



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

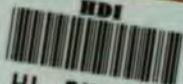
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

HDI



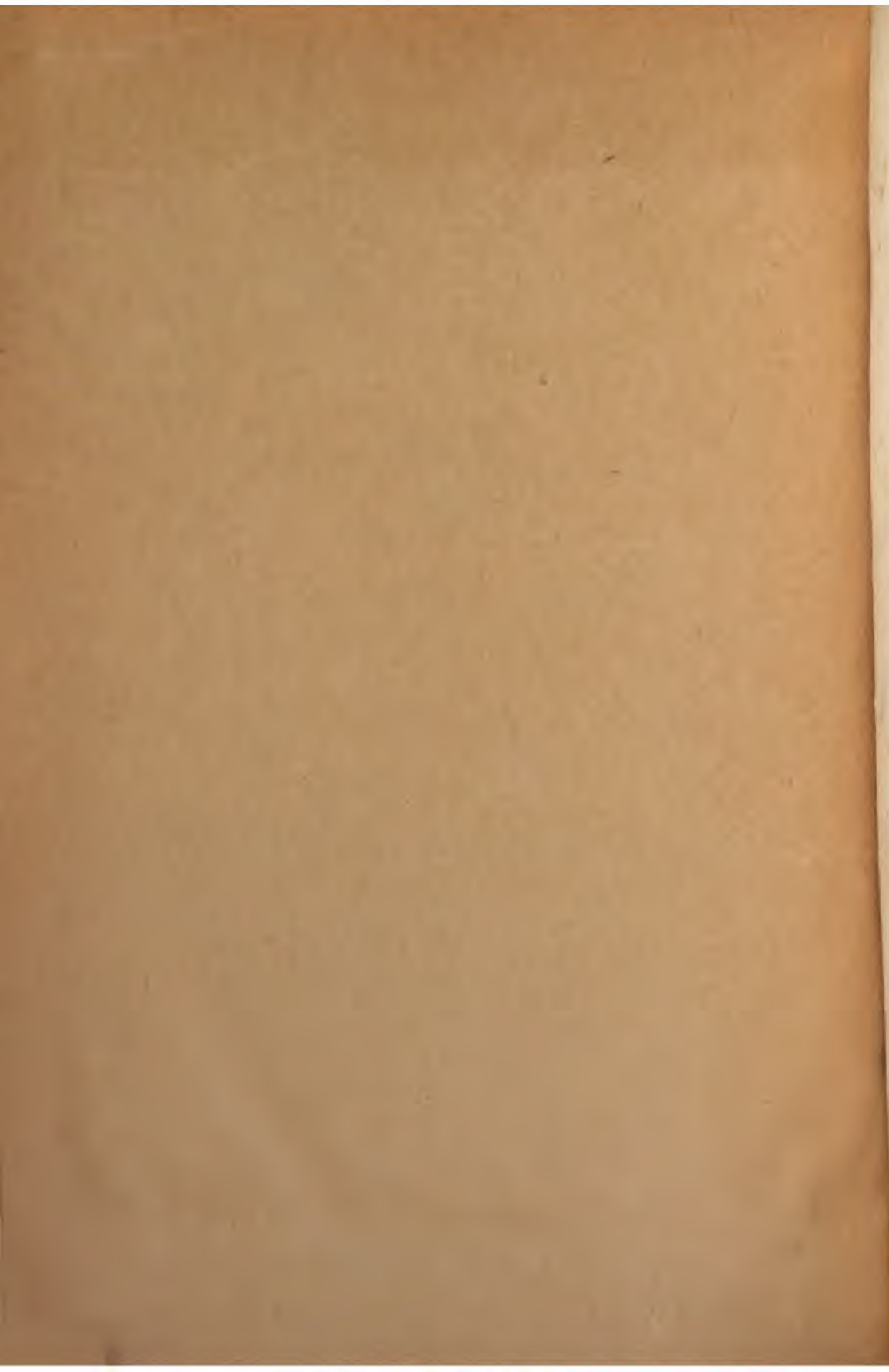
HL 5M8T G

Bd. Aug. 1940



HARVARD LAW SCHOOL
LIBRARY

Received *May 2. 1902*





Jul 24 12x

THE

c #

ENCYCLOPÆDIA

OF

PLEADING AND PRACTICE

UNDER THE CODES AND PRACTICE ACTS,
AT COMMON LAW, IN EQUITY
AND IN CRIMINAL CASES.

COMPILED UNDER THE EDITORIAL SUPERVISION OF

WILLIAM M. McKINNEY.

VOL. XXIII.—INDEX.

PREPARED BY THOMAS JOHNSON MICHIE.

0

NORTHPORT, LONG ISLAND, N. Y.

EDWARD THOMPSON COMPANY, LAW PUBLISHERS

1902.

S
US
013.90
ENC

Dit leg

COPYRIGHT, 1902.

BY

EDWARD THOMPSON CO.

All rights reserved.

Rec. May 2, 1902.

INDEX

TO

ENCYCLOPÆDIA OF

PLEADING AND PRACTICE.

ABANDONMENT:

Appeals, see APPEALS.
 Calendars and trial dockets, 3, 809
Eminent domain, see EMINENT DOMAIN.

ABATEMENT, 5, 783

See DEATH; REVIVAL OF JUDGMENTS;
 REVIVOR OF SUITS AND ACTIONS;
 SURVIVAL OF ACTIONS.

Actio personalis moritur cum persona,
 5, 790

Admiralty, 5, 792

Another suit pending, see ANOTHER
 SUIT PENDING.

Answers in code pleading:

Matter in abatement and matter
 in bar, 1, 854

Appeals (see APPEALS), 5, 794

Death of defendant pending ap-
 peal or writ of error, 5, 823

Death of one of several defend-
 ants, 5, 836

Death of one of several plain-
 tiffs, 5, 815

Death of plaintiff pending ap-
 peal, 5, 800

Death pending appeal or writ of
 error, 5, 794

Dismissal of appeal, 2, 351

Arrest of judgment, 2, 798

Assumpsit, 2, 1011

Attachment:

Death of defendant, 3, 90; 5, 832

Bail and recognizance, 3, 186

Breach of promise of marriage:

Death of defendant, 5, 828

Death of plaintiff, 5, 809

Civil death, 5, 847

Cognovit, 4, 565

Contempt, 4, 787

Corporations:

Death of plaintiff, 5, 811

Index Pl. & Pr. — 1

ABATEMENT, *cont'd.*

Creditors' bills:

Death of defendant, 5, 835

Criminal conversation, 5, 617

Death by wrongful act, see DEATH BY
 WRONGFUL ACT.

Death of both parties, 5, 841

Death of defendant, 5, 819

Actions against sheriffs, 5, 834

Actions *ex delicto*, 5, 829

Actions for personal injuries, 5,
 827

After final judgment, 5, 822

After verdict, 5, 822, 826

Attachment, 5, 832

Before final judgment, 5, 821

Before service of summons, 5,
 821

Breach of promise, 5, 828

Creditors' bills, 5, 835

Death of one of several defend-
 ants, 5, 835

In actions against husband
 and wife, 5, 839

In actions against partners,
 5, 839

In actions *ex contractu*, 5, 836

In actions *ex delicto*, 5, 836

In actions of ejectment, 5,
 837

In actions of trespass, 5, 838

In foreclosure proceedings,
 5, 841

In suits for partition, 5, 840

In suits in equity, 5, 840

Pending appeal or writ of
 error, 5, 836

Death of sole defendant, 5, 819

Debt, 5, 827

Deceit, 5, 828

Ejectment, 5, 825

Equity practice, 5, 824

ABATEMENT, *cont'd.*Death of defendant, *cont'd.*

- Equity suits, 5, 834
- Foreclosure, 5, 834
- Garnishment, 5, 832
- Libel and slander, 5, 828
- Penalties, 5, 833
- Pending appeal or writ of error, 5, 823
- Real action, 5, 820
- Replevin, 5, 826
- Reversal of judgment, 5, 824
- Seduction, 5, 828
- Spiritual court, 5, 820
- Suits for divorce, 5, 831
- Trover, 5, 827

Death of king, 5, 786

Death of plaintiff, 5, 796

- Actions against sheriffs, 5, 811
- Actions *ex delicto*, 5, 810
- Actions for breach of promise, 5, 809
- Actions for libel and slander, 5, 808
- Actions for personal injuries, 5, 807
- Actions for seduction, 5, 809
- Actions of dower, 5, 804
- Actions of ejectment, 5, 803
- Actions of replevin, 5, 804
- Actions to recover penalties, 5, 711
- After final judgment, 5, 800
- After verdict or interlocutory judgment, 5, 798
- Before final judgment, 5, 797
- Before verdict, 5, 797
- Death of sole plaintiff, 5, 796
- Equitable plaintiff, 5, 813
- Foreclosure proceedings, 5, 805
- Injuries to real or personal property, 5, 805
- Nominal plaintiff, 5, 812
- One of several plaintiffs, 5, 814
 - Before final judgment, 5, 814
 - In actions by husband and wife, 5, 817
 - In actions by partners, 5, 818
 - In actions *ex delicto*, 5, 816
 - In actions of ejectment, 5, 815
 - In actions of trespass, 5, 816
 - In actions to recover penalties, 5, 817
 - In creditors' bills, 5, 819
 - In suits in equity, 5, 818
 - Pending appeal or writ of error, 5, 815
- Pending appeal or writ of error, 5, 800
- Pending execution, 5, 802
- Pending reference, 5, 800
- Qui tam* actions, 5, 812

ABATEMENT, *cont'd.*Death of plaintiff, *cont'd.*

- Special proceedings, 5, 812
- Suits for divorce, 5, 810
- Trustees of corporation, 5, 811

Death of witness, 8, 99

Debt:

- Death of defendant, 5, 827

Deceit:

- Death of defendant, 5, 828

Decrees, 5, 968

- Death after judgment of cause, 5, 969
- Decree after death of party, 5, 968
- Judgment or decree after death, 5, 846

Defaults:

- Judgment by default against deceased defendant, 6, 15
- Judgment by default against deceased plaintiff, 6, 13

Defendant, see *infra*, Death of defendant.

Directors:

- Death of plaintiff, 5, 811

Divorce, see **DIVORCE**.

Dower:

- Death of plaintiff in action of dower, 5, 804

Effect of death at common law, 5, 786

Ejectment:

- Death of defendant, 5, 825
- Death of one of several defendants, 5, 837
- Death of one of several plaintiffs, 5, 815
- Death of plaintiff, 5, 803

Eminent domain:

- Death of party, 7, 505

Equitable attachment, 7, 796

Equity practice, 5, 790

Error, writ of, 5, 794; 7, 846

Bankruptcy, 7, 869

Death after assignment of error, 7, 868

Death before writ issues, 7, 868

Death of defendant pending appeal or writ of error, 5, 823

Death of joint plaintiff or defendant in error, 7, 868

Death of one of several defendants, 5, 836

Death of one of several plaintiffs, 5, 815

Death of plaintiff pending writ of error, 5, 800

Death of sole defendant, 7, 866

Death of sole plaintiff, 7, 866

Death pending appeal or writ of error, 5, 794

In general, 7, 866

ABATEMENT, *cont'd.*Error, writ of, *cont'd.*

Legal representatives, 7, 866

Marriage, 7, 869

Examination of parties before trial, 8, 67

Examination of witnesses:

Death of witness after examination in chief and before opportunity to cross-examine, 8, 99

Ex contractu and *ex delicto*, 5, 789

Death of defendant, 5, 829

Death of one of several defendants in actions *ex contractu*, 5, 836Death of one of several defendants in actions *ex delicto*, 5, 838

Death of one of several plaintiffs, 5, 816

Death of plaintiff, 5, 810

Executions, see DEATH.

Final judgment:

Death of defendant after final judgment, 5, 822

Death of defendant before final judgment, 5, 821

Death of plaintiff after final judgment, 5, 800

Death of plaintiff before final judgment, 5, 797

Forcible entry and detainer, 9, 64, 68

Abatement of action, 9, 68

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Forthcoming and delivery bonds:

Bond executed after death of creditor, 9, 654

Garnishment:

Death of defendant, 5, 832

Husband and wife:

Death of husband, 5, 817; 10, 235

Death of one of several defendants, 5, 839

Death of wife, 5, 817; 10, 236

Effect of death of husband on actions against husband and wife, 10, 256

Effect of death of wife on actions against husband and wife, 10, 257

Effect of death on suits by husband and wife, 10, 235, 236

Death of husband, 10, 235

Nonjoinder or misjoinder, 10, 227

Judicial writs, 5, 792

Justices of the peace, 12, 721

Laches:

Failure to suggest, 5, 843

ABATEMENT, *cont'd.*

Landlord and tenant:

Attachment, 12, 920

Libel and slander, 13, 31

Death of defendant, 5, 828

Death of plaintiff, 5, 808

Mandamus, 5, 792; 13, 755

Death of relator, 13, 755

Death of respondent, 13, 756

In general, 13, 755

Termination of relator's office, 13, 756

Termination of respondent's office, 13, 756

Marriage (annulment), 13, 882

Next friend, 14, 1001, 1002

Official bonds:

Notice of motion, 15, 177

Partition, see PARTITION.

Partnership:

Death of one of several defendants, 5, 839

Death of one of several plaintiffs, 5, 818

Penalties and penal actions, 16, 301; 5, 812

Actions on remedial statutes, 16, 301

Death of defendant, 5, 833; 16, 301

Death of informer, 16, 301

Death of one of several plaintiffs, 5, 817

Death of plaintiff, 5, 811

Pending actions, 5, 788

Plaintiff, see *infra*, Death of plaintiff.

Pleas in abatement:

Verification, 22, 1027

Premature suits, 15, 878, 879

Privilege, 16, 978

Probate and contest of wills, 16, 1028

Procedure:

When action abates, 5, 845

Public officers, see PUBLIC OFFICERS.

Qui tam actions:

Death of plaintiff, 5, 812; 16, 301

Receivers, see RECEIVERS.

References, see REFERENCES.

Replevin:

Death of defendant, 5, 826

Death of plaintiff, 5, 804

Revival of judgments, see REVIVAL OF JUDGMENTS.

Revivor of suits and actions, see REVIVOR OF SUITS AND ACTIONS.

Seduction:

Death of defendant, 5, 828

Death of plaintiff, 5, 809

Sequestration, 19, 547

Sheriffs and constables, 20, 168

Death of defendant in actions against sheriffs, 5, 834

Death of plaintiff, 5, 811

ABATEMENT, *cont'd.*

- Sheriffs' sales*, see **SHERIFFS' SALES**.
- States, 20, 591
- Stipulation against abatement, 5, 846; 20, 616
- Stock and stockholders:
 - Proceedings on motion to enforce stockholders' liability, 20, 762
- Suggesting death, 5, 841
 - Effect of suggestion, 5, 84
 - Failure to suggest, 5, 843
 - In general, 5, 841
 - Laches, 5, 843
 - Subsequent proceedings, 5, 845
- Supplemental pleadings, 21, 38
- Survival of actions*, see **SURVIVAL OF ACTIONS**.
- Survival of right of action, 5, 786
- Telegraphs and telephones, 21, 535
- Time to plead, 21, 679
- Trespass:
 - Death of one of several defendants, 5, 838
 - Death of one of several plaintiffs, 5, 816
- Trover and conversion:
 - Death of defendant, 5, 827
- Trusts and trustees:
 - Actions between trustees and beneficiaries or their representatives, 22, 148
- United States courts, 5, 788; 22, 300
- Verdict:
 - Death after verdict, 5, 793
 - Death of defendant after verdict, 5, 822
 - Death of plaintiff after verdict, 5, 798
 - Death of plaintiff before verdict, 5, 797
- Verification, 22, 1027

ABATEMENT IN PLEADING, 1, 1See **ABATEMENT; DILATORY PLEAS**.

Action premature, 1, 22

Affidavit, 1, 28

Defective affidavit, 1, 29

Necessity of affidavit, 1, 28

Requisites of affidavit, 1, 29

Affidavit of merits, 1, 33

Alimony, 1, 411

Amendments, 15, 26, 591

After pleas in abatement, 1, 591

Amendments to *ad damnum*, 1, 588

Criminal proceedings, 1, 701

Another suit pending (see **ANOTHER SUIT PENDING**), 1, 757

Requisites of the plea, 1, 771

Answers in abatement:

Abolition under the code, 1, 838

Answers in code pleading, 1, 838, 839

General denials, 1, 827

ABATEMENT IN PLEADING, *con.*Answers in code pleading, *cont'd.*

Matter in abatement and matter in bar, 1, 854

Anticipation of defense, 1, 24

Bastardy, 3, 287

Capacity to sue, 1, 10

Carriers, 3, 857

Certainty, 1, 6, 24

Pleas *puis darrein continuance*, 1, 38Construction, see *infra*, Interpretation.

Corporations, 1, 10; 5, 96

Consolidation, 5, 98

Liability to be sued after dissolution, 5, 97

Right to sue after dissolution, 5, 96

Costs, 5, 130

Creditors' bills, 5, 554

Definition, 1, 1

Demurrer, 1, 36

General or special demurrers, 6, 306

Nonjoinder, 1, 17

Divorce, 7, 96

Duplicitv, 1, 25; 7, 243

Equity, 1, 40

Construction, 1, 40

Objections raised, 1, 40

Parties, 1, 41

Same as at law, 1, 40

Executors and administrators:

Nonjoinder, 1, 16

Final judgment, 1, 30, 31

Infancy, 1, 9

Interpretation, 1, 23

Whether pleas are construed strictly, 1, 23

Joinder, 1, 14

Misjoinder, 1, 13

Nonjoinder, 1, 14

Judgments, 1, 30, 38

Finality of judgment, 1, 30, 31

Judgment for defendant, 1, 30

Judgment for plaintiff on demurrer, 1, 30

Judgment for plaintiff on issue of fact, 1, 31

Puis darrein continuance, 1, 38*Jurisdiction*, see *infra*, Pleas to the jurisdiction.

Kinds of pleas in abatement, 1, 3

Action premature, 1, 22

Capacity to sue, 1, 10

Defects in process and proceedings, 1, 19

Infancy, 1, 9

In general, 1, 3

Misjoinder, 1, 13

Misnomer, 1, 12

Nonjoinder, 1, 14

Nontenure, 1, 19

ABATEMENT IN PLEADING, *con.*Kinds of pleas in abatement, *cont d.*

Pleas to the jurisdiction, 1, 3

Privilege, 1, 19

Real party in interest, 1, 11

Service of process, 1, 20

Variance, 1, 20

Married women:

Plea of coverture, 1, 9

Misjoinder, 1, 13

Misnomer (see NAMES), 1, 12

Name:

Misnomer, 1, 12

Next friend:

Failure to appoint or irregular
appointment, 14, 1021

Nonjoinder, 1, 14

Nontenure, 1, 19

Notice or brief statement of defense,
14, 1085

Official bonds, 15, 148

Oyer, 1, 20

Parties to action:

Equity, 1, 41

Misnomer, 1, 12

Partnership:

Existence of partnership, 15, 934

Nonjoinder, 1, 16; 15, 894, 895

Plea in bar:

Some matters may be pleaded
either in abatement or in bar,
16, 554Pleas in bar and pleas in abatement,
1, 2Pleas *puis darrein continuance*, 1, 36

Certainty, 1, 38

Judgments, 1, 38

Matters arising after issue, 1, 36

Supplemental answer, 1, 37

Waiver of other pleas, 1, 37

Pleas to the jurisdiction, 1, 3

Amendment in court's discre-
tion, 1, 5Denial of jurisdiction to particu-
lar court, 1, 3Must be clear, distinct, and posi-
tive, 1, 6Objection must be taken by plea
or demurrer, 1, 4

Prayer, 1, 8

Should show want of residence,
1, 7Statutory provisions saving ob-
jections to jurisdiction, 1, 5When no court has jurisdiction,
1, 3

Pleas to the person, 16, 597

Prayer, 1, 27

Form of prayer, 1, 28

Necessity of proper prayer, 1, 27

Pleas to the jurisdiction, 1, 8

Premature suits, 16, 878, 879

Privilege, 1, 19

ABATEMENT IN PLEADING, *con.*

Process, 1, 19

Puis darrein continuance, see *infra*,
Puis puis darrein continuance.

Real party in action, 1, 11

Replication, 1, 38

Demurrer, 1, 39

Examples, 1, 38, 39

Waiver, 1, 39

Requisites, 1, 23

Affidavit, 1, 29

Amendments, 1, 26

Anticipation of defense, 1, 24

Capacity to sue, 1, 10

Certainty, 1, 24

Duplicity, 1, 25

Matter affecting codefendant, 1,
26

Nonjoinder, 1, 17

Plea must give better writ, 1,
25Pleas to the jurisdiction must be
clear, distinct, and positive, 1, 6

Real party in action, 1, 11

Strict construction, 1, 23

Whether rules obsolete, 1, 26

Residence:

Plea to the jurisdiction, 1, 7

Returns, see RETURNS.

Sham and frivolous pleadings, 20, 46

Signature, 1, 28

Trial, 1, 32

Variance, 1, 20

Verification, 1, 28

Waiver, 1, 32

Affidavit of merits, 1, 33

After imparlance, 1, 36

Capacity to sue, 1, 10

Demurring, 1, 36

Exceptions and rules, 1, 35

Infancy, 1, 9

Pleading out of order, 1, 34

Pleading to merits, 1, 32

Proceeding in cause. 1. 36

Replication, 1, 39

Waiver of plea, 1, 32

Withdrawing plea to merits. 1,
34Waiver of right to plead abatement,
1, 36**ABATEMENT OF NUISANCE, see
NUISANCES.****ABBREVIATIONS, 1, 42**

Affidavits:

Abbreviations of title, 1, 312

Title of office, 1, 319

Amount, 1, 47

C. O. D., 1, 49

Contractions of Christian names, 1,
46

Description, 1, 47

Examples, 1, 48

General rule as to, 1, 42

ABBREVIATIONS, *cont'd.*

- Indictments:
 - Arabic figures, 10, 419
 - State, 10, 423
- Initials, 1, 43
- J. P., 1, 43
- Judicial notice, 1, 42, 43
 - Contraction of Christian names, 1, 43
 - Initials, 1, 43
 - Officials, 1, 43
 - Prefix, 1, 46
 - Proper names, 1, 43
 - Suffix, 1, 46
 - Time, 1, 47
- Mrs., 14, 292
- Names, 1, 43
- N. P., 1, 43
- Parol evidence, 1, 42
- Prefixes, 1, 46
- Returns, 18, 918
- Suffixes, 1, 46
- Time, 1, 47
- Validity, 1, 42
- Variance, 22, 571
- Verdict, 22, 904
- ABDUCTION** (see **KIDNAPPING**; **SE-
DUCTION**):
 - Definition, 1, 50
 - Indictment, 1, 50
 - Allegations, 1, 50, 51
 - Form, 1, 50
 - Intention of abduction, 1, 51
 - Joinder of counts and causes, 1, 52
 - Place and manner, 1, 52
- ABDUCTION OF CHILDREN**, see **KIDNAPPING**.
- ABIDING THE EVENT**, 1, 53
 - Agreements, 1, 54
 - Arbitration and award, 1, 53
 - Bonds, 1, 54, 57
 - Civil actions, 1, 58
 - Criminal proceedings, 1, 57
 - Costs, 1, 59
 - General rule as to costs, 1, 59
 - New trial, 1, 59
 - Statute, 1, 60
 - Test action, 1, 61
 - "With costs to abide the event," 5, 220
 - Criminal procedure, 1, 57
 - Definition, 1, 53
 - Funds in court, 1, 61
 - Interpleader, 1, 61
 - New trial, 1, 59
 - Power of attorney, 1, 54
 - Recognizance, 1, 57
 - Civil actions, 1, 58
 - Criminal proceedings, 1, 57
 - Stipulations, 1, 54
 - Test action, 1, 61
- ABORTION**, 1, 62
 - Allegation of pregnancy, 1, 63

ABORTION, *cont'd.*

- Certainty, 1, 63
- Feloniously, 1, 63
- Indictment, 1, 62
- Intent, allegation of, 1, 64
- Joinder of counts and causes, 1, 65
- Maliciously, 1, 63
- Specifying means, 1, 64
- Womb, 1, 63
- ABSENCE**:
 - Affidavits of merits or defense, 1, 360
- ABSTRACT**:
 - Appeals*, see **APPEALS**.
 - Presumption of correctness, 2, 440
 - Bills of exceptions, 3, 384
 - Records*, see **RECORDS**.
- ABSTRACT OF TITLE**:
 - Trespass to try title, 21, 942
- ABUSIVE AND OFFENSIVE
LANGUAGE**:
 - Breach of the peace, 3, 679
 - Disorderly conduct, 7, 3, 4
- ACCESSORIES AND THE LIKE**, 1, 66
 - See **AIDERS AND ABETTERS**.
 - Abolition of distinction between accessories and principals, 1, 69
 - Accessory must still be charged as accessory, 1, 70
 - Alleging offense when accessory is treated as such, 1, 70
 - Charged as both principal and accessory, 1, 71
 - Conviction as either principal or accessory, 1, 71
 - How to allege the offense when accessory is charged as principal, 1, 70
 - In general, 1, 69
 - Sufficiency of common-law indictment, 1, 70
 - Whether accessory may be charged as principal, 1, 70
 - Whether principal must be first convicted, 1, 71
 - Whether statute affects accessory after the fact, 1, 72
 - Acquittal of principal, 1, 68, 69, 71
 - After the fact, 1, 66, 69
 - Abolition of distinction between accessory and principal, 1, 72
 - Acquittal of principal, 1, 69
 - Averment of knowledge, 1, 69
 - Joinder with principal, 1, 69
 - Before the fact (see *infra*, Abolition of distinction between accessories and principals), 1, 66, 68
 - Accessory to several defendants, 1, 69
 - Indicted alone, 1, 68
 - Joinder with principal, 1, 68
 - Necessary to indict as such, 1, 68

ACCESSORIES AND THE LIKE,*cont'd.*Before the fact, *cont'd.*

Whether principal must be convicted, 1, 68

Burglary, 3, 799

Joinder, 3, 783

Conviction of principal, 1, 68, 69, 71

Definition, 1, 66

Escape, 7, 915

Homicide:

Charging as principal and as accessory, 10, 155

Indictment of accessories and principals in the second degree, 10, 156

Accessories before the fact, 10, 157

Charging with assisting, etc., 10, 158

Murder by rioters, 10, 157

Principals in the second degree, 10, 156

Joint indictment, 10, 158

Indictment, 1, 66

Instructions, 11, 324

Absence of request, 11, 328

Accomplice testimony in general, 11, 324

Advising acquittal where testimony is uncorroborated, 11, 326

Instructing jury to view testimony with caution, 11, 325

Instructions as to who are accomplices, 11, 329

Introductory statements, 11, 325

No testimony by accomplice, 11, 326

Nothing to show witness accomplice, 11, 326

Joinder of parties, 1, 67

Joinder with principal, 1, 69

Principals, 1, 66

Principals of the second degree, 1, 67

Separate trials, see **SEPARATE TRIALS**.

Venue, 22, 825

ACCIDENT, see **SURPRISE**.

Judgments:

Equitable relief against judgments, 11, 1180, 1184

Lost instruments and records:

Jurisdiction in equity, 13, 356

New trial, see **NEW TRIAL**.**ACCIDENT INSURANCE**, see **INSURANCE**.**ACCOMPLICES**, see **ACCESSORIES AND THE LIKE**.**ACCORD AND SATISFACTION**, 1,

73

See **ARBITRATION AND AWARD**.

Acceptance, allegation of, 1, 77

Admissions, 1, 82

ACCORD AND SATISFACTION, *con.*

Affirming an accord, 1, 82

Answers in code pleading, 1, 835, 849

Appeals:

Whether accord and satisfaction may be shown to appellate court, 1, 75

Assumpsit, 1, 74; 2, 1028

Awards, 3, 142

Code pleading, 1, 74, 76

Common law, 1, 74, 76

Definition of plea, 1, 73

Equity, 1, 82

Equity of redemption, release of, 1, 79

Estoppel, 1, 82

Form of plea, 1, 76

Insufficient allegations, 1, 80

Interpretation:

Construction of plea, 1, 79

Judgments:

Equitable relief against judgments, 11, 1179

Matter must be pleaded, 1, 74

Mistake, 1, 78

Necessary allegations, 1, 77

Necessity of pleading, 1, 73

Nul tiel record, 1, 81

Payment:

Evidence under plea of payment, 16, 211

Pleas, 19, 171

Pro tanto, 1, 82*Puis darrein continuance*, 1, 75; 17, 266

Question of law and fact, 1, 82

Replication, 1, 79

Tender, 1, 82

Time, allegation of, 1, 77

Time to plead, 1, 75

Verification, 1, 76

Whether admissible under plea of non-assumpsit, 1, 74

ACCOUNTS AND ACCOUNTING,

1, 83

See **JOINER OF COUNTS AND CAUSES**.

"Account," 1, 90, 91

Account stated:

As to plea of stated account, see *infra*, **EQUITY**, and see **ACCOUNT STATED**.

Action of account, 1, 84

Declaration, 1, 85

Executors and administrators, 1, 85

Final judgment, 1, 87

Generally fallen into disuse, 1, 84

Judgment *quod computet*, 1, 86

Partnership affairs, 1, 85

Plea, 1, 86

States having no chancery courts, 1, 84

When it lies, 1, 84

ACCOUNTS AND ACCOUNTING, *cont'd.*

- Actions on accounts, 1, 90
 - Affidavit, 1, 92
 - Copy of account, 1, 90
 - "Indebted," 1, 91
 - Particularity of complaint, 1, 90
 - Pleading by copy, 1, 90
 - Probated accounts, 1, 91
 - Statutory provisions, 1, 90
 - Verified account, 1, 91
 - What constitutes an account, 1, 90

Affidavit, 1, 92

Agency, 16, 919

- Accounting in equity, 16, 920
- Agent profiting at expense of principal, 16, 921
- Allegations of fraud, mistake, etc., 16, 922
- Bill by agent, 16, 924
- Bill by principal, 16, 920
- Bill for discovery, 16, 921
- Common-law action of account, 16, 919
- Costs, 16, 923
- Cross-bill by agent, 16, 922
- Miscellaneous matters, 16, 923
- Plea of statute of limitations, 16, 922

Amendment, 1, 88

- Amending plea where defendant sets forth a stated account, 1, 101

Answer, 1, 99

Appeals, 1, 102; 2, 127

- Finality of order, 2, 67, 70

Assignment for benefit of creditors:

- Cost of accounting, 2, 918
- Final accounting of assignee, 2, 917

- Party to bill in equity, 1, 105

Assumpsit:

- Account stated, 2, 1024
 - Admissions, 2, 1024
 - Failure to object, 2, 1025
 - Grounds for impeaching, 2, 1025
 - Partners, 2, 1025
 - What necessary to make, 2, 1024
- Plea of non-assumpsit, 1, 89

Bill, 1, 99

Bill in equity, 1, 97

- Impeaching account, 1, 107

Bills of particulars, 1, 89; 3, 543

- Account stated, 3, 544
- Attorneys, 3, 547
- In general, 3, 543
- Proper matters of account, 3, 545
- Successive acts of service, 3, 546

Certainty:

- Bill for accounting, 1, 97

cont'd.

Code pleading, 1, 94

- Plea of account stated, 1, 102

Complaint:

- Impeaching account, 1, 107

Complaint and declaration, 1, 85

- Allegation of receipt under common-law action, 1, 85

- Pleas, 1, 86

Complicated accounts, 1, 94

Copyright, 5, 25

Corporations:

- Parties to bill in equity, 1, 105

Costs, 1, 102

Counts, paragraphs, and separate statements:

- Separate counts, 5, 315

Cross-bills, 5, 635

Debts of decedents, see SETTLEMENT OF DECEDENTS' ESTATES.

Declaration, 1, 90

Declaration or complaint, 1, 97

- Account stated, 1, 88

Decrees, 1, 102; 5, 954

Demand:

- Allegation of demand, 1, 98

Equity, 1, 93

- Answer, 1, 99

- Appeal, 1, 103

- Appeal from decree, 1, 103

- Basis and extent of equity jurisdiction, 1, 93

- Bill, 1, 97

- Certainty and particularity of bill, 1, 97

- Code, 1, 94

- Complaint, 1, 97

- Complicated accounts, 1, 95

- Costs, 1, 102

- Cross-bill, 1, 99

- Decree, 1, 102

- Demand, 1, 98

- Equity jurisdiction in cases of accounts, 1, 93

- Fiduciary relation, 1, 96

- Ignorance and fraud, 1, 98

- Mutual accounts, 1, 94

- Necessary allegations, 1, 93, 98

- Offer to pay balance, 1, 98

- Parties, 1, 104

- Plea of stated account, 1, 100

- Amending bill, 1, 101

- Codes, 1, 102

- In general, 1, 100

- Requisites of plea, 1, 101

- Surcharging and falsifying, 1, 102

- What may be pleaded as stated account, 1, 101

Practice, 1, 102

Prayer, 1, 99

ACCOUNTS AND ACCOUNTING,

*cont'd.*Equity, *cont'd.*

Proceedings to impeach an account, 1, 107

Setting out account in answer, 1, 100

Superfluous averments, 1, 98

Test of complication, 1, 95

Exceptions and objections, 8, 299

Executors and administrators, see SETTLEMENT OF DECEDENTS' ESTATES.

Final judgments and decrees, 2, 67, 70

Fraud:

Equity, 1, 98

Guardians, see GUARDIANS.

Impeaching account, 1, 107

Impeachment of account stated, 2, 1025

"Indebted," 1, 91

Issues to the jury, 11, 649

Itemizing, 1, 90

Joint tenants and tenants in common, 11, 758

Common law, 11, 758

Common-law receipt only, 11, 759

Necessary allegations, 11, 759

Judgment *quod computet*, 1, 86

Judgments, 1, 86

Equitable relief against judgments, 11, 1175

Final judgments and decrees, 1, 87

Opening judgment, 1, 87

Quod computet, 1, 86

Mutual accounts, 1, 94

Order of reference, see REFERENCE.

Parties to actions, 1, 104

Assignees, 1, 105

Bill in equity for accounting, 1, 104

Corporations, 1, 105

Parties to bill in equity, 1, 104

Partners, 1, 104

Trustees and *cestuis que trustent*, 1, 105

Unnecessary persons, 1, 106

Waiving relief, 1, 106

Partition, 15, 802

Partnership, see PARTNERSHIP.*Patents*, see PATENTS.*Plea of stated account*, see *infra*, Equity.

Pledges, 16, 646

Prayer, 1, 99

Probated accounts, 1, 91

Receivers, see RECEIVERS.

Redemption:

Bill for redemption and accounting, 17, 964

ACCOUNTS AND ACCOUNTING,

cont'd.

References, 17, 983

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Specific performance, 20, 496

Splitting causes of action, 1, 153

Stated accounts, see *infra*, Equity, and see ACCOUNT STATED.

Stockholders, 1, 105

Surcharging and falsifying, see SURCHARGING AND FALSIFYING.

Surplusage:

Bill in equity, 1, 98

Survival of actions, 21, 319

Trade-marks and trade names, 21, 770

Allegations, 21, 771

Amount and nature of profits and from whom recoverable, 21, 771

Dependence upon injunction, 21, 772

In general, 21, 770

Injunction without accounting, 21, 772

Trusts and trustees (see TRUSTS AND TRUSTEES), 1, 96

Parties to bill in equity, 1, 105

Verification, 1, 91

Waste, see WASTE.

Words and phrases:

Account, 1, 90, 91

Indebted, 1, 91

ACCOUNT STATED, 1, 87

See ACCOUNTS AND ACCOUNTING.

Amendment, 1, 88

Assumpsit, 2, 1024

Bill of particulars, 1, 89

Declaration as such, 1, 88

Declaration or complaint, 1, 88

Definition, 1, 87

Denial, 1, 89

In general, 1, 87

Mistake, 1, 89

Non-assumpsit, 1, 89

Prematurely brought, 1, 89

ACCRETIONS:

Ejectment, 7, 268

ACKNOWLEDGMENT (see LIMITATIONS):

Bail and recognizance, 3, 227

Forgery, 9, 565

Judicial sales, 12, 106

ACQUIESCENCE, see LACHES.

ACQUITTAL, see FORMER CONVICTION OR ACQUITTAL.

ACTIONS, 1, 108

See CARRIERS; JOINDER OF COUNTS AND CAUSES.

Abolition of forms of action, 1, 141

Civil action as a substitute, 1, 145

ACTIONS, *cont'd.*

Abolition of forms of action, *cont'd.*
 Common-law distinction preserved at first, 1, 142
 Distinction between law and equity, 1, 144
 No new causes of action created, 1, 143
 Statutory provisions, 1, 141
 Substantive distinction preserved, 1, 144
 True rule, 1, 143
Account, see ACCOUNTS AND ACCOUNTING; ACCOUNT STATED.
 Actions against teachers, 19, 249
Affidavits of merits, see AFFIDAVITS OF MERITS OR DEFENSE.
Agency, see AGENCY.
Amicable actions, see FRIENDLY SUITS.
Animals, see TRESPASSING, VICIOUS, AND DISEASED ANIMALS.
Appeals, see APPEALS.
Appearances, see APPEARANCES.
Arbitration and award, see AWARDS.
Assault and battery, see ASSAULT AND BATTERY.
Assignments, see EQUITABLE ASSIGNMENTS.
Assignments for benefit of creditors, see ASSIGNMENTS FOR BENEFIT OF CREDITORS.
Assumpsit, see ASSUMPSIT.
Attachment, see ATTACHMENT.
 Attorneys:
 Actions against attorneys, see ATTORNEYS.
 Attorney's fees, see ATTORNEYS.
 Bail and recognizance, see BAIL AND RECOGNIZANCE.
 Banks and banking, see BANKS AND BANKING.
 Bastardy, see BASTARDY.
 Bills of particulars, see BILLS OF PARTICULARS.
 Bonds:
 Forthcoming and delivery bonds, see FORTHCOMING AND DELIVERY BONDS.
 Breach of promise of marriage, see BREACH OF PROMISE OF MARRIAGE.
 Bridges, see BRIDGES.
 Carriers, see CARRIERS.
 Cause *ex contractu* and cause *ex delicto*:
 Code pleading, 1, 147
 Cause of action (see SPLITTING CAUSES OF ACTION), 1, 116
 Construction of statutes, 1, 118
 Definition, 1, 116
 Delict alone, 1, 117
 Judgments, see JUDGMENTS.
 Remedy alone, 1, 118
 Certiorari, see CERTIORARI.

ACTIONS, *cont'd.*

ChamPERTY and maintenance, see CHAMPERTY AND MAINTENANCE.
Change of venue, see CHANGE OF VENUE.
 Character of actions, how determined under codes, 1, 146
 A question of construction, 1, 146
 Cause *ex contractu* and cause *ex delicto* equitable or legal, 1, 146
 Prayer for relief, 1, 146
 Whether the prayer for relief may be consulted, 1, 146, 147
Clubs, see UNINCORPORATED SOCIETIES.
 Code pleading:
 Cause *ex contractu* and cause *ex delicto*, 1, 147
 Civil action as a substitute, 1, 145
 Common-law distinction preserved at first, 1, 142
 Distinction between law and equity, 1, 144
 Equity:
 Whether an action is equitable or legal, 1, 146
 No new causes of action created, 1, 145
 Statutory provisions, 1, 141
 Substantive distinction preserved, 1, 144
 True rule, 1, 143
Cognovit, see COGNOVIT.
Commencement of, see *infra*, When is an action commenced.
Conditions precedent, see CONDITIONS PRECEDENT.
Consolidation of actions, see CONSOLIDATION OF ACTIONS.
Conspiracy, see CONSPIRACY.
Constables, see SHERIFFS AND CONSTABLES.
Continuances, see CONTINUANCES.
 Contracts, 1, 111
Conversion, see TROVER AND CONVERSION.
 Convicts, 5, 15
Copyright, see COPYRIGHT.
Corporations, see CORPORATIONS.
Costs, see COSTS.
Counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.
Counties, see COUNTIES.
Counts, paragraphs, and separate statements, see COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS.
Criminal conversation, see CRIMINAL CONVERSATION.
 Crown, actions of, 1, 111
Damages, see DAMAGES.
Death, see DEATH.
Death by wrongful act, see DEATH BY WRONGFUL ACT.

ACTIONS, *cont'd.*

Debt, see DEBT.
Defaults, see DEFAULTS.
Defenses, see EQUITABLE DEFENSES.
Definition, 1, 110
 Special proceedings, 1, 112
Delivery bonds, see FORTHCOMING AND DELIVERY BONDS.
Detinue, see DETINUE.
Devisees, see HEIRS AND DEVISEES.
Discontinuance, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
Dismissal, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
Distress, see DISTRESS.
Distributees, see LEGATEES AND DISTRIBUTUTES.
Divorce, see DIVORCE.
Dower, see DOWER.
Druggists, 7, 226
Easements, see EASEMENTS.
Ejectment, see EJECTMENT.
Election of remedies, see ELECTION OF REMEDIES.
Elections, see ELECTIONS.
Eminent domain:
 Action on awards and judgments, 7, 625
Enforcement of lien, see LIENS.
Entry, writ of, see ENTRY, WRIT OF.
Equitable assignments, see EQUITABLE ASSIGNMENTS.
Equitable defenses, see EQUITABLE DEFENSES.
Equity:
 Whether an action is equitable or legal under the codes, 1, 146
Escape, see ESCAPE.
Estrays, 8, 18
Executions, see EXECUTIONS.
Executors and administrators, see EXECUTORS AND ADMINISTRATORS.
Extortion, see EXTORTION.
Factors and brokers, see FACTORS AND BROKERS.
Ferries, 8, 920
Fines, see FINES AND COSTS IN CRIMINAL CASES.
Fish and fisheries, see FISH AND FISHERIES.
Fixtures, 9, 16
Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.
Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.
Forma pauperis, see FORMA PAUPERIS.
Former adjudication, see FORMER ADJUDICATION.
Forms of actions, see *infra*, Abolition of forms of action.
Forthcoming and delivery bonds, see FORTHCOMING AND DELIVERY BONDS.

ACTIONS, *cont'd.*

Friendly suits, see FRIENDLY SUITS.
Garnishment, see GARNISHMENT.
Gas and gas companies, 9, 878
Guaranty, see GUARANTY.
Guardians, see GUARDIANS.
Habeas corpus, see HABEAS CORPUS.
Hawkers and peddlers, see HAWKERS AND PEDDLERS.
Health regulations, 10, 4
Heirs, see HEIRS AND DEVISEES.
Highways, see STREETS AND HIGHWAYS
Husband and wife, see HUSBAND AND WIFE.
 As to joinder of husband and wife, see HUSBAND AND WIFE.
Infants, see INFANTS; NEXT FRIEND.
Inns and innkeepers, see INNS AND INNKEEPERS.
Insane person, see INSANE PERSONS; NEXT FRIEND.
Insolvency, see INSOLVENCY.
Insurance, see INSURANCE.
Internal revenue, see INTERNAL REVENUE.
Interpleader, see INTERPLEADER.
Interpretation:
 Character of actions under codes, 1, 146
Interstate commerce, see INTERSTATE COMMERCE.
Intervention, see INTERVENTION.
Intoxicating liquors, see INTOXICATING LIQUORS.
Issues to the jury, see ISSUES TO THE JURY.
Joinder of causes and counts, see JOINDER OF COUNTS AND CAUSES.
Joinder of parties, see JOINDER OF PARTIES.
Joint tenants and tenants in common, see JOINT TENANTS AND TENANTS IN COMMON.
Judgments, see JUDGMENTS.
 Actions on judgments, see JUDGMENTS.
Jury:
 Issues to the jury, see ISSUES TO THE JURY.
Justices of the peace, 12, 822
 Civil actions against justices, 12, 822
 Notice of suit, 12, 823
Landlord and tenant, see LANDLORD AND TENANT.
Land patents, see LAND PATENTS.
Legatees, see LEGATEES AND DISTRIBUTUTES.
Legislative meaning, 1, 110
Liens, see LIENS.
Limitations, see LIMITATIONS.
 When is an action commenced, 1, 119

ACTIONS, cont'd.

Local actions:

Appearances, 2, 658

Local and transitory actions, see JURISDICTION; VENUE.*Logs and lumber*, see LOGS AND LUMBER.*Lost instruments and records*, see LOST INSTRUMENTS AND RECORDS.*Malicious prosecution*, see MALICIOUS PROSECUTION.*Malpractice*, see MALPRACTICE.*Mandamus*, see MANDAMUS.*Marriage (annulment)*, see MARRIAGE (ANNULMENT).*Married women*, see NEXT FRIEND.*Master and servant*, see MASTER AND SERVANT.*Mines and mining*, see MINES AND MINING.*Money counts*, see MONEY COUNTS.*Monopolies*, see MONOPOLIES.*Motions*, see MOTIONS.*Municipal corporations*, see MUNICIPAL CORPORATIONS.*Municipal securities*, see MUNICIPAL SECURITIES.*Negligence*, see NEGLIGENCE.*Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.*Next friend*, see NEXT FRIEND.*New trial*, see NEW TRIAL.*Nonsuit*, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.*Nuisances*, see NUISANCES.*Offer of judgment*, see OFFER OF JUDGMENT.*Officers of private corporations*, see OFFICERS OF PRIVATE CORPORATIONS.*Open and close*, see OPEN AND CLOSE.*Orders*, see ORDERS.*Ordinances*, see ORDINANCES.*Paragraphs*, see COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS.*Parent and child*, see PARENT AND CHILD.*Parties to actions*, see PARTIES TO ACTIONS.*Partition*, see PARTITION.*Partnership*, see PARTNERSHIP.*Passengers*, see PASSENGERS.*Patents*, see LAND PATENTS; PATENTS.*Penal actions*, see PENALTIES AND PENAL ACTIONS*Personal injuries*, see PERSONAL INJURIES.*Pleas at law*, see PLEAS AT LAW.*Poor and poor laws*, see POOR AND POOR LAWS.*Poor debtor acts*, see POOR DEBTOR ACTS.**ACTIONS, cont'd.***Postmasters*, see POSTMASTERS.

Prayers:

Character of actions under codes:
Whether prayer may be consulted, 1, 146, 147*Prayers for relief*, see PRAYERS FOR RELIEF.*Premature suits*, see PREMATURE SUITS.*Publication*, see PUBLICATION.*Public lands*, see PUBLIC LANDS.*Public officers*, see PUBLIC OFFICERS.*Quieting title*, see QUIETING TITLE.*Quo warranto*, see QUO WARRANTO.*Railroads*, see RAILROADS.

Rape, 17, 668

Real actions, see REAL ACTIONS.*Receivers*, see RECEIVERS.*Recoupment*, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.*References*, see REFERENCES.*Rehearing*, see REHEARING.*Religious societies*, see RELIGIOUS SOCIETIES.*Removal of causes*, see REMOVAL OF CAUSES.*Removal of cloud*, see QUIETING TITLE.*Replevin*, see REPLEVIN.*Replications and replies*, see REPLICATIONS AND REPLIES.*Rescission, cancellation, and reformation of contracts*, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.*Restitution*, see RESTITUTION.*Retrahit*, see RETRAHIT.*Revival of judgments*, see REVIVAL OF JUDGMENTS.*Sales*, see SALES.*Satisfaction and discharge of judgments*, see SATISFACTION AND DISCHARGE OF JUDGMENTS.*Schools*, see SCHOOLS.*Scire facias*, 19, 263

Release of all actions, 19, 264

Scire facias held to be an action, 19, 263*Scire facias* not an original action, 19, 263

To what extent considered an action, 19, 264

Security for costs, see SECURITY FOR COSTS.*Seduction*, see SEDUCTION.*Separate statements*, see COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS.*Separate trials*, see SEPARATE TRIALS.*Servant*, see MASTER AND SERVANT.

Service of process, 1, 120

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

ACTIONS, *cont'd.*

Severance, see SEVERANCE.
Sheriffs and constables, see SHERIFFS AND CONSTABLES.
Sheriffs' sales, see SHERIFFS' SALES.
Simultaneous action, see SIMULTANEOUS ACTION.
Societies and clubs, see UNINCORPORATED SOCIETIES.
Special proceedings, see SPECIAL PROCEEDINGS.
Splitting causes of action, see SEPARATE TRIALS; SPLITTING CAUSES OF ACTION.
Statement of claim, see STATEMENT OF CLAIM.
States, see STATES.
Stock and stockholders, see STOCK AND STOCKHOLDERS.
Street railways, see STREET RAILWAYS.
Streets and highways, see STREETS AND HIGHWAYS.
Summary proceedings, see SUMMARY PROCEEDINGS.
Supersedes and stay of proceedings, see SUPERSEDES AND STAY OF PROCEEDINGS.
Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.
Suretyship, see SURETYSHIP.
Survival of actions, see SURVIVAL OF ACTIONS.
Taxation, see TAXATION.
Telegraphs and telephones, see TELEGRAPHS AND TELEPHONES.
Tenant, see LANDLORD AND TENANT.
Tenants in common, see JOINT TENANTS AND TENANTS IN COMMON.
Tender, see TENDER.
Theory of the case, see THEORY OF THE CASE.
Title, ownership, and possession, see TITLE, OWNERSHIP, AND POSSESSION.
Tolls, see TOLLS.
Transitory actions:
 Appearances, 2, 658
Trespass, see TRESPASS.
Trespass on the case, see TRESPASS ON THE CASE.
Trespass to try title, see TRESPASS TO TRY TITLE.
Trover and conversion, see TROVER AND CONVERSION.
Trusts and trustees, see TRUSTS AND TRUSTEES.
Turnpikes and tollroads, see TURNPIKES AND TOLLROADS.
Unincorporated societies, see UNINCORPORATED SOCIETIES.
Usury, see USURY.
Vendor and purchaser, see VENDOR AND PURCHASER.
Venue, see VENUE.

ACTIONS, *cont'd.*

Verdict, see VERDICT.
Warehousemen, see WAREHOUSEMEN.
Waste, see WASTE.
Water companies and waterworks, see WATER COMPANIES AND WATERWORKS.
Waters and watercourses, see WATERS AND WATERCOURSES.
Ways, see WAYS.
 When is an action commenced, 1, 119, 141
 In general, 1, 119
 In the various states, 1, 119-141
 United States courts, 1, 141
 Words and phrases:
 "Action," 1, 110
 Cause of action, 1, 116
 Special proceedings, 1, 112
 Suit, 1, 110
ACTIONS IN PERSONAM:
 Admiralty, 1, 255
AD DAMNUM (see AMENDMENTS; DAMAGES):
 Remittitur:
 Verdict in excess of *ad damnum*, 18, 140
ADDITIONAL ALLOWANCES OF COSTS, 1, 211
Affidavit, 1, 218
Amount involved, 1, 227
Amount of allowance, see *infra*, Computation of allowance.
Appeals (see APPEALS):
 Appeal from order granting or refusing additional allowance, 1, 218
 General term, 1, 218
Application, 1, 216
Affidavits, 1, 218
 After judgment, 1, 216
 After tender, 1, 216
 After trial, 1, 216
 Appeal from order granting or refusing additional allowance, 1, 218
 At trial, 1, 216
 Costs of the motion, 1, 218
 Necessity for formal notice, 1, 217
 Review before another judge, 1, 218
 To what court made, 1, 217
 Trial before referee, 1, 218
 When made, 1, 216
Attachment, 1, 213
Code provisions, 1, 212
Computation of allowance, 1, 230
 Amount claimed, 1, 232
 Amount of counterclaim, 1, 233
 Amount recovered, 1, 232
 Basis of allowance, 1, 230
 Defendant's allowance, 1, 232
 Limits of allowance, 1, 230

ADDITIONAL ALLOWANCES OF COSTS, *cont'd.*

- Computation of allowance, *cont'd.*
 - Real actions, 1, 230-233
 - Subject-matter in actions relating to land, 1, 230
 - Subject-matter involved, 1, 233
- Costs of the motion, 1, 218
- Courts:
 - To what court application made, 1, 217
- Defense, what is, 1, 215
- Defendant's right to, 1, 226
- Demurrer, 1, 221
- Difficult and extraordinary cases, 1, 226
 - Examples, 1, 226-228
 - Meaning of the term, 1, 226
- Discontinuance, 1, 228
 - Allowance to plaintiff's attorney 1, 228
 - Before trial, 1, 228
 - Code of procedure, 1, 228
 - In general, 1, 228
 - Offer to allow judgment, 1, 229
 - Tender, 1, 229
 - Terms, 1, 228
- Discretionary allowances, 1, 213
- Discretion of court, 1, 223, 227
 - Difficult and extraordinary cases, 1, 227
 - Examples of exercise of discretion, 1, 222, 224
 - Where court may exercise discretion, 1, 222
- Ejectment, 1, 230
- Eminent domain, 1, 225; 7, 671
- Extraordinary costs*, see *infra*, Difficult and extraordinary cases.
- Foreclosure of mortgages, 1, 215
- General principles, 1, 211
- Good faith, 1, 223
- Hardship, 1, 224
- Immaterial considerations, 1, 228
- Injunctions, 1, 221
- "Involved," 1, 233
- Judgment, 1, 213
- Limits of allowance*, see *infra*, Computation of allowance.
- Litigation not finished, 1, 220
- Matter of right, 1, 213
- Mechanic's lien, 1, 213
- Merits of application, 1, 224
- Necessity of recovery of judgment, 1, 213
- Nonsuit, 1, 221
- Notice of application, 1, 217
- Number of allowances, 1, 229
- One allowance only, 1, 229
- Orders, 1, 214
- Partnership, 1, 223
 - Accounting, dissolution, and settlement, 15, 1111

ADDITIONAL ALLOWANCES OF COSTS, *cont'd.*

- Pecuniary value of subject-matter, 1, 221
 - Plaintiff's failure to appear at trial 1, 220
 - Punishment, 1, 224
 - Recoupment and counterclaim, 1, 226
 - Recovery of ordinary costs essential, 1, 220
 - Referees, 1, 218
 - Retrials, 1, 220
 - Right, 1, 213
 - Rules of court, 18, 1255
 - Set-off, recoupment, and counterclaim:
 - Amount of counterclaim, 1, 233
 - Special proceedings, 1, 225
 - Specific performance, 20, 527
 - Stipulations, 1, 223; 20, 634
 - Successful party, 1, 215
 - Surrogates' courts, 1, 212
 - Tender, 1, 216, 229
 - Time when application should be made, 1, 216
 - "Trial," 1, 220
 - Where allowance may be granted or refused, 1, 220
 - Wills, 1, 223; 22, 1212
- ADDRESS, 1, 234**
- Bills in equity, 3, 340
 - Chancery practice, 1, 234
 - Code practice, 1, 236
 - Address printed, 1, 236
 - Compelling attorney to disclose address, 1, 236
 - In general, 1, 136
 - New York code, 1, 236
 - Notice of motion, 1, 236
- ADEQUATE REMEDY AT LAW, see REMEDY AT LAW.**
- ADJOURNMENT, 1, 238**
- See CHAMBERS AND VACATION.
 - Action on appeal brought at an adjourned term, 1, 244
 - Adjourned term and new special term, 1, 245
 - Appeals:
 - Presumption in favor of adjourning term, 2, 459
 - Consequences of adjournment, 1, 243
 - Continuances*, see CONTINUANCES.
 - Coroners' inquests, 5, 48
 - Courts of record, 1, 239
 - Day to day, 1, 240
 - Definition, 1, 238
 - Depositions, 6, 525
 - Adjournment to another place, 6, 527
 - Certificate to show cause for adjournment, 6, 551

ADJOURNMENT, *cont'd.*Depositions, *cont'd.*

Examples, 6, 525, 527

In general, 6, 525

Notice, 6, 621

Notice providing for adjournment, 6, 526

Distinction between adjournment *sine die* and adjournment to a certain day, 1, 243

Eminent domain:

Notice of adjournment, 7, 492

Execution sales, see **SHERIFFS' SALES.**

Existence of court during adjournment, 1, 245

Foreclosure of mortgages, 9, 529

Announcement, 9, 530

Examples, 9, 529, 530

In general, 9, 529

Sale, 9, 188

Grand juries, 10, 383

Infants:

Sale of real estate, 10, 806

Insane persons, 10, 1197

Instructions during recess, 1, 246

Interstate commerce, 11, 487

Irregular adjournments, 1, 245

Judicial sales, 12, 47

Discretion of officer, 12, 47

In general, 12, 47

Notice of adjournment, 12, 26

When sale may be adjourned, 12, 47

Justices of the peace, 1, 247

Dockets, 12, 752

Landlord and tenant:

Summary proceedings under statutes, 12, 894

Length of adjournment, 1, 239

Motions, 14, 165

Notice of adjournment, 1, 242

Place of adjournment, 1, 243

Poor debtor acts, 16, 722

Power of court over record, 1, 245

Power to adjourn, 1, 239

Preliminary examination, see **PRELIMINARY EXAMINATION.**

Quasi-judicial officers, 1, 248

References, see **REFERENCES.**

Rendition and entry of judgments, 18, 433

"Session," 1, 240

Settlement of decedents' estates:

Sales of realty, 19, 898

Sheriff exceeding his authority, 1, 243

Sheriff's adjournment, 1, 243

Sheriff's authority, 1, 241-243

Sheriffs' sales, see **SHERIFFS' SALES.**

Statement of facts on appeal:

Adjournment of settlement, 20, 573

Statutes authorizing, 1, 239

ADJOURNMENT, *cont'd.*

Statutes authorizing sheriff, clerk, or single judge, 1, 241

Statutes liberally construed, 1, 242

Sunday, 1, 240

Supplementary proceedings, see **SUPPLEMENTARY PROCEEDINGS.**

Terms and sessions of court, 21, 626

Postponement, 21, 624

How power should be exercised, 21, 624

In general, 21, 624

"Term," 1, 240

Term reopened after final adjournment, 1, 243

Verdict:

Reception of verdict during temporary adjournment, 22, 923

Waiver of irregularities, 1, 246

Who may order adjournment, 1, 240

AD LITEM, see **GUARDIANS AD LITEM.****ADMEASUREMENT OF DOWER**, see **DOWER.****ADMINISTRATION**, see **EXECUTORS AND ADMINISTRATORS; SETTLEMENT OF DECEDENTS' ESTATES; SURROGATE.****ADMIRALTY, 1, 249**See **CARRIERS; SHIPPING.**Actions *in personam*, 1, 258Admiralty courts, see *infra*, **Courts.**Affidavits (see *infra*, **Verification**), 1, 287

Amendments, 1, 256

Libel, 1, 270

Another suit pending, 1, 258, 776

Answer, see *infra*, **Respondent's pleadings.**

Apostles, 1, 281

Appeal bond, 1, 279

Appeals, 1, 278

Apostles, 1, 281

Appeal bond, 1, 279

Assignment of errors, 1, 280

Bond to stay execution, 1, 279

Briefs, 1, 282

Citation, 1, 280

Decision, 1, 282

Exceptions to bond, 1, 281

Filing papers, 1, 281

Final decree, 1, 283

Hearing, 1, 282

How taken, 1, 279

In general, 1, 278

Mandate, 1, 282

New testimony, 1, 281

Petition of appeal, 1, 280

Prize, 1, 304

Prohibition, mandamus, or certiorari, 1, 283

Supreme court, 1, 283

Appearance, 1, 263

Appraisal, 1, 267, 297

ADMIRALTY, *cont'd.*

- Arrest in civil action, 1, 261
- Assignment of errors, 1, 280
- Attachment:
 - Foreign attachment, 1, 258
- Bonds, 1, 273
 - Appeal bond, 1, 279
 - Bond to stay execution, 1, 279
 - Stipulation for release, 1, 265
- Briefs, 1, 282
- Commissioners, see *infra*, United States commissioner.
- Commissioners, prize, 1, 300
- Complaint, see *infra*, Libel.
- Conflict of laws:
 - Death claims, 1, 289
 - Personal injuries, 1, 289
- Consolidation of actions, 1, 289
- Costs (see *infra*, Stipulations), 1, 290
 - Appeals, 1, 304
 - Commissioner's fees, 1, 292
 - Costs of printing, 1, 293
 - Docket fee, 1, 291
 - Examples, 1, 292, 293
 - Fees, 1, 292
 - Libellant's stipulation for costs, 1, 257
 - Marshal's fees, 1, 292
 - On appeals, 1, 291
 - Prize, 1, 303
 - Several libels filed, 1, 292, 293
 - Stenographer's fees, 1, 293
 - Stipulation for costs, 1, 264
 - Taxation of costs, 1, 276
 - United States statute limiting liability of shipowner, 1, 297, 299
 - When allowable, 1, 290
 - Witnesses' fees, 1, 292
- Courts (see UNITED STATES COURTS), 1, 251
 - Circuit court of appeals, 1, 252
 - District courts, 1, 251
 - Supreme court, 1, 252
- Cross-libel, 1, 272
- Damages:
 - Prize, 1, 303
 - Where damages are divided between two vessels, 1, 277
- Death, 1, 290; 5, 792
- Death by wrongful act:
 - Conflict of loss, 1, 289
- Declaration, see *infra*, Libel.
- Decree:
 - Final decree, what is, 1, 276
 - Prize, 1, 302
 - Review of interlocutory decree on appeal, 1, 278
 - Summary judgment and execution, 1, 278
 - United States statute limiting liability of shipowner, 1, 299

ADMIRALTY, *cont'd.*

- Default:
 - Appearance and default, 1, 263
 - Defendant's default, 1, 260
 - Prize, 1, 302
- Definition, 1, 251
- Depositions, 1, 284
 - Commission to take testimony, 1, 285
 - Dedimus potestatem*, 1, 285
 - Depositions in *perpetuam rei memoriam*, 1, 286
 - Letters rogatory, 1, 285
- Distribution of proceeds, 1, 278
- Evidence, 1, 283
 - Commission to take testimony, 1, 285
 - Dedimus potestatem*, 1, 285
 - Depositions *de bene esse*, 1, 284
 - Depositions in *perpetuam rei memoriam*, 1, 286
 - General rules, 1, 283
 - Letters rogatory, 1, 285
 - Pleadings as evidence, 8, 31
- Exceptions:
 - Answer, 1, 272
 - Libel, 1, 269
 - Report of commissioner, 1, 276
- Execution, 1, 278
- Executors and administrators, 1, 290
- Exemptions:
 - Property exempt from seizure, 1, 262
- Final judgments and decrees, 2, 67
 - Appeal, 1, 283
 - What is final decree, 1, 276
- Foreign attachment, 1, 258
 - Defendant's default, 1, 260
 - Garnishment, 1, 259
 - In general, 1, 258
- Garnishment, 1, 259
- General average, 9, 880
- Hearing, 1, 282
- Interlocutory decree and reference, 1, 275
 - Commissioner's report, 1, 276
 - Confirming commissioner's report, 1, 276
 - In general, 1, 275
 - Proceedings before commissioner, 1, 275
- Interrogatories, 1, 255
 - By defendant, 1, 256
 - By libellant, 1, 255
- Intervention, 1, 288
 - How accomplished, 1, 288
 - Suit for wages, 1, 288
- Joinder of *rem* and *personam* proceedings, 1, 257
 - One suit as bar to another, 1, 258
 - Right to join, 1, 257

ADMIRALTY, *cont'd.*

Judgment:

Summary judgment and execution, 1, 278

Judicial sales, 12, 8

Laches, 1, 287

Letters rogatory, 1, 285· 6, 497

Libel, 1, 253

Contents, 1, 254

Cross-libel, 1, 272

Evidence, 8, 32

Form, 1, 254

Libel of review, when lies, 1, 253

Prayer for relief, 1, 255

Prize, 1, 301

Technical rules of common-law pleading, 1, 253

United States statute limiting shipowner's liability, 1, 296

Appraisal, 1, 297

Filing libel, 1, 297

In general, 1, 296

Proceedings under libel, 1, 297

Staying proceedings, 1, 298

Stipulation as to costs, 1, 297

Turning over vessel, 1, 297

Verification, 1, 255

Limitation of actions, 1, 287

Limitation of shipowner's liability, 1, 293

Appraisal, 1, 297

Costs, 1, 299

Decree, 1, 298

Filing libel, 1, 297

In general, 1, 293

Petition or libel, 1, 296

Proceedings, 1, 295

Proceedings under the libel, 1, 297

Proof of claims, 1, 298

Provisions of United States statutes, 1, 293

Return of monition, 1, 298

Staying proceedings, 1, 298

Stipulation for costs, 1, 297

Validity of exemption, 1, 294

Mandate, 1, 282

Marshal:

Duty of marshal, 1, 261

Mesne process, 1, 261

Motions, 1, 286

New trial, 1, 274

Partnership:

Accounting, dissolution, and settlement, 15, 1057

Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.

Personal injuries:

By what law governed, 1, 289

Personam, 1, 252

Petition, 1, 286

Index Pl. & Pr. — 2

ADMIRALTY, *cont'd.*

Petition under Rule 59, 1, 270

Prayers:

Prayer for relief, 1, 255

Prize, 1, 299

Captor's first duty, 1, 300

Costs, 1, 303

Damages, 1, 301

Decree, 1, 303

Examinations *in preparatorio*, 1, 301

Filing libel, 1, 301

Final distribution of proceeds, 1, 303

General rule, 1, 299

Libel, 1, 301

Prize commissioners, 1, 300

Proceedings on return of process, 1, 302

Salvage on recaptures, 1, 304

Process, see *infra*, Mesne process;

Return of process.

Reference, 1, 275

Rehearing, 1, 274; 18, 68

Release:

Stipulations for release, 1, 265

Rem, 1, 253

Report of commissioner, see *infra*, United States commissioner.

Reservation of decision, 1, 274

Respondent's pleadings, 1, 269

Allegation of new facts in answer, 1, 272

Amendment of libel, 1, 270

Answer, 1, 271

Contents of answer, 1, 271

Counterclaim, 1, 272

Cross-libel, 1, 272

Dilatory exception, 1, 270

Exceptions to answer, 1, 272

Exceptions to libel, 1, 269

For what exception may be taken, 1, 270

In general, 1, 269

Peremptory exception, 1, 269

Petition under Rule 59, 1, 270

Security, 1, 273

Time of filing answer, 1, 271

Verification of answer, 1, 272

Return of process, 1, 263

Appearance, 1, 263

Appraisal, 1, 266

Bond, 1, 267

Claim, 1, 264

Contents, 1, 263

Default, 1, 263

Respondent's stipulation for costs, 1, 264

Sale of perishable property, 1, 268

Sale on return, 1, 269

Stipulation for release, 1, 265

Stipulation for value, 1, 266

ADMIRALTY, *cont'd.*Return of process, *cont'd.*

Suretyship, 1, 266

Tender, 1, 268

Time for return, 1, 263

Sale:

Sale of property and distribution
of proceeds, 1, 278

Sale of perishable property, 1, 268

Sale on return, 1, 269

Salvage, see SALVAGE.

Scandal and impertinence, 19, 183

Searches and seizures:

Property exempt from seizure,
1, 262

Security, 1, 265, 272

Seizures:

Jurisdiction, 1, 261

Property exempt from seizure,
1, 262

Service of process:

Nonresidents, 1, 259

Shipowner, see *infra*, Limitation of
shipowner's liability.*Shipping*, see SHIPPING.

State decisions, 22, 336

Staying proceedings:

United States statute limiting
liability of shipowner, 1, 298Stay of recoupment and counter-
claim, 1, 273Stipulations (see *infra*, Costs), 1, 297
Libelant's stipulation for costs,
1, 257Order as to performance by stip-
ulators, 1, 277

Stipulation for costs, 1, 264

Stipulation for release, 1, 265

Stipulation for value, 1, 266

Summary judgment and execution,
1, 278

Supplemental pleadings, 21, 50

Suretyship, 1, 267

Survival of actions, 21, 321

Tender, 1, 268

Trial, 1, 274

United States commissioner, ., 275

Commissioner's report, 1, 276

Confirming report, 1, 276

Exception to commissioner's re-
port, 1, 276Proceedings before commis-
sioner, 1, 275United States courts (see *infra*,
Courts), 22, 312

Verification:

Answer, 1, 272

Libel, 1, 255, 272

Waters and watercourses:

Obstruction of navigation, 22,
1176**ADMISSIONS (see ESTOPPEL):**

Accord and satisfaction, 1, 82

ADMISSIONS, *cont'd.*

Affidavits, 1, 335

Agreed case, 1, 390

Answers in code pleading:

*As to allegation admitted by failure
to deny*, see ANSWERS IN CODE
PLEADING.

Arraignment and plea, 2, 774

Bills of exceptions:

Admitted facts, 3, 420

Carriers, 3, 857

Continuances, see CONTINUANCES.

Corporations:

Corporate existence, 5, 90

Decrees:

Decrees *pro confesso*, 5, 986

Conclusion of law, 5, 989

Like a default at law, 5, 987

Nonresidents, 5, 988

Plaintiff's right to equitable
relief, 5, 1000Sufficiency of the bill, 5,
1000

What is admitted, 5, 986

What is not admitted, 5, 987

Defaults, 6, 115

Actions of tort, 6, 120

Allegations of amount of dam-
ages, 6, 128Application of the general rule,
6, 119

Capacity of plaintiff to sue, 6, 121

Cause of action, 6, 116

Conclusion of law, 6, 118

Confession of judgment, 6, 124

Contracts, 6, 119

Criminal cases, 6, 121

Default of codefendant, 6, 119

Default of executor, 6, 121

Errors not cured, 6, 123

Facts not well pleaded, 6, 117

Failure to sign answer, 6, 125

Fraud, 6, 120

In general, 6, 115

Joint defendants, 6, 121

Judgment, 6, 116

Judgment *nil dicit*, 6, 123

Misjoinder, 6, 122

Official bond, 6, 119

Plaintiff's failure to reply to
partial defense, 6, 119

Questions of jurisdiction, 6, 126

Real action, 6, 120

Regularity of previous proceed-
ings, 6, 123

Scire facias, 6, 121

Secundum allegata et probata, 6,
119Statute of jeofails and amend-
ment, 6, 125

Summary proceedings, 6, 120

Trustee process, 6, 121

Unauthorized amendment, 6, 122

ADMISSIONS, *cont'd.*

- Defaults, *cont'd.*
 - What defects are cured by default, 6, 122
- Demurrers, 6, 334
 - Construction of statute, 6, 337
 - Extent of admissions, 6, 336
 - For what purpose admission used, 6, 338
 - In general, 6, 334
 - Legal effect of written instrument, 6, 337
 - Matters contrary to law, 6, 338
 - New facts, 6, 338
 - What is admitted, 6, 336
 - When admission of no effect, 6, 338
- Demurrers in chancery, 6, 396
 - Admissions on hearing, 6, 426
 - Against whom admission operates, 6, 398
 - Conclusions of law, 6, 397
 - For what purpose admission used, 6, 398
 - Fraud, 6, 398
 - Inconsistency, 6, 397
 - Inferences, 6, 397
 - Matters impossible in law, 6, 398
 - What matters admitted, 6, 296
- Depositions, 6, 570
 - Depositions taken in another suit, 6, 579
- Directing verdict:
 - What is admitted, 6, 693
- Dismissal, discontinuance, and non-suit:
 - Motion for want of evidence, 6, 942
- Examination of parties before trial, 8, 64
 - Facts in affidavit, 8, 53
- Funds and deposits in court, 9, 733
 - Action as to covenant, 9, 733
 - Action of assumpsit, 9, 733
 - Action of special contracts, 9, 733
 - Actions on insurance policies, 9, 734
 - Common counts, 9, 735
 - Effect as an admission, 9, 733
 - Payment into court of equity on admission, 9, 740
 - Admission of affidavit, 9, 741
 - Motion made after decree, 9, 742
 - Of defendant's liability to pay, 9, 740
 - Of plaintiff's title, 9, 741
 - Statute of limitations, 9, 734
- Garnishment, 9, 850
- General issue, 9, 882
- Guardians *ad litem*, 10, 675, 720
 - Admissions of guardians *ad litem* generally, 10, 675

ADMISSIONS, *cont'd.*

- Guardians *ad litem*, *cont'd.*
 - Admitting adversary's case, 10, 675
 - Answer, 10, 723
 - Answer not binding on infant, 10, 691
 - Beneficial and prejudicial admissions distinguished, 10, 676
 - Effect of admissions of guardian, 10, 675
 - In general, 10, 675
- Impeachment of witnesses:
 - Admissions of party called as witness, 10, 323
- Infants, 10, 591
- Injunctions, 10, 1066
 - Admissions by the demurrer, 10, 982
 - Admissions in the answer, 10, 1066
 - Admissions of one codefendant, 10, 1067
 - Failure to deny immaterial allegations, 10, 1067
 - In general, 10, 1066
- Instructions, 11, 333
 - Criminal cases, 11, 334
 - Instructions as to admission of record, 11, 333
 - Instructions giving undue weight to, 11, 335
 - Miscellaneous examples, 11, 336
 - View that court may caution against, 11, 334
 - View that court should not caution against, 11, 333
- Issues to the jury, 11, 686
- Judgments:
 - Judgment on part of claim admitted, 11, 1040, 1041
- Mandamus (see MANDAMUS):
 - Reply, 13, 747
 - Effect of denial by the reator, 13, 748
 - Effect of failure to reply, 13, 747
 - Reply admits legal sufficiency of answer, 13, 748
 - Where a case is submitted on petition and answer, 13, 748
- Mines and mining, 14, 20
- New trial:
 - Newly-discovered evidence, 14, 818
 - Verdict contrary to admissions, 14, 777
- Next friend, 14, 1039
- Notice or brief statement of defense, 14, 1086
- Partnership:
 - Execution of instrument, 15, 938

ADMISSIONS, cont'd.

- Payment into court, see in, ra, Funds*
and deposits in court.
 - Pleadings, 2, 774
 - Pleas at law, see PLEAS AT LAW.*
 - Production of documents:
 - Equity, 6, 782
 - Receivers, 17, 803
 - Admissions of owner, 17, 803
 - Rescission, cancellation, and reformation of contracts:
 - Admissions in answers, 18, 850
 - Stock and stockholders, 20, 697
 - Tender:
 - Effect of tender as admission, 21, 582
 - Title, ownership, and possession, 21, 735
 - Trover and conversion:
 - Admissions in plea or answer, 21, 1107
 - Work and labor, 22, 1374
- ADOPTION, 10, 845**
- Appeals, 10, 849
 - Collateral attack, 10, 850
 - Definition, 10, 845
 - Determination, 10, 848
 - Hearing, 10, 848
 - Husband and wife, 10, 847
 - Judicial character, 10, 845
 - Jurisdiction, 10, 846
 - Conformity with statute, 10, 846
 - Consent as prerequisite, 10, 846
 - Courts exercising jurisdiction, 10, 846
 - Nature, 10, 845
 - Notice, 10, 848
 - Origin, 10, 845
 - Petition, 10, 847
 - Records, 10, 848
 - Review, 10, 849
 - Revocation, 10, 849
- AD QUOD DAMNUM:**
Mills and milldams, see MILLS AND MILLDAMS.
- ADULTERATION OF FOOD:**
Health regulations, 10, 4
- ADULTERY, 1, 305**
See LEWDNESS; SEDUCTION.
Bills of particulars, 3, 548
Criminal conversation, see CRIMINAL CONVERSATION.
Divorce, see DIVORCE.
Incest, see INCEST.
Indictment, 1, 305
 - Allegations of knowledge, 1, 307
 - Allegations of marriage, 1, 307
 - Allegations of time, 1, 306
 - Essential allegations, 1, 305
 - Form, 1, 305
 - Living together, 1, 306
 - Name of co-criminal, 1, 306

ADULTERY, cont'd.

- Indictment, *cont'd.*
 - Name of defendant's husband, 1, 307
 - Name of defendant's wife, 1, 307
 - Parties not husband and wife, 1, 307
 - Party commencing prosecution, 1, 306
 - Surplusage, 1, 306
 - Using word "adultery," 1, 306
- Instructions, 1, 308
- Joinder of counts and causes, 1, 307
- Joinder of parties, 1, 308
- Living together, 1, 306
- Surplusage, 1, 306

ADVANCEMENTS:

- Settlement of decedents' estates, 19, 1087

ADVERSE POSSESSION:

- Actual possession:
 - Pleading, 13, 286
- Appeals, 2, 45
- Burden of proof, 21, 739
- Claim of title:
 - Pleading, 13, 288
- Color of title:
 - Pleading, 13, 289
- Continuity of possession:
 - Pleading, 13, 287
- Definition, 13, 283
- Duration of possession:
 - Pleading, 13, 287
- Ejectment, 7, 343
 - Pleas, 7, 343
- Exclusive possession:
 - Pleading, 13, 286
- Hostile character of possession:
 - Pleading, 13, 287
- Limitations, 13, 283
 - Actual possession, 13, 286
 - Averment of payment of taxes, 13, 289
 - Continuity of possession, 13, 287
 - Definition, 13, 283
 - Duration of possession, 13, 287
 - Essential averments as to possession, 13, 285
 - Exclusive possession, 13, 286
 - Hostility of possession, 13, 287
 - Manner of pleading specially, 13, 285
 - Necessity of pleading specially by the defendant, 13, 284
 - Necessity of pleading specially by the plaintiff, 13, 284
 - Open and notorious possession, 13, 286
 - Pleading claim of title, 13, 288
 - Pleading color of title, 13, 289
 - When taken advantage of by demurrer, 13, 254
- Manner of pleading specially, 13, 285

ADVERSE POSSESSION, *cont'd.*

- Open and notorious possession:
 - Pleading, 13, 286
- Pleadings (see *infra*, Limitations):
 - Essential averments as to possession, 13, 285
- Quieting title, 17, 301
- Special plea, 13, 284
- Taxes, averment of payment of:
 - Pleading, 13, 289

ADVICE OF COUNSEL:

- Affidavits of merits or defense, 1, 364
- Change of venue, 4, 415
- Contempt, 4, 792
- Continuances, 4, 839
- Decrees:

- Opening decrees, 5, 1025

Injunctions:

- Disobedience of injunction, 10, 1107

- Malicious prosecution, 13, 475

AFFIDAVITS, 1, 309

See CHANGE OF VENUE; MOTIONS; VERIFICATION.

Abatement in pleading, 1, 28

- Defective affidavit, 1, 29
- Necessity of affidavit, 1, 28
- Requisites of affidavit, 1, 29

Abbreviations:

- Abbreviations of title, 1, 311
- Title of office, 1, 319

Accounts, 1, 92

Additional costs of allowance, 1, 218

Admiralty, 1, 287

Admissions, 1, 335

Agency:

- Affidavit by agent, 1, 327
- Agent's signature, 1, 316

Agreed case:

- Affidavit of reality, 1, 388

Alimony, 1, 441, 443

Alternative statements, 1, 322

Amendments, 1, 336, 337, 503, 654, 680

- Application for leave to amend, 1, 637, 638

- Attachment, 3, 14

- Express statute, 1, 682

- Formal defects, 1, 337

- In absence of express statute, 1, 680

- Officer, 1, 337

- Rules in various states, 1, 680, 683

- Signature of officer, 1, 337

- Statutes, 1, 337

- Substantial defects, 1, 337

Appeal bonds and undertakings:

- Affidavit of surety worth, 1, 1003
- Forma pauperis*, 1, 999

Appeals:

- Affidavit on appeal, 2, 234
- Date, 2, 236
- Entitling, 2, 236

AFFIDAVITS, *cont'd.*Appeals, *cont'd.*

Affidavit on appeal, *cont'd.*

- Examples, 2, 234, 236

- Filing, 2, 236

- In general, 2, 234

- What is sufficient compliance, 2, 235

- Consideration on appeal, 1, 336

- Impeachment of record, 2, 300

- Service of process, 2, 228

- Transcript on appeal, 2, 270

Appearances, 2, 650

Arguments of counsel:

- Ex parte* affidavits, 2, 757

Assault and battery, 2, 836

Attachment, 1, 321; 3, 3

- "Absconding," 3, 26

- Accuracy of statement of plaintiff's claim, 3, 15

- Actually due, 3, 19

- Agent, 3, 23

- Agent or other person as affiant, 3, 8

- Allegation of contract, 3, 18

- Allegation of knowledge and belief, 3, 21

- Allegation of nonresidence, 3, 26

- Allegation of promissory note, 3, 18

- Amendments, 3, 14

- Amount, 3, 15

- "And," 3, 24

- "Attorney," 3, 8, 23

- Before whom to be made, 3, 6

- "Credible person," 3, 8

- Description of affiant, 3, 9

- Disjunctive statements, 3, 22

- Effect of failure to give required affidavit, 3, 4

- Effect of formal defects, 3, 12

- Equivalent averment, 3, 11

- Formal defects, 3, 12

- Form of affidavit, 3, 10

- Foundation of the demand, 3, 17

- Harassing, 3, 27

- Inconsistency, 3, 21

- Intent, 3, 27

- Joint debtors, 3, 18

- Jurat, 3, 13

- "Justly," 3, 20

- Justness of claim, 3, 19

- Laches in issuing writ, 3, 6

- Language of statute, 3, 10

- Lost affidavit, 3, 5

- Name of plaintiff, 3, 14

- Nature of debt, 3, 16

- Negating existence of counter-claims, 3, 20

- Omitted words, 3, 15

- "Over and above all counter-claims," 3, 23

- Partnership, 3, 12

ADMISSIONS, *cont'd.*

Payment into court, see in, ra, Funds
and deposits in court.

Pleadings, 2, 774

Pleas at law, see PLEAS AT LAW.

Production of documents:

Equity, 6, 782

Receivers, 17, 803

Admissions of owner, 17, 803

Rescission, cancellation, and reformation of contracts:

Admissions in answers, 18, 850

Stock and stockholders, 20, 697

Tender:

Effect of tender as admission, 21, 582

Title, ownership, and possession, 21, 735

Trover and conversion:

Admissions in plea or answer, 21, 1107

Work and labor, 22, 1374

ADOPTION, 10, 845

Appeals, 10, 849

Collateral attack, 10, 850

Definition, 10, 845

Determination, 10, 848

Hearing, 10, 848

Husband and wife, 10, 847

Judicial character, 10, 845

Jurisdiction, 10, 846

Conformity with statute, 10, 846

Consent as prerequisite, 10, 846

Courts exercising jurisdiction, 10, 846

Nature, 10, 845

Notice, 10, 848

Origin, 10, 845

Petition, 10, 847

Records, 10, 848

Review, 10, 849

Revocation, 10, 849

AD QUOD DAMNUM:

Mills and milldams, see MILLS AND MILLDAMS.

ADULTERATION OF FOOD:

Health regulations, 10, 4

ADULTERY, 1, 305

See LEWDNESS; SEDUCTION.

Bills of particulars, 3, 548
Criminal conversation, see CRIMINAL CONVERSATION.

Divorce, see DIVORCE.

Incest, see INCEST.

Indictment, 1, 305

Allegations of knowledge, 1, 307

Allegations of marriage, 1, 307

Allegations of time, 1, 306

Essential allegations, 1, 305

Form, 1, 305

Living together, 1, 306

Name of co-criminal, 1, 306

ADULTERY, *cont'd.*

Indictment, *cont'd.*

Name of defendant's husband, 1, 307

Name of defendant's wife, 1, 307

Parties not husband and wife, 1, 307

Party commencing prosecution, 1, 306

Surplusage, 1, 306

Using word "adultery," 1, 306

Instructions, 1, 308

Joinder of counts and causes, 1, 307

Joinder of parties, 1, 308

Living together, 1, 306

Surplusage, 1, 306

ADVANCEMENTS:

Settlement of decedents' estates, 19, 1087

ADVERSE POSSESSION:

Actual possession:

Pleading, 13, 286

Appeals, 2, 45

Burden of proof, 21, 739

Claim of title:

Pleading, 13, 288

Color of title:

Pleading, 13, 289

Continuity of possession:

Pleading, 13, 287

Definition, 13, 283

Duration of possession:

Pleading, 13, 287

Ejectment, 7, 343

Pleas, 7, 343

Exclusive possession:

Pleading, 13, 286

Hostile character of possession:

Pleading, 13, 287

Limitations, 13, 283

Actual possession, 13, 286

Averment of payment of taxes, 13, 289

Continuity of possession, 13, 287

Definition, 13, 283

Duration of possession, 13, 287

Essential averments as to possession, 13, 285

Exclusive possession, 13, 286

Hostility of possession, 13, 287

Manner of pleading specially, 13, 285

Necessity of pleading specially by the defendant, 13, 284

Necessity of pleading specially by the plaintiff, 13, 284

Open and notorious possession, 13, 286

Pleading claim of title, 13, 288

Pleading color of title, 13, 289

When taken advantage of by demurrer, 13, 254

Manner of pleading specially, 13, 285

ADVERSE POSSESSION, *cont'd.*

Open and notorious possession:

Pleading, 13, 286

Pleadings (see *infra*, Limitations):

Essential averments as to possession, 13, 285

Quieting title, 17, 301

Special plea, 13, 284

Taxes, averment of payment of:

Pleading, 13, 289

ADVICE OF COUNSEL:

Affidavits of merits or defense, 1, 364

Change of venue, 4, 415

Contempt, 4, 792

Continuances, 4, 839

Decrees:

Opening decrees, 5, 1025

Injunctions:

Disobedience of injunction, 10, 1107

Malicious prosecution, 13, 475

AFFIDAVITS, 1, 309

See CHANGE OF VENUE; MOTIONS; VERIFICATION.

Abatement in pleading, 1, 28

Defective affidavit, 1, 29

Necessity of affidavit, 1, 28

Requisites of affidavit, 1, 29

Abbreviations:

Abbreviations of title, 1, 311

Title of office, 1, 319

Accounts, 1, 92

Additional costs of allowance, 1, 218

Admiralty, 1, 287

Admissions, 1, 335

Agency:

Affidavit by agent, 1, 327

Agent's signature, 1, 316

Agreed case:

Affidavit of reality, 1, 388

Alimony, 1, 441, 443

Alternative statements, 1, 322

Amendments, 1, 336, 337, 503, 654, 680

Application for leave to amend, 1, 637, 638

Attachment, 3, 14

Express statute, 1, 682

Formal defects, 1, 337

In absence of express statute, 1, 680

Officer, 1, 337

Rules in various states, 1, 680, 683

Signature of officer, 1, 337

Statutes, 1, 337

Substantial defects, 1, 337

Appeal bonds and undertakings:

Affidavit of surety worth, 1, 1003

Forma pauperis, 1, 999

Appeals:

Affidavit on appeal, 2, 234

Date, 2, 236

Entitling, 2, 236

AFFIDAVITS, *cont'd.*Appeals, *cont'd.*Affidavit on appeal, *cont'd.*

Examples, 2, 234, 236

Filing, 2, 236

In general, 2, 234

What is sufficient compliance, 2, 235

Consideration on appeal, 1, 336

Impeachment of record, 2, 300

Service of process, 2, 228

Transcript on appeal, 2, 270

Appearances, 2, 650

Arguments of counsel:

Ex parte affidavits, 2, 757

Assault and battery, 2, 836

Attachment, 1, 321; 3, 3

"Absconding," 3, 26

Accuracy of statement of plaintiff's claim, 3, 15

Actually due, 3, 19

Agent, 3, 23

Agent or other person as affiant, 3, 8

Allegation of contract, 3, 18

Allegation of knowledge and belief, 3, 21

Allegation of nonresidence, 3, 26

Allegation of promissory note, 3, 18

Amendments, 3, 14

Amount, 3, 15

"And," 3, 24

"Attorney," 3, 8, 23

Before whom to be made, 3, 6

"Credible person," 3, 8

Description of affiant, 3, 9

Disjunctive statements, 3, 22

Effect of failure to give required affidavit, 3, 4

Effect of formal defects, 3, 12

Equivalent averment, 3, 11

Formal defects, 3, 12

Form of affidavit, 3, 10

Foundation of the demand, 3, 17

Harassing, 3, 27

Inconsistency, 3, 21

Intent, 3, 27

Joint debtors, 3, 18

Jurat, 3, 13

"Justly," 3, 20

Justness of claim, 3, 19

Laches in issuing writ, 3, 6

Language of statute, 3, 10

Lost affidavit, 3, 5

Name of plaintiff, 3, 14

Nature of debt, 3, 16

Negating existence of counter-claims, 3, 20

Omitted words, 3, 15

"Over and above all counter-claims," 3, 23

Partnership, 3, 12

AFFIDAVITS, *cont'd.*

- Attachment, *cont'd.*
 - Part of the record, 3, 5
 - Petition as affidavit, 3, 5
 - Presumption of knowledge, 3, 23
 - Qualifying words, 3, 19
 - Reasonable certainty, 3, 15
 - Recitals in writ, 3, 45
 - "Removing," 3, 26
 - Signature of plaintiff, 3, 13
 - Sources of information, 3, 23
 - Statement of grounds of attachment, 3, 21
 - Statement of plaintiff's claims, 3, 15
 - Statement should be clear, 3, 19
 - Statutory phrases and clauses, 3, 26
 - Statutory provision as to affiant, 3, 7
 - Statutory requirement, 3, 3
 - Substantial averments, 3, 15
 - Substantial compliance with statute, 3, 11
 - Surplusage, 3, 11
 - The affiant, 3, 7
 - Title, 1, 312
 - Traverse of the affidavit, 3, 78
 - Burden of proof, 3, 79
 - Must deny all the grounds of attachment, 3, 78
 - Must not put the merits of the cause in issue, 3, 79
 - Nature and effect of the traverse, 3, 78
 - Unliquidated damages, 3, 16
 - Validity of judgment, 3, 4
 - Variance, 3, 27
 - Vex, 3, 27
 - When to be made, 3, 5
 - Who may object, 3, 5
- Attorney and client:
 - Authority of attorney to take, 1, 330
 - Whether an attorney may make affidavit, 1, 326
- Attorney's clerk, 1, 327, 331
- Authentication, 1, 317
 - Abbreviations, 1, 319
 - Blank form, 1, 318
 - Deputy, 1, 319
 - Foreign affidavits, 1, 332
 - Necessity, 1, 317
 - Official title, 1, 318
 - Seal, 1, 320
- Bail and recognizance, 3, 164
 - Debt, 3, 165
 - Discharged on common bail, 3, 165
 - Information and belief, 3, 165
 - In general, 3, 164
 - Necessary statements, 3, 164
 - Title, 1, 312

AFFIDAVITS, *cont'd.*

- Bills *de bene esse*, 3, 332
- Bills of exceptions, 3, 396
 - Examples, 3, 298, 396
 - Incorporated in the record, 3, 396
 - Where part of record proper, 3, 397
- Bills of review, 3, 587
- Breach of the peace, 3, 681
- Certiorari*, see CERTIORARI.
- Clerks:
 - Authority to take, 1, 329
- Colored person, 1, 325
- Competency of affiants, 1, 325
 - Agent, 1, 327
 - Attorneys, 1, 326
 - Attorney's clerk, 1, 327, 331
 - Corporations, 1, 325
 - Example, 1, 325
 - Felon, 1, 325
 - Negro, 1, 325
 - Partnership, 1, 326
 - Third person, 1, 328
 - Witness, 1, 325
- Conclusions of law, 1, 322
- Consolidation of actions, 4, 682, 683
- Consuls:
 - Authority to take affidavits, 1, 332
- Contempt, 4, 779
 - Contempt in court's presence, 4, 775
 - Jurisdiction of court, 4, 781
 - Necessity of affidavit, 4, 779
 - Prima facie* case, 4, 780
 - Requisites of affidavit, 4, 779
- Continuances*, see CONTINUANCES.
- Coram nobis* and *coram vobis*, 5, 34
- Corporations:
 - Who may make affidavits, 1, 326
- Costs, 5, 238
 - Affidavit to the bill of costs, 5, 242
- Creditors' bills:
 - Receivers, 5, 598
- Date, 1, 320
- Defaults:
 - Application for relief, 6, 167
 - Counter affidavit on relief from defaults, 6, 158
 - Plaintiff's affidavit, 6, 54
- Defense (see AFFIDAVITS OF MERITS OR DEFENSE), 1, 309
- Depositions, 1, 309; 6, 488
 - Affidavit and deposition compared, 1, 309
 - Failure to make affidavit, 6, 488
 - Issuance of commission, 6, 488
 - Reasons for taking depositions, 6, 568
 - Sufficient affidavit, 6, 488
- Deputies, 1, 319
 - Authority to take, 1, 329

AFFIDAVITS, *cont'd.*

- Disbarment and suspension of attorneys, 6, 713
- Disclaimers, 6, 724
- Dismissal, discontinuance, and non-suit:
 - Want of prosecution, 6, 916
- Distress, 7, 22
 - Counter affidavit, 7, 23
 - Demand, 7, 23
 - Disclaiming bad motive, 7, 23
 - In general, 7, 22
 - Jurisdictional facts, 7, 22
- Eminent domain:
 - Certiorari, 7, 664
- Equitable attachment, 7, 794
- Evidence, 1, 324
 - Admissions against evidence, 1, 335
 - Ex parte* affidavits, 1, 334
 - Weight to be attached to, 1, 334
 - When affidavit admissible, 1, 334
- Examination of parties before trial, 8, 51
 - Action about to be brought, 8, 53
 - Cause of action, 8, 52
 - Defense, 8, 52
 - Form, 8, 51
 - Information and belief, 8, 51
 - Names and residences of parties, 8, 53
 - Sufficiency, 8, 51
 - Trust relation existing, 8, 53
 - What affidavit must show, 8, 52
 - When facts in affidavit admitted, 8, 53
 - Who may make, 8, 51
- Exceptions and objections, 8, 202
- Extradition, 8, 817
- Felon, 1, 325
- Filing, 1, 336
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Foreign affidavits:
 - Authentication, 1, 332
 - Who may take, 1, 331
- Formal requisites, 1, 311
- Forma pauperis*, see FORMA PAUPERIS.
- Garnishment*, see GARNISHMENT.
- Guardians *ad litem*, 10, 651
- Habeas corpus*, see HABEAS CORPUS.
- Infants:
 - Notice of publication of advertisement of sale of real estate, 10, 804
- Information and belief, 1, 321
- Informations (see INFORMATIONS):
 - Variance, 10, 499
- Injunctions (see INJUNCTIONS):
 - Dissolution of preliminary injunctions for want of affidavit, 10, 1047
 - Preliminary injunctions, 10, 1004

AFFIDAVITS, *cont'd.*

- Insane persons*, see INSANE PERSONS.
- Insolvency*, see INSOLVENCY.
- Interested party, 1, 325
- Issues to the jury:
 - Application, 11, 655
- Judges:
 - Authority to take, 1, 329
- Judgments*, see JUDGMENTS; OPENING, AMENDING, AND VACATING JUDGMENTS.
- Jurat, 1, 316, 337
 - "Before me," 1, 316
 - In general, 1, 316
 - Service of copy, 1, 317
 - Surplusage, 1, 317
 - Sworn or affirmed, 1, 317
 - "Then personally appeared," 1, 317
- Justices of the peace (see JUSTICES OF THE PEACE):
 - Authority to take, 1, 329
- Language, 1, 323
- Larceny*, see LARCENY.
- Logs and lumber:
 - Attachment to enforce lien, 13, 338
 - Conversion, 13, 346
- Lost instruments and records*, see LOST INSTRUMENTS AND RECORDS.
- Mandamus (see MANDAMUS), 13, 685
 - Title, 1, 312
- Merits*, see AFFIDAVITS OF MERITS OR DEFENSE.
- Ne exeat*, see NE EXEAT.
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- New trial*, see NEW TRIAL.
- Notaries public:
 - Authority to take, 1, 329
- Oath, 1, 324
 - Affidavit and oath compared, 1, 310
 - Form, 1, 324
 - Insufficient, 1, 324
 - Who may make, 1, 325
- Opening, amending, and vacating judgments*, see OPENING, AMENDING, AND VACATING JUDGMENTS.
- Parties to actions, 1, 325
- Partnership:
 - Agent's signature, 1, 316
 - Authority to make, 1, 326
- Patents*, see PATENTS.
- Pedigree:
 - Affidavit as evidence, 1, 333
- Perjury*, see PERJURY.
- Petitions, 16, 521
- "Printer," 1, 325
- Privilege, 16, 973
- Profert and oyer*, see PROFERT AND OYER.
- Prohibition, 16, 1138

AFFIDAVITS, *cont'd.**Publication of notice, see PUBLICATION.*

Public officers:

Authority to take, 1, 329

Receivers, see RECEIVERS.

Record:

Affidavit as part of, 1, 336

References, 17, 1029

Affidavits on application for reference, 17, 1007

*Removal of causes, see REMOVAL OF CAUSES.**Replevin, see REPLEVIN.*

Requisites, 1, 311

*Returns, see RETURNS.**Revival of judgments, see REVIVAL OF JUDGMENTS.*

Satisfaction and discharge of judgments, 19, 135

Scandal and impertinence, see SCANDAL AND IMPERTINENCE.

Seal, 1, 320

Search warrants, 19, 325, 328

Security for costs, 19, 368

*Sequestration, see SEQUESTRATION.**Service of process, see SERVICE OF PROCESS.*

Sham and frivolous pleadings, 20, 75

Signature, 1, 315, 321, 337

Necessity, 1, 315

Partnership signature, 1, 316

Statutes requiring, 1, 315

Where signed, 1, 315

Special and struck juries, 20, 285

Stipulations, 20, 666

Substance, 1, 320

Alternative statements, 1, 322

Conclusions of facts, 1, 322

English language, 1, 323

Information and belief, 1, 321

In general, 1, 320

Language, 1, 323

Language prescribed by statute, 1, 321

Oath, 1, 324

Opinions, 1, 322

Parties, 1, 323

Signature, 1, 321

Sufficiency, 1, 310

Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.

Surplusage:

Jurat, 1, 317

Threats and threatening letters:

Prosecution for filing affidavits accusing of crime, 21, 677

Time to plead, 21, 697

Title, 1, 311

Abbreviations of title incorrect, 1, 311

Attachment, 1, 312

Bail, 1, 312

Contents, 1, 311

AFFIDAVITS, *cont'd.*Title, *cont'd.*

Example, 1, 311, 313

How entitled, 1, 311

In general, 1, 311

Mandamus, 1, 312

Necessity, 1, 311

Reference to other papers, 1, 312

When not to be entitled, 1, 312, 313

Title of pleadings and instruments, 1, 311

Trial of the right of property, see RIGHT OF PROPERTY, TRIAL OF.

Use of affidavits, 1, 331

Venue, 1, 313

Form, 1, 313

In general, 1, 313

Jurisdiction presumed, 1, 314

Necessity, 1, 313

Officer beyond jurisdiction, 1, 314

Officer of local jurisdiction, 1, 314

Purpose of, 1, 314

Who authorized to take, 1, 328

Foreign affidavits 1, 331

Within the state, 1, 328

Witnesses:

Competency of affiant, 1, 325

AFFIDAVITS OF MERITS OR DEFENSE, 1, 338

Abatement in pleading, 1, 36

Absence, 1, 360

Actions, see infra, Default.

Advice of counsel, 1, 364

Agency, 1, 359; 16, 906

By agent, 1, 371

Allegations, see infra, Contents,

Amendments, 1, 375

Answer:

To extend time to answer or demur, 1, 355

Verified answer as substitute, 1, 354

Appeals, 1, 348

"As he is advised and believes," 1, 365

Assumpsit, 1, 347

Admission of part of claim, 1, 351

Admissions binding, 1, 347

How sufficiency tested, 1, 351

Judgment by default, 1, 350

Pennsylvania, 1, 347

Plaintiff's statement, 1, 349

To what actions applicable, 1, 349

Waiver of defects, 1, 350

Where plaintiff files or serves a statement of his claim or demand, 1, 347

Attorney and client (see *ADVICE OF COUNSEL*), 1, 359, 371

Attorney or counsel, 1, 364

"Believed," 1, 365

AFFIDAVITS OF MERITS OR DEFENSE, *cont'd.*

- By whom made, 1, 358
 - Absence as excuse, 1, 360
 - Agent, 1, 359
 - Attorney, 1, 359
 - Defendant, 1, 358
 - Real party in interest, 1, 358
 - Several defendants, 1, 358
 - Sufficient excuse, 1, 360
- Change of venue, 1, 355, 373; 4, 439
 - Allegations, 1, 373
 - Examples, 1, 373, 374
 - What defendant must swear to, 1, 373
 - When plaintiff opposes a motion, 1, 374
- Clerk, 1, 371
- Contents, 1, 360
 - Advice of counsel, 1, 363
 - Alleging "statement" of case, 1, 361
 - Amendments, 1, 374
 - "As he is advised and believes," 1, 365
 - By agent, 1, 371
 - By attorney, 1, 371
 - By clerk, 1, 371
 - By codefendant, 1, 371
 - Defendant's defense, 1, 361
 - Equity, 1, 366
 - Facts constituting defense, 1, 367
 - Formal defects, 1, 367
 - Good and meritorious defense, 1, 363
 - Good and perfect defense, 1, 363
 - Good and substantial defense, 1, 362
 - Good and valid defense, 1, 363
 - "His defense," 1, 361
 - Illinois rule, 1, 367
 - Immaterial defects, 1, 366
 - Information and belief in Pennsylvania, 1, 369
 - In general, 1, 360
 - Jurat, 1, 374
 - Materiality of every part of form, 1, 360
 - Name of counsel, 1, 365
 - Ordinary form, 1, 360
 - Partial defense, 1, 368
 - Partial defense in Pennsylvania, 1, 370
 - Pennsylvania rule, 1, 368
 - Proper form, 1, 361
 - Statement of facts in Pennsylvania, 1, 369
 - Statement to defendant's counsel, 1, 362
 - Substantial compliances, 1, 367
 - Supplemental affidavit in Pennsylvania, 1, 370

AFFIDAVITS OF MERITS OR DEFENSE, *cont'd.*

- Contents, *cont'd.*
 - The usual affidavit, 1, 360
 - "This action," 1, 364
 - This or his case, 1, 361
 - Title, 1, 374
 - To obtain change of venue, 1, 373
 - Upon the merits, 1, 363
 - Where facts are stated, 1, 366
- Continuances, 4, 877
- Controverting the affidavit, 1, 375
- Default:
 - Defendant's failure to plead, 6, 79
 - Insufficient affidavit, 6, 87
 - Meritorious defense* see **DEFAULTS.**
 - Pleading of defendant undisposed of, 6, 85
 - Plea without affidavit, 6, 87
 - To prevent inquests or judgment by default, 1, 341
 - Actions for torts, 1, 349
 - Actions of assumpsit, 1, 347
 - Actions on judgments, 1, 347
 - Admission of part of claim, 1, 351
 - Admissions binding, 1, 351
 - Demurrers, 1, 345
 - Heirs, 1, 349
 - How sufficiency tested, 1, 351
 - In actions at common law, 1, 342
 - In actions on contract, where plaintiff files an affidavit of the amount due, 1, 343
 - In actions on money demands, 1, 343
 - In general, 1, 341
 - Judgment by default, 1, 350
 - On overruling a demurrer, 1, 342
 - Plaintiff's statement, 1, 349
 - Pleas in abatement, 1, 345
 - Sufficiency of plaintiff's statement, 1, 350
 - To prevent inquests, 1, 341
 - To what actions of assumpsit the law applies, 1, 348
 - Verified answer as equivalent of affidavit of merits, 1, 342
 - Waiver of defects, 1, 350
- Definition, 1, 338
- Demurrer, 1, 342, 345
 - Extension of time, 1, 355
- Equity, 1, 353
 - Proposed answer, 1, 353
 - Statement of facts, 1, 357, 366
- Excuses for not making, 1, 359, 360
- Executors and administrators, 1, 349

AFFIDAVITS OF MERITS OR DEFENSE, *cont'd.*

Filing, 1, 375
 Foreign attachment, 1, 348
 Good and perfect defense, 1, 363
 Good and substantial defense, 1, 362
 Heirs, 1, 349
 Infants, 1, 349
 Information and relief, 1, 365, 369
Inquest, see *infra*. Default.
 Insanity, 1, 349
 Judgments:

As to opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Actions on judgments, 1, 347; 11, 1158

Judgment for want of sufficient affidavit of defense, 11, 1042

Examples, 11, 1042, 1044

In general, 11, 1042

Test of sufficiency, 11, 1043

Jurat, 1, 374

Limitations, 13, 226

Married women, 1, 348

Motions, 1, 356

Name of counsel, 1, 365

New trial:

Accident or surprise, 14, 753

Number of affidavits, 1, 357

Opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Pleas:

Plea in abatement, 1, 345

Requirements of constitutional law, 1, 339

Rules of court, 1, 339

Validity of rules requiring affidavit of defense, 18, 1246

Sales:

Action for price, 19, 48

Scire facias, 1, 1349; 19, 286

Security for costs, 19, 370

Service of process, 1, 375

Several defendants, 1, 359

Sham and frivolous pleadings, 20, 48, 84

Statute, 1, 339

Suing twice:

Motions, 14, 150

Time at which affidavit should be made, 1, 357

Before joining issue, 1, 357

Before trial, 1, 357

General rule, 1, 357

More than one affidavit, 1, 357

Premature, 1, 357

Time to plead, 21, 697

Title of pleadings and instruments 1, 374

Torts, 1, 349

AFFIDAVITS OF MERITS OR DEFENSE, *cont'd.*

Vendor and purchaser, 22, 694

Purchaser's action to recover back purchase money, 22, 765

Waiver of defects, 1, 350

When required, 1, 341

Written instruments in Pennsylvania, 1, 369

AFFILIATION, see **BASTARDY**.

AFFIRMATION, 1, 377

See **AFFIDAVITS**.

American statute law, 1, 377, 378

Atheist, 1, 377, 378

Children, 1, 379

Criminal proceedings, 1, 380

Definition, 1, 377

Effect, 1, 380

English law, 1, 377

History, 1, 377

Strict construction, 1, 379

United States, 1, 379

Witness not objecting to, 1, 380

AFFRAY, 1, 382

Assault and battery, 1, 382, 383

Definition, 382

Indictment:

Allegation of place, 1, 383

Form, 1, 382

Trial, 1, 383

AFTER-ACQUIRED PROPERTY:

Creditors' bills, 5, 460

AGE:

Rape, see **RAPE**.

AGENCY, 16, 888

See **FACTORS AND BROKERS**.

Accounts and accounting, 16, 919

Accounting in equity, 16, 920

Agent profiting at expense of principal, 16, 921

Allegations of fraud, mistake, etc., 16, 922

Bill by agent, 16, 924

Bill by principal, 16, 920

Bill for discovery, 16, 921

Common-law action of account, 16, 919

Costs, 16, 923

Cross-bill by agent, 16, 922

Miscellaneous matters, 16, 923

Plea of statute of limitations, 16, 922

Actions by agent against principal:

Double employment, 16, 918

Evidence of negligence, 16, 919

For commissions, 16, 916

Bills of particulars, 16, 917

Common counts, 16, 917

Miscellaneous actions, 16, 917

Real-estate agents, 16, 916

Indemnity, 16, 916

Pleading and proof, 16, 918

AGENCY, *cont'd.*

- Actions by or against agents, 16, 905
 - Affidavits of defense, 16, 906
 - Agents as defendants, 16, 906
 - Agents as plaintiffs, 16, 905
 - Contracts with words *descriptio persona*, 16, 905
 - Denial of authority, 16, 910
 - Form of action on unauthorized contract, 16, 906
 - In general, 16, 905
 - Suing for use of principal, 16, 905
- Actions by or against principals, 16, 899
 - Allegations and proof, 16, 903
 - Alleging authority in agent, 16, 900
 - Contracts, 16, 899
 - Denial of authority, 16, 909
 - Order of proof, 16, 904
 - Pleading and proof, 16, 899
 - Pleading ratification, 16, 904
 - Torts, 16, 902
 - Written contracts, 16, 901
- Actions by principal against agent, 16, 911
 - Allegation of demand, 16, 914
 - Allegations and proof, 16, 912
 - Arrest of agents, 16, 915
 - Form of action, 16, 811
 - Waiver of tort, 16, 913
- Actions *ex contractu*:
 - Accounts and accounting*, see *infra*, Accounts and accounting.
 - Actions by agent against principal, 16, 916
 - Actions by or against agents, 16, 905
 - Actions by or against principals, 16, 899
 - Actions by principal against agent, 16, 911
 - Parties to actions, 16, 890
- Actions *ex delicto*:
 - Actions by or against principals, 16, 902
 - Misfeasance of agents, 16, 893
 - Nonfeasance of agents, 16, 892
 - Waiver of tort, 16, 913
- Affidavits:
 - Affidavit by agent, 1, 327
 - Agent's signature, 1, 316
- Affidavits of merits or defense, 1, 359; 16, 906
 - By agent, 1, 371
- Amendments:
 - Substituting principal by amendment, 16, 894
- Answers*, see *infra*, Plea or answer.
- Answers in code pleading:
 - Presumption of knowledge of agent's acts, 1, 813

AGENCY, *cont'd.*

- Appearances:
 - Appearance by agent, 2, 673
- Arrest of agents, 16, 915
- Attachment, 3, 23
 - Affidavit, 3, 8
 - Bond, 3, 35
- Bills in equity*, see *infra*, Accounts and accounting.
- Bills of discovery, 16, 921
- Bills of particulars, 16, 917, 918
- Burglary, 3, 779
- Carriers:
 - Action against agent, 3, 839
 - Action by agent, 3, 835
 - Undisclosed principal, 3, 835
- Certiorari:
 - Appeal lost through neglect of agent, 4, 65
- Commission*, see *infra*, Actions by agent against principal.
- Contractors:
 - Parties to actions, 16, 893
- Covenant, 5, 359
- Demand:
 - Actions against agents, 16, 914
 - Allegation of demand against agent, 16, 914
 - Complaint against agent, 16, 914
 - Date of demand, 16, 915
 - When allegation of demand unnecessary, 16, 914
- Ejectment, 7, 300
- Eminent domain:
 - Notice, 7, 488
 - Station agent, 7, 490
- Equity*, see *infra*, Accounts and accounting.
- Exceptions and objections, 8, 299
- Ex contractu*, see *infra*, Actions *ex contractu*.
- Ex delicto*, see *infra*, Actions *ex delicto*.
- Executions against the body and arrest in civil cases, 8, 592; 16, 915
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Form of action, 16, 894
 - Unauthorized contract, 16, 906
- Fraud, 16, 922
- Garnishment:
 - Affidavit, 9, 817
- Indemnity:
 - Actions by agent against principal, 16, 916
- Injunctions:
 - Defendant, 10, 915
 - Disobedience of injunction, 10, 1102
- Insurance:
 - Agents as parties to actions, 11, 591

AGENCY, *cont'd.*

Interpleader, 11, 450

Intoxicating liquors:

Sale to or by agent, 11, 550,
554

Joinder of parties:

Joinder of agent with principal,
16, 895Agents of corporations, 16,
896Agents with an interest, 16,
895

General rule, 16, 895

When either may sue or be
sued, 16, 896Where fraud is charged, 16,
896Joinder of principal and agent in
action for tort, 15, 560

Limitation of actions, 16, 922

Mechanics' liens:

Principal and agent as parties
defendant, 13, 961

Mistake, 16, 922

Negotiable instruments, see **NEGOTIA-
BLE INSTRUMENTS**.

Order of proof, 15, 387

Actions by or against principals,
16, 904

Discretion of court, 15, 387

Examples, 15, 387

Proving agent's acts before
showing authority, 15, 387Parties to actions (see **PARTIES TO
ACTIONS**), 16, 890; 22, 173Actions *ex contractu*, 16, 890Actions *ex delicto*, 16, 892Actions for misfeasance of agent,
16, 893Actions for nonfeasance of agent,
16, 892Actions to recover money paid
agents, 16, 892

Agents as defendants, 16, 898

Agents as plaintiffs, 16, 896

Agent's position, 16, 890

Code provisions, 16, 896

Contractor, 16, 893

Form of action, 16, 894

General rules, 16, 890

Joinder of agent with principal,
see *infra*, Joinder of parties.

Negligence of agent, 16, 894

Principal as party, 16, 898

Substituting principal by amend-
ment, 16, 894Telegraphs and telephones, 21,
510Where either may sue or be sued,
16, 896

Patents:

Joinder of agent in actions for
infringement, 16, 75**AGENCY, *cont'd.***

Payment:

Evidence of payment to agent,
16, 210

Payment to agent, 16, 196

Penalties and penal actions:

Acts of agents, 16, 264

Plea or answer, 16, 908

Denial of authority in actions
against agents, 16, 910Denial of authority in actions
against principals, 16, 909Denial of authority under oath,
16, 909Denying authority of agent, 16,
908

General denial and proof, 16, 911

Pledges:

Owner of property wrongfully
pledged by agent, 16, 652

Poor debtor acts:

Service of notice or citation on
creditor's agent, 16, 711

Ratification:

Pleading ratification, 16, 904

Real-estate agents:

Actions for commissions, 16,
916

Relations with third persons, 16, 890

Removal of causes:

Diverse citizenship, 18, 200

Sales:

Action for price, 19, 13

Service of process:

Service on agent, 19, 649

In general, 19, 649

Relation must appear, 19,
651When not authorized by
statute, 19, 650

Substitution of parties, 20, 1027

Summons and process, 20, 1136

Supplementary proceedings, 21, 98

Surplusage, irrelevant or redundant
matter, 21, 295

Telegraphs and telephones:

Parties to actions, 21, 510

Torts, see *infra*, Actions *ex delicto*.

Trove and conversion:

Joinder of parties defendant, 21,
1054

Parties defendant, 21, 1051

Parties to actions, 21, 1048

AGGRAVATED ASSAULT, see **AS-
SAULT AND BATTERY**.**AGGRAVATION**:

Pleas at law, 16, 566

AGGRAVATION OF DAMAGE,
see **DAMAGES**.**AGGRIEVED PARTY**:

Appeals:

Appeals by, 2, 167

Appeals from probate, 2, 170

AGGRIEVED PARTY, *cont'd.*

Appeals, *cont'd.*

- Construction of statutes, 2, 168
- Corporations, 2, 168
- Creditors, 2, 168
- Examples, 2, 168, 170
- In general, 2, 167
- Meaning of the word "aggrieved," 2, 170
- Statutory provisions, 2, 167
- Taxpayers, 2, 168

AGREED CASE, 1, 384

See REPORT AND CASE MADE; STATEMENT OF CASE ON APPEAL.

Additional allowance, 1, 400

Admissions, 1, 390

Affidavits:

Affidavit of reality, 1, 388

Amendments, 1, 395

Court directing an amendment, 1, 395

Instances of allowance of amendment, 1, 395

When court will grant relief, 1, 395

Appeals, 1, 403; 2, 101, 167

Finality of judgment, 1, 403

Motion for new trial, 1, 404

Necessity for bill of exceptions, 1, 403

Necessity of judgment rendered, 1, 405

Relation of appellate to inferior court, 1, 404

Right to appeal reserved by stipulation, 1, 405

Whether an appeal or writ of error lies, 1, 403

Case rescinded, 1, 393

Commencement of suit, 1, 385

Contents, 1, 385

Costs, 1, 400

Court, *see infra*, Function of the court.

Defects of pleading and form of action, 1, 391

Definition, 1, 385

Discharge, 1, 396

Dismissal, 1, 400

Costs, 1, 400

Effect as an estoppel, 1, 390

Effect as a waiver, 1, 391

Ejectment, 1, 391

Error, writ of, 1, 403; 7, 846

Estoppel, 1, 390

Evidence, 1, 386

Agreement as to the evidence, 1, 387

Not evidence, but facts, should be stated, 1, 386

Extent of control by parties, 1, 389

Fictitious, 1, 394

Friendly suits, *see* FRIENDLY SUITS.

AGREED CASE, *cont'd.*

Function of the court, 1, 393

Good faith, 1, 395

Good faith of subject-matter, 1, 394

Infants:

Submission of agreed controversy under statute, 10, 591

Injunction, 1, 388, 396

Injunction the only relief that can be awarded, 1, 396

Instructions:

Assumption upon agreed statement of facts, 11, 132

Judgments, 1, 387, 391

Jurisdiction:

Parties, 1, 398

Leave of court, 1, 393

Miscellaneous powers of court, 1, 397

Mode of stating, 1, 386

Modern practice, 1, 400

Nature of agreed case, 1, 385

Nature of the controversy, 1, 388

Necessary inferences, 1, 394

New Hampshire, 1, 400

New trial, 1, 405

Office of stipulation (*see infra*, Stipulation), 1, 389

Parties to action, 1, 398

Infants, 1, 399

Pleadings, 1, 401

Effect of filing an agreed case subsequent to the pleadings, 1, 402

Pleas, 1, 388

Pleas in abatement, 1, 388

Power to amend, 1, 395

Power to discharge, 1, 396

Power to draw inferences of fact, 1, 394

Purpose of agreed case, 1, 385

Question of sufficiency, 1, 402

Relation to the pleadings, 1, 401

Report and case made, *see* REPORT AND CASE MADE.

Rescission, 1, 393

Reserving objections by stipulation, 1, 392

Solemn judicial admission, 1, 390

Statutory provisions, 1, 406

Stipulation, 1, 389

Verdict, 386

Waiver, 1, 391

Waiver of defects of pleading, 1, 391

When state concluded, 1, 390

Whether parties could give court control over others, 1, 389

AGREEMENTS, *see* STIPULATIONS.

AGRICULTURAL LIENS, *see* LIENS.

AIDER BY VERDICT, *see* VERDICT.

AIDERS AND ABETTORS (*see* ACCESSORIES AND THE LIKE):

Burglary:

Joinder, 3, 783

AIDERS AND ABETTORS, *cont'd.*

Counterfeiting, 5, 292

Escape, 7, 915

Injunctions, 10, 917

ALIAS, 14, 181**ALIAS AND PLURIES WRITS**

(see SUMMONS AND PROCESS):

Venditioni exponas, 22, 650**ALIBI:**

Continuances, 4, 851

Instructions, 11, 358

Applying doctrine of reasonable doubt, 11, 361

Instructions as to failure to prove alibi, 11, 365

Instructions disparaging defense improper, 11, 360

Instructions held to violate rule, 11, 360

Instructions proper under rule that burden of proving alibi is not on defendant, 11, 364

Instructions proper under rule that burden of proving alibi is on defendant, 11, 363

Necessity of instructing on alibi defense, 11, 358

Necessity of request, 11, 359

ALIENS:

Ejectment, 7, 277

Grand juries, 10, 357

Removal of causes, 18, 181

Petition for removal, 18, 309

Suits between citizens and aliens, 18, 238

Who may remove suit, 18, 279

Security for costs, see SECURITY FOR COSTS.

United States courts, 22, 275

Averment of alienage, 22, 267

ALIMONY, 1, 407

Abatement of action, 1, 411

Affidavits, 1, 441, 443

Allowance:

Where divorce refused, 1, 409

Ancillary proceedings, 1, 417

Ancillary to divorce, 1, 408

Appeal from orders for temporary alimony, 7, 134

Appeals, 1, 446

Abuse of discretion, 1, 447

Alimony *pendente lite*, 1, 446, 447

Collateral attack, 1, 450

Counsel's fees, 1, 455, 448, 449

Decree granting alimony, 1, 446

Decree refusing alimony, 1, 446

Discretion as to amount, 1, 446

Discretion of trial court, 1, 448

Good faith and merits of the appeal, 1, 448

Granting of temporary alimony by appellate court, 1, 449

In general, 1, 446

ALIMONY, *cont'd.*Appeals, *cont'd.*

Jurisdiction of trial court while appeal is undetermined, 1, 449

Pending an appeal, 1, 448

Temporary alimony, 1, 446, 447; 2, 136

Whether an appeal is allowable, 1, 446

Appearance, 1, 413

Application after divorce *a mensa*, 1, 415.

Assignments:

Fraudulent assignments, 1, 445

Attorney's fees (see *infra*, Suit money), 1, 453

Amount, 1, 454

Appeals, 1, 455

Appellate court, 1, 449

Application, 1, 453

At what time granted, 1, 453

Definition, 1, 450

Discretion of court, 1, 455

In general, 1, 453

Number of attorneys, 1, 454

Pending appeal, 1, 448

Proof unnecessary, 1, 454

Statutes, 1, 455

When allowed, 1, 453

When asked and granted, 1, 419 453

Bill in equity, see *infra*, Pleadings.

Bonds, 1, 445

Burden of proof, 1, 425

Conflict of laws:

Enforcing decree in another state, 1, 416

Constitutional law:

Allowance, 1, 439

Contempt, 1, 445

Constitutional law, 1, 439

How application made, 1, 440

Jail liberties, 4, 803

Costs (see *infra*, Attorney's fees; Suit money), 1, 455

Against wife, 1, 455

Common law, 1, 455

Discretion of court, 1, 456

Motion and decree, 1, 457

Statutory origin, 1, 455

Suit money distinguished from, 1, 450

Counsel's fees, see *infra*, Attorney's fees.*Courts*, see *infra*, Jurisdiction.

Creditors' bills, 5, 489

Debt, 5, 910

Decree (see *infra*, Liens):

Condition, 1, 410

Duration of payment, 1, 411

Enforcing decree in another state, 1, 416

Independent right, 1, 410

ALIMONY, *cont'd.*Decree, *cont'd.*

- In general, 1, 410
- In personam*, 1, 413
- Property, 1, 411
- Revision, 1, 411
- Specification, 1, 410

Discontinuances, 7, 117

Dismissal, 1, 413

Divorce:

- Ancillary to divorce, 1, 408, 409
- Appeal from orders for temporary alimony, 7, 134
- Application after dissolution of marriage, 1, 414
- Discontinuances, 7, 117
- Divorce and alimony separately considered, 1, 420
- Effect of death on decree for permanent alimony, 7, 124
- Effect of death on orders for temporary alimony, 7, 123
- Incident to divorce, 1, 412
- Insanity, 7, 63
- When ecclesiastical practice follows, 7, 57
- Effect of death on decree for permanent alimony, 7, 124
- Effect of death on orders for temporary alimony, 7, 123

Evidence, 1, 424

Wife's affidavit, 1, 424

Fees, see *infra*, Attorney's fees.*Feme sole*, 1, 423

Fraudulent assignments, 1, 445

Hearing:

- Necessity of hearing husband, 1, 422

Imprisonment for debt, 1, 439

Incident to other proceedings, 1, 412

Independent right, 1, 408

Abatement of action, 1, 411

Abatement of decree, 1, 411

Alimony after legislative divorce, 1, 409

Allowance where divorce refused, 1, 409

Ancillary, 1, 408

Avoidance of decree, 1, 411

Decree, 1, 410

Divorce and alimony separately considered, 1, 420

Duration of payment, 1, 411

General rule, 1, 408

Injunction, 1, 410

Jurisdiction, 1, 409

Jurisdiction of equity, 1, 409

Ne exeat, 1, 410

Power to grant without divorce, 1, 403, 409

Practice, 1, 409

Procedure, 1, 409

Temporary alimony, 1, 410

ALIMONY, *cont'd.*

Injunctions, 1, 410, 442, 445

Against whom granted, 1, 443

At what time granted, 1, 442

Necessary allegations, 1, 442

Operation of injunction, 1, 443

Petition of affidavit of wife, 1, 442

Receiver, 1, 443

Terms, 1, 443

What must be shown, 1, 442

Whether injunction may be granted, 1, 442

Insanity, 7, 63

Jurisdiction, 1, 412

Appearance of defendant, 1, 413

Application after dissolution of marriage, 1, 414

Application after divorce *ex parte*, 1, 415Decree *in personam*, 1, 413

Defendant domiciled in state, 1, 413

Divorce courts, 1, 412

Domicil, 1, 412

Enforcing decree in another state, 1, 416

Grant of alimony without divorce, 1, 409

Legislative divorce, 1, 409

Liens:

Decree as lien on land, 1, 443

Divorce suit, 1, 443

In general, 1, 443

Order to convey property to trustee, 1, 444

To what lien attaches, 1, 444

Marriage, 1, 421

Application after dissolution of marriage, 1, 414

Marriage (annulment):

Permanent alimony, 13, 885

Temporary alimony, 13, 884

Necessity of suit pending, 1, 421

Ne exeat (see *NE EXEAT*), 1, 410, 445

Notice of motion, 1, 418

Parties to action, 1, 423

Pendente lite, see *infra*, Temporary alimony.

Permanent alimony:

At what time asked, 1, 420

Pleadings (see *infra*, Prayer for alimony; Temporary alimony), 1, 420, 421

Divorce and alimony separately considered, 1, 420

Hearing husband, 1, 422

How wife sues, 1, 423

Parties, 1, 423

Permanent alimony, 1, 420

What to be shown to warrant alimony *pendente lite*, 1, 420

When temporary alimony asked and granted, 1, 418

ALIMONY, *cont'd.*

- Power to grant alimony without divorce, 1, 409
- Practice, 1, 417
- Prayer for alimony, 1, 417
 - Ancillary proceedings, 1, 417
 - Methods of praying alimony, 1, 418
 - Notice of motion, 1, 418
 - Permanent alimony, 1, 420
 - Relief sought for not prayed for until after decree, 1, 417
 - Temporary alimony, 1, 418
 - Whether prayer necessary, 1, 417
- Procedure, 1, 417
- Publication, 17, 44
- Receivers, 1, 443
- Separation, 1, 421
- Sequestration, 1, 445
- Sister state judgments:
 - Enforcing decree in another state, 1, 416
- Suit money (see *infra*, Attorney's fees), 1, 451
 - Definition, 1, 450
 - Discretion of court, 1, 453
 - Final hearing, 1, 452
 - In general, 1, 451
 - Object of, 1, 452
 - Of what it consists, 1, 452
 - Upon what principle allowed, 1, 451
 - When made, 1, 452
- Survival of actions, 21, 360
- Temporary alimony, 1, 410
 - Appeal, 1, 446, 447
 - Appellate court, 1, 448, 449
 - Hearing husband, 1, 423
 - Pending appeal, 1, 448
- What must be shown to warrant alimony *pendente lite*, 1, 421
 - Bill not good on its face, 1, 422
 - Marriage between the parties, 1, 421
 - Necessity of allegations, 1, 421, 422
 - Prima facie* case, 1, 422
 - Property of husband, 1, 421
 - Separation, 1, 421
 - Suit pending for divorce, 1, 421
 - When temporary alimony not granted, 1, 422
 - Where allegations must be made, 1, 422, 423
 - Wife's need of allowance, 1, 421
- When asked and granted, 1, 418
 - After final decree, 1, 419
 - Attorney's fees, 1, 419
 - At what stages of suit, 1, 419, 420

ALIMONY, *cont'd.*

- Temporary alimony, *cont'd.*
 - When asked and granted, *cont'd.*
 - Informal personal appearance not sufficient, 1, 419
 - In general, 1, 418
 - Summary, 1, 420
 - Time at which granted, 1, 420
 - Permanent alimony, 1, 420
 - Temporary alimony, 1, 420
 - When ecclesiastical practice followed, 7, 57
- ALLOCATUR:**
 - Certiorari, 4, 198
 - Orders, 15, 319
- ALLOCATION** (see SENTENCE):
 - Homicide, 10, 188
- ALLOWANCES OF COSTS**, see ADDITIONAL ALLOWANCES OF COSTS.
- ALLOWANCE TO WIDOW OR FAMILY**, see SETTLEMENT OF DECEDENTS' ESTATES.
- ALTERATION OF INSTRUMENTS:**
 - Amendments, 1, 642
 - Answers in code pleading:
 - General denials, 1, 820
 - Appeals:
 - Transcript of record, 2, 292
 - Bills of exceptions, 3, 501
 - Depositions, 6, 562, 606
 - Executions, 8, 437
 - Forgery*, see FORGERY.
 - Indictments:
 - Interlineations, 10, 419
 - Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
 - Non est factum*, 16, 545
 - Summons and process, 20, 1182
- ALTERNATIVE PLEADING**, see DEFINITENESS AND CERTAINTY IN PLEADINGS.
- ALTERNATIVE REMEDIES**, see ELECTION OF REMEDIES.
- AMBASSADORS AND CONSULS**, 17, 259
 - Actions and suits against, 17, 260
 - Actions and suits by, 17, 259
- AMBIGUITY** (see DEFINITENESS AND CERTAINTY IN PLEADINGS):
 - Contracts, 4, 918
 - Definiteness and certainty in pleadings, 6, 267
 - Instructions, 11, 141
- AMENDMENTS**, 1, 458
 - Abatement in pleading, 1, 5, 26
 - Accounts and accounting, 1, 88
 - Amending plea where defendant sets forth a stated account, 1, 101
 - Actual amendments, 1, 640
 - Ad damnum*, 1, 586, 650, 668; 11, 902
 - After judgment, 1, 590

AMENDMENTS, *cont'd.**Ad damnum, cont'd.*

After merits fully litigated, 1, 589
 After plea in abatement, 1, 588
 After referee's report, 1, 589
 After verdict, 1, 589
 Attachments, 1, 679, 68
 Before trial, 1, 587
 Filling a blank, 1, 588
 Increasing, 1, 584, 587
 On the trial, 1, 588
 Reducing, 1, 587
 To conform to proof, 1, 588
 Upon relinquishing the verdict,
 1, 589
 Whether new cause of action, 1,
 586

Admiralty, 1, 256

Libel, 1, 270

Affidavits, 1, 336, 503, 654, 680

Application for leave to amend,
 1, 637, 638

Attachment, 3, 14

Express statute, 1, 682

Formal defects, 1, 336

In absence of express statute, 1,
 680

Officer, 1, 337

Rules in various states, 1, 680, 683

Signature of officer, 1, 337

Statutes, 1, 337

Substantial defects, 1, 337

Under general statute of amend-
 ments, 1, 681

Affidavits of merits or defense, 1, 375

Agency:

Substituting principal by amend-
 ment, 16, 894

Agreed case:

Court directing an amendment,
 1, 395

Instances of allowance of amend-
 ment, 1, 396

Power of court, 1, 395

When court will grant relief, 1,
 395

Aider by verdict, 22, 946

Alteration of instrument, 1, 642

Amount in controversy, 1, 705, 710

Answers (see *infra*, Cause of action),
 1, 495, 632

After hearing, 1, 500

At hearing, 1, 500

Discretion of court, 1, 497

Facts occurring subsequent to
 answer, 1, 499

How amendments are made, 1,
 505

In general, 1, 495

Making a new defense, 1, 499

Material amendments, 1, 496

Mistake of fact, 1, 498

New defense, 1, 632

Index Pl. & Pr. — 3

AMENDMENTS, *cont'd.**Answers, cont'd.*

Original answer superseded by
 amended answer, 1, 626

Previous knowledge, 1, 498

Setting up statutes of frauds and
 limitations, 1, 497

Statute of frauds, 1, 500

Statute of limitations, 1, 500

Time of amendment, 1, 500

Titles, 1, 495

Unconscionable defense, 1, 499

Appeal bonds and undertakings, 1,
 990

Clerical and formal errors, 1, 996

Common-law bond, 1, 998

Construction of statutes, 1, 994.

Curative statutes, 1, 993

Discretion of court, 1, 994

Dismissal for substantial error,
 1, 996

Effect of lack of jurisdiction, 1,
 990

Estoppel of appellant from deny-
 ing jurisdiction, 1, 991

Forma pauperis, 1, 1000

Motion to amend, 1, 997

Official misconduct, 1, 990

Orders, 1, 997

Power to amend, 1, 993

Recognizance, 1, 993

Review of order allowing or re-
 fusing amendment, 1, 995

Right of appellee, 1, 996

Strict compliance with substan-
 tial requirements, 1, 993

Surplusage, 1, 992

Time of motion to amend, 1, 997

Trivial errors, 1, 997

Varying from language of stat-
 ute, 1, 991

When bond is void, 1, 990

When unnecessary, 1, 991

Where motion to amend is
 made, 1, 997

Appeals, 2, 110

Abstract, 2, 317

After demand, 1, 618

After remand from appellate
 court, 1, 489

Amendments considered as
 made, 1, 611

Amendments in appellate court,
 1, 468

Amendments to conform to
 proof, 1, 582

Appeals from justice, 1, 612, 615

Appeals from justice to county
 court, 1, 615

Appeals from probate court, 1,
 614

At what stage of proceedings
 amendment allowed, 1, 607

AMENDMENTS, *cont'd.*Appeals, *cont'd.*

- Complaint bad on demurrer, 1, 611
- Consent of parties, 1, 608
- Costs, 1, 650
- Discretionary, 1, 619
- Discretion of court, 2, 411, 412
- Discretion of trial court, 1, 524, 596
- Error in granting or denying application, 2, 545
- Final judgments and decrees, 2, 254
- In general, 1, 524
- Insufficient statements, 1, 611
- Judgments, 15, 228
- Limited remand, 1, 620
- Merits fully tried, 1, 610
- Method of review, 1, 534
- Notice of appeal, 2, 231
- Presumption in favor of, 2, 468
- Remand with directions to amend, 1, 617
- Remand with leave to amend, 1, 481, 488
- Res adjudicata*, 1, 620
- Review of discretion of trial court, 1, 524
- Review of exercise of discretion, 1, 464
- Statute of jeofails, 1, 608
- Substantial amendment, 1, 607
- Terms, 1, 647
- United States courts, 1, 607
- Where the cause is tried upon the record, 1, 607
- Where the trial is *de novo*, 1, 611
- Whether allowable in appellate court, 1, 488

Arbitration and award:

- Judgments on awards, 11, 1054

Arraignment and plea:

- Amendment of record, 2, 792

Assignment of errors, 2, 972

Attachments, see ATTACHMENTS.

At what stage of proceedings, 1, 590

- Ad damnum*, 1, 590
- Additional pleas after issue joined, 1, 596
- After change in demurrer, 1, 593
- After change of venue, 1, 590
- After demurrer, 1, 591
- After demurrer for misjoinder, 1, 593
- After demurrer under code provisions, 1, 594
- After issue joined, 1, 596
- After judgment, 1, 605
- After jury instructed, 1, 603
- After jury sworn, 1, 602
- After mistrial, 1, 603
- After motion for nonsuit, 1, 603

AMENDMENTS, *cont'd.*At what stage of proceedings, *cont'd.*

- After plea in abatement, 1, 591
- After report of referee, 1, 603
- After submission to jury, 1, 603
- After verdict, 1, 604
- Amendment of answer denied, 1, 602
- Amendment of complaint denied, 1, 601
- Amendment of demurrer, 1, 595
- At what stage of trial, 1, 602
- Before announcing ready for trial, 1, 597
- Before trial, 1, 590
- Bills in equity, 1, 478
- Changing issue, 1, 596
- Defects cured by verdict, 1, 604
- Discretion of court, 1, 599
- During the argument, 1, 603
- Formal errors on the trial, 1, 598
- Furtherance of justice, 1, 601
- In appellate court*, see *infra*, Appeals.
- Knowledge of defense, 1, 601
- Laches of applicant, 1, 600
- Limitation of actions, 1, 601
- Making a new cause of action*, see *infra*, Cause of action.
- Mistake, 1, 600
- On the eve of trial, 1, 598
- On the trial, 1, 598
- Presumption of propriety, 1, 600
- Question first raised on the trial, 1, 600
- Reswearing the jury, 1, 602
- Terms of amendment after verdict, 1, 605
- Useless amendment, 1, 601
- Where plaintiff's claims would be barred, 1, 600

Audita querela, 3, 123

Bail and recognizance, 3, 231

Bankruptcy:

- Order, 22, 359
- Petition, 22, 349
- Schedules, 22, 351

Bastardy, 3, 286

- Judgment, 3, 309
- Justice's return to trial court, 3, 290

Before trial, 1, 590

Bills in equity, 1, 466

- After decree, 1, 487
- After demurrer, 1, 479
- After master's report, 1, 483
- After plea, 1, 481
- After reference, 1, 483
- After remand from appellate court, 1, 489
- After replication, 1, 482
- After witnesses examined, 1, 482
- Amended bill, 1, 504

AMENDMENTS, *cont'd.*Bills in equity, *cont'd.*

Amending at the hearing in respect of parties, 1, 484

Amending at the hearing to conform to proof, 1, 485

Amending prayer at the hearing, 1, 484

Amendments in appellate court, 1, 468

Application for leave to amend, 1, 480

At the hearing, 1, 484

At what stage amendment in respect to parties allowed, 1, 467

At what stage of proceedings, 1, 479

Avoiding special defense, 1, 469

Before issue, 1, 478

Change of parties, 1, 466

Creditor's bill, 1, 466, 469

Demurrer to proposed amendment, 1, 476

Effect of amendment, 1, 468, 490

Effect on contempt proceedings, 1, 492

Effect on injunction, 1, 492, 493

Effect on statute of limitations, 1, 492

Form of amended bill, 1, 505

How amendments are made, 1, 504

How objections to proposed amendment may be taken, 1, 476

In appellate court, 1, 487

Inconsistent amendments, 1, 476

Inconsistent claims, 1, 474

In general, 1, 504

Injunctions, 1, 493

In respect of matter, 1, 468

In respect of parties, 1, 466

Interlineation, 1, 504

Jurisdictional averments, 1, 472

Leave to amend after paying cost of demurrer, 1, 480

Making a new case, 1, 472

Making new case at the hearing, 1, 487

Matter occurring pending suit, 1, 471

New process upon amendment, 1, 494

Obviating multifariousness, 1, 494

Of sworn bills, 1, 478

Perfecting allegations at the hearing, 1, 484

Prayer for relief, 1, 468

Remand with leave to amend, 1, 481, 488

Repugnant amendments, 1, 476

AMENDMENTS, *cont'd.*Bills in equity, *cont'd.*

Retroactive effect of amendment, 1, 491

Review on appeal, 1, 481

Right of defendant to plead anew, 1, 490

Same defense not applicable, 1, 474

Seeking different relief, 1, 474

Signature of counsel, 1, 505

Stipulation, 1, 504

Substance, 1, 469

Tests, 1, 474

Time of allowing amendment, 1, 478

Verification, 1, 505

Verified bills, 1, 478

Waiver of default, 1, 493

Bills of exceptions, 3, 512

Acceptance of amendments, 3, 447

Amendment by the record, 3, 503

Continuance, 3, 503

Memoranda, 3, 505

Motion to amend, 3, 502

Notice, 3, 506

Term, 3, 503

Trial court, 3, 503

Where made, 3, 502

Bills of particulars, 3, 537

Bonds, 1, 683

Briefs, 3, 735

By referee, see REFEREES.

Calendars and trial dockets:

Effect of amendment, 3, 803

Caption, 1, 662

Indictments, 1, 690

Carrier of goods:

Charging common carrier as warehouseman, 1, 570

Case made on appeal, 3, 905

By appellate court, 3, 906

By trial judge, 3, 905

In what cases granted, 3, 907

Motion to remand, 3, 908

Proceedings to bring up a more perfect case, 3, 906

Proposal of amendments by appellee, 3, 894

Remitting for resettlement, 3, 907

Cause of action:

Actions for negligence, 1, 563

Actions for slander, 1, 563

Ad damnum, 1, 586

Amplified statements, 1, 557

Answers, 1, 558

Assigning new breaches of covenant, 1, 565

Changing common-law action to statutory and *vice versa*, 1, 569

AMENDMENTS, *cont'd.*Cause of action, *cont'd.*

- Changing contract to tort and *vice versa*, 1, 567
- Changing ground of liability, 1, 572
- Changing legal to equitable action and *vice versa*, 1, 568
- Charging common carrier as warehouseman, 1, 570
- Codes, 1, 548, 556
- Common count and special contracts, 1, 566
- Common laws, 1, 547
- Correcting misdescriptions, 1, 558
- Death by wrongful act, 1, 561
- Ejectment, 1, 561
- Failure to state in cause of action, 1, 510
- False imprisonment, 1, 570
- Federal follows state practice, 1, 557
- General tests, 1, 556
- Introducing new cause of action or defense, 1, 547
- Libel, 1, 570
- Limitation of actions, 1, 621
- Making allegations more formal or precise, 1, 560
- Malicious prosecution, 1, 570
- Method of determining the question, 1, 574
- Misdescription, 1, 558
- New cause of action, 1, 514, 576
- New judgment, 1, 556
- Objection, how taken, 1, 571
- Prevalence and extent of the rule forbidding, 1, 547
- Recovery under original complaint not a bar to recovery under amended complaint, 1, 556
- Review of decision of trial judge, 1, 574
- Same allegation in different form, 1, 562
- Same measure of damage not applicable, 1, 556
- Setting forth entirely new cause of action, 1, 632
- Slander, 1, 570
- Statutes, 1, 548, 556
- Summary statement of the rule, 1, 564
- Trespass *quare clausum*, 1, 561
- Waiver of objection, 1, 573
- What amendments are allowed, 1, 557
- What constitutes a new cause of action, 1, 556

Certiorari, 4, 157, 204

Amendment of the writ, 4, 204

AMENDMENTS, *cont'd.*Certiorari, *cont'd.*

- Bonds, 4, 190
 - Instances in which amendments are allowable, 4, 190
 - Objection to bonds, 4, 191
 - Statutes authorizing amendment of appeal bonds, 4, 191
- Discretion of court, 4, 157
- Examples, 4, 157, 158, 204
- Formal defects in the writ, 4, 204
- Return or answer, 4, 227
 - Discretion of court, 4, 230
 - Grounds for amendments, 4, 228
 - In general, 4, 227
 - Motion for further return, 4, 228
 - Necessity of motion, 4, 230
 - Unnecessary matters, 4, 229
- Right to amend petition, 4, 157
- Chambers and vacation, 4, 338
 - Amendment of judgments and orders, 4, 347
- Records, 17, 921
- Change of parties*, see *infra*, Parties to action.
- Change of venue, 1, 590
 - Change by amendment of complaint, 4, 454
- Changing common-law action to statutory and *vice versa*, 1, 568
- Changing contract to tort and *vice versa*, 1, 567
- Changing issue, 1, 596
- Changing legal to equitable action and *vice versa*, 1, 568
- Changing place of trial, 1, 631
- Changing prayer for relief, 1, 631
- Changing the form of action, 1, 574, 576
 - As to stating new cause of action*, see *infra*, Cause of action.
 - At common law, 1, 574
 - Discretion of court, 1, 574
 - Effect of answering amendment, 1, 577
 - Facts fortifying plaintiff's rights, 1, 577
 - Matter arising *pendente lite*, 1, 576
 - New cause of action, 1, 576
 - Statutes authorizing, 1, 575, 576
 - Supplemental complaint, 1, 576
- Citations, 4, 541
- Codes, see *infra*, Cause of action.
- Commitments, 4, 581
- Common law, 1, 508, 509
- Conditions, see *infra*, Terms.
- Conflict of laws:
 - Lex fori* governs, 1, 509
 - Relation between federal and state practice, 1, 510
- Conformity to proof, 1, 578

AMENDMENTS, *cont'd.*

Constitutional law:
Statutes authorizing amendment
to indictment, 1, 692

Construction of pleadings, 4, 747

Contempt:

Discharging contempt proceed-
ings, 1, 492

Continuances, 4, 836

Affidavit, 4, 878

Amendment or complaint, 4, 837

Amendment requiring continu-
ance, 4, 838

At common law, 4, 836

Continuance properly refused, 4,
837

Immaterial amendments, 4, 837

Modern rule, 4, 837

Review, 4, 904

Coram nobis and *coram vobis*, 5, 35

Corporations:

Names, 5, 65, 69

Costs (see *infra*, Terms), 5, 222

Payment of costs as a condition
precedent, 1, 507

Terms, 1, 646

Terms of amendment, 1, 605

Court, see *infra*, Discretion of court.

Covenant:

Declaration, 5, 375

Creditors' bills, 1, 466, 469; 5, 576

Criminal proceedings, 1, 688

Cross-bills, 5, 667

Damages, see *infra*, *Ad damnum*.

Ad damnum clause, 5, 706

Dates:

Attachments, 1, 687

Indictments, 1, 691

Death by wrongful act, 1, 561; 5, 879

Adding new parties, 5, 880

Alleging existence of benefi-
ciaries, 5, 881

Alleging foreign statute, 5, 882

Alleging loss of services, 5, 883

Failure to show cause of action,
5, 880

Giving further particulars, 5, 882

In general, 5, 879

Legal plaintiff omitted, 5, 881

Declaration and complaint, see *infra*,
Jurisdictional averments.

Attachments, 1, 676

Complaint of grand juror, 1, 699

Failure to state cause of action,
1, 510

Original complaint superseded,
1, 625

Supplemental complaint, 1, 576

Decrees, see *DECREES*.

Defaults:

Amendment of complaint where
pleading of defendant is un-
disposed of, 6, 88

AMENDMENTS, *cont'd.*

Defaults, *cont'd.*

Amendment of declaration and
complaint, 6, 88

After default taken, 6, 53

After record lost, 6, 54

Immaterial amendment, 6,
52

Judgment not void, 6, 53

Material amendment, 6, 51

Prior default, 6, 52

Supplemental complaint, 6,
52

Application for relief, 6, 210

Waiver of default, 1, 493

Defense (see *infra*, Unconscionable
defense):

*As introducing new cause of action
or defense*, see *infra*, Cause of
action.

Definiteness and certainty in plead-
ings, 6, 253, 280

Definition, 1, 462

Delay, amendment for the purpose
of, 1, 634

Demurrer, 1, 494, 595

Amending demurrer, 6, 384

Amendment after demurrer, 1,
479, 591

Amendment of demurrer, 1, 632

Filing amendment without leave,
1, 635

Objection taken by demurrer, 1,
476

Demurrers in chancery, 6, 427

Application for leave to amend,
6, 428

Effect of amendment, 6, 428

In general, 6, 427

Limitation of right to amend, 6,
427

What defects amendable, 6,
427

When allowable, 6, 427

Depositions, 6, 606

Certificate, 6, 558

Certificate in United States
courts, 6, 628

Effect of amendment of process
or pleading after taking depo-
sition, 6, 581

Deinue:

Amending judgment, 6, 663

Directing verdict, 6, 689

Discovery:

Amending bill, 6, 771

Adding parties, 6, 771

Adding prayer for relief, 6,
771

Amending bill for relief and
discovery, 6, 772

Amendment to waive dis-
covery, 6, 772

AMENDMENTS, *cont'd.*

- Discretion of court, 1, 524
 - Absolute right to amendments, 1, 530
 - Amendment granted or allowed contrary to law, 1, 531
 - Amendment rarely disturbed where application to amend is granted, 1, 595
 - Appellate court's right to review the decision of the lower courts, 1, 524
 - Changing the form of action, 1, 574
 - Code system, 1, 525
 - Construction of statute, 1, 528
 - Harmless error, 1, 533
 - Leave to amend*, see *infra*, *Leave to amend*.
 - Method of review, 1, 534
 - Objection and exception, 1, 533
 - Presumption in favor of trial court, 1, 532
 - Review for want of power, 1, 531
 - Review of discretion, 1, 524
 - Statutes, 1, 528
 - Terms*, see *infra*, *Terms*.
- Dismissal, discontinuance, and non-suit:
 - After amendment, 6, 843
 - Dismissal for defect of parties, 6, 898
 - Want of prosecution, 6, 917
- Distress, 7, 25
- Divorce, 7, 85, 101
 - Affidavit of service by publication, 7, 113
 - After trial, 7, 102
 - Answer, 7, 88
 - Discretionary, 7, 101
 - Extent of amendments, 7, 101
 - Generally allowable, 7, 101
 - Premature suit, 7, 102
- Drunkenness, 7, 231
- Effect of amendment (see *infra*, *Retrospective effect*):
 - As waiver of error in previous rulings, 1, 624
 - Effect of amending of course, 1, 631
 - Effect of striking out amended pleadings, 1, 627
 - Injunction, 1, 624
 - Original pleadings superseded, 1, 625
 - Right to plead *de novo*, 1, 627
- Ejectment, 1, 561
 - Answer, 1, 561
 - Misdescription, 1, 562
 - New demise, 1, 561
 - The date, 1, 561
 - The term, 1, 561
- Election of remedies, 7, 368

AMENDMENTS, *cont'd.*

- Elections, 7, 389
 - Amending the answer, 7, 390
 - At what time, 7, 389
 - In general, 7, 389
 - Introducing new matter, 7, 390
 - When allowed, 7, 389
- Eminent domain, 7, 540
 - Appeal, 7, 656
 - Bonds, 7, 644
 - Judgment, 7, 623
 - Power to allow, 7, 540
 - Report of commissioners, 7, 606
 - What allowable, 7, 541
- Entry, writ of, 7, 728
- Equitable assignments, 7, 775
- Equity, 1, 463
 - Amendments discretionary, 1, 463
 - Answers*, see *infra*, *Answers*.
 - Bills in equity*, see *infra*, *Bills in equity*.
 - Cardinal rules, 1, 463
 - Curing a variance, 1, 465
 - Demurrers, 1, 494
 - Demurrer*, see *infra*, *Demurrer*.
 - Discretion, 1, 463
 - Fruitless amendment, 1, 465
 - Leave to amend*, see *infra*, *Leave to amend*.
 - Liberal practice, 1, 464
 - Master's reports, 1, 501
 - Pleas in equity*, see *PLEAS IN EQUITY*.
 - Process, 1, 501
 - Replications, 1, 495
 - Restatement, 1, 463
 - Review of exercise of discretion, 1, 464
 - Special indulgence, 1, 464
 - Verified pleadings, 1, 464
- Error, writ of, 7, 728, 908
 - Amendment based on record, 7, 911
 - Amendment, discretionary, 7, 910
 - Amendments affecting parties, 7, 910
 - Application, 7, 881
 - At common law, 7, 908
 - Describing party by partnership name, 7, 911
 - Examples, 7, 908, 910
 - How discretion exercised, 7, 910
 - Insertion of names, 7, 910
 - Return day, 7, 911
 - Striking out names, 7, 910
 - Teste, 7, 911
 - Under statute, 7, 908
 - Variance between *scire facias* and writ, 7, 909
 - What defects amendable, 7, 908
 - Where amendment unnecessary, 7, 912

AMENDMENTS, *cont'd.*

- Evidence (see *infra*. Proof), 8, 27
- Amended pleadings, 8, 33
- Pleadings as, 8, 27
- Exceptions and objections, 8, 207
- Bill, indictment, etc., 8, 207
- Exception necessary, 8, 208
- Plaza or answer, 8, 208
- Ex contractu* and *ex delicto*:
 - Attachments, 1, 578
 - Changing contract to tort and *vice versa*, 1, 567
- Executions*, see EXECUTIONS.
- Executions against the body and arrest in civil cases, 8, 635
- Executors and administrators, 1, 538
- Judgment, 8, 692
- False imprisonment, 1, 570; 8, 849
- Favored, 1, 516
- Filling blanks, 1, 588
- Findings of court, 8, 950
- Forcible entry and detainer, 9, 67
 - Allowance and terms discretionary, 9, 68
 - Conform to proof, 9, 67
 - In general, 9, 67
 - On trial *de novo*, 9, 68
 - Record, 9, 75
 - To cure misjoinder, 9, 68
 - To cure variance, 9, 68
 - To remove jurisdictional objections, 9, 67
- Forma pauperis*, 16, 692
- Affidavit or oath, 16, 688
- Form of action*, see *infra*, Changing the form of action.
- Form of amended pleadings, 1, 643
- Frauds, statute of, 1, 497
- Further amendments, 1, 519
- Furtherance of justice, 1, 515
- Garnishment:
 - Records, 9, 873
 - Return, 9, 829
- Grand juries:
 - Return of venire facias, 10, 361
- Guardian and ward, 1, 539
- Guardians:
 - Death of guardian, 9, 944
 - Declaration and complaint, 9, 942
- Habeas corpus, 9, 1028
- Husband and wife:
 - Nonjoinder or misjoinder, 10, 228, 230
- Immaterial amendment, 1, 523
- Implied amendment, 1, 641
- Implied leave to amend, 1, 634, 636
- Indefinite amendments, 1, 523
- Indictment*, see INDICTMENT.
- Indorsement, 1, 662
- Information, 1, 696
 - Amendment discretionary, 1, 697
 - Filing new information, 1, 698

AMENDMENTS, *cont'd.*

- Information, *cont'd.*
 - Indictment distinguished from, 1, 696
 - Statutes, 1, 698
- Informations in equity, 10, 865
- In general, 1, 563
- Inherent power to amend, 1, 508
- Injunctions*, see INJUNCTIONS.
- Insolvency:
 - Petition by creditors for discharge, 11, 16
 - Petition for discharge, 11, 10
 - Schedule, 11, 18
- Insurance:
 - Amendment of pleadings, 11, 427
- Interlineation, 1, 642
- Interpleader:
 - Amendment of bill of interpleader, 11, 468
- Interstate commerce:
 - Answer, 11, 487
 - Complaints, 11, 486
- Intervention, 11, 507
- Intoxicating liquors:
 - Indictment, 11, 574
 - Warrant, 11, 587
- Introducing new cause of action or defense*, see *infra*, Cause of action.
- Irrigation, 11, 596
- Issues to the jury, 11, 675
- Jeofails, 11, 756
 - Aider by verdict, 22, 950
 - Variance, 22, 541
- Judgment roll, 18, 480
- Judgments*, see OPENING, AMENDING, AND VACATING JUDGMENTS.
- Ad damnum* clause, 11, 902
- Affidavit and statement upon confession of judgment, 11, 1008
- Amending pleadings to conform to proof, 11, 872
- Amendment of pleading on motion for judgment, 11, 1047
- Judgments on appeal, 11, 1064
 - Power to amend, 11, 1064
 - Time of amendment, 11, 1065
- Judgments on awards, 11, 1054
- Offer of judgment accepted, 4, 715,
- Judicial sales:
 - Return, 12, 22
- Jurisdictional averments, 1, 472, 511
- Averments necessary to perfect the jurisdiction of the court, 1, 511
- Court without jurisdiction, 1, 511
- Defective averments, 1, 512
- Federal courts, 1, 512
- Striking out a count, 1, 512
- Jury:
 - List of veniremen, 12, 370
 - Venire facias, 12, 345

AMENDMENTS, *cont'd.*

- Justices of the peace, 1, 508; 12, 699
 - Appeal bond, 12, 779
 - At what stage allowable, 12, 700
 - Change of parties, 12, 700
 - Dockets, 12, 749
 - Judgments, 12, 738
 - Notice of appeal, 12, 768
 - Parties, 12, 783
 - Power to allow, 12, 699
 - Return of justice on appeal, 12, 792
 - Trial *de novo* in appellate court, 1, 611, 616
- Laches, 1, 522
 - Bills in equity, 12, 735
 - Laches of applicant, 1, 600
- Landlord and tenant:
 - Affidavit for attachment, 12, 917
- Leave to amend, 1, 502, 629
 - Absolute right, 1, 629
 - Affidavit, 1, 503
 - Amendments of course, 1, 629
 - Answer, 1, 632
 - Application, 1, 503
 - Application for leave, 1, 636
 - Changing prayer for relief, 1, 631
 - Changing place of trial, 1, 631
 - Delay, amendments for the purpose of, 1, 634
 - Demurrer, 1, 632
 - Effect of amending of course, 1, 631
 - Effect of filing without leave, 1, 635
 - Equity, 1, 502
 - General application, 1, 637
 - Grounds shown by affidavit, 1, 637
 - Implied leave, 1, 634, 636
 - Necessity of affidavit, 1, 638
 - Notice of motion, 1, 639
 - Once of course, 1, 633
 - Orders granting leave, 1, 640
 - Prayer for general relief, 1, 639
 - Presumption of leave, 1, 636
 - Prima facie* case sufficient, 1, 638
 - Process, 1, 671
 - Remedy for unauthorized amendment, 1, 634
 - Renewal of motion, 1, 638
 - Service of amended complaint, 1, 630
 - Service of proposed amendment, 1, 639
 - Setting forth a new cause of action, 1, 632
 - Statement of proposed amendment, 1, 637
 - Statutory provisions, 1, 629
 - Suggestion by the court, 1, 636
 - Time to amend, 1, 630
 - Waiver of irregularity, 1, 636

AMENDMENTS, *cont'd.*

- Leave to amend, *cont'd.*
 - Waiver of right to amend, 1, 631
 - What amendments may be made by defendant, 1, 632
 - What amendments may be made by plaintiff, 1, 631
 - What pleadings may be amended of course, 1, 633
 - When leave is necessary, 1, 502; 1, 634
 - When leave is not necessary, 1, 634, 639
 - When pleadings filed without leave allowed to stand, 1, 636
 - Writing, 1, 503
- Lex fori* governs, 1, 509
- Libel and slander, 1, 570
 - Amendment under action for slander setting out the defamatory charges in different forms, 1, 563
 - Changing from libel or slander to malicious prosecution, 1, 570
 - Declaration and complaint, 13, 94
 - Different form of words, 13, 95
 - Foreign language, 13, 49
 - New cause of action, 13, 94
 - Permissible amendments, 13, 95
 - Plea or answer, 13, 96
- Limitation of actions, 1, 497, 500, 621
 - Amendments barred by statute, 1, 518
 - Bills in equity, 13, 234
 - Effect of amendments, 1, 621
 - How question is raised, 1, 623
 - Setting up statute, 1, 601
 - Suspension of statute, 1, 492
 - Unconscionable defense, 1, 520
 - Where amendment does not introduce new cause of action, 1, 621
 - Where amendment introduces a new cause of action, 1, 622
 - Where new parties are introduced, 1, 623
 - Where plaintiff's claim would be barred, 1, 600
- Logs and lumber:
 - Declaration and complaint to enforce lien, 13, 344
- Lost instruments and records:
 - Application for restoration of judicial records, 13, 382
 - Bill in action on lost instruments, 13, 372
 - Instrument lost *pendente lite*, 13, 372
 - Restoration of judicial records, 13, 384
- Malicious prosecution:
 - Declaration and complaint, 13, 454

AMENDMENTS, *cont'd.*

- Mandamus, 13, 545, 751
 - Alternative writ, 13, 753
 - Amendment after return, 13, 754
 - Conformity to peremptory writ, 13, 786
 - Discretion of court, 13, 753
 - Effect of bringing action against wrong person, 13, 661
 - In general, 13, 751
 - Particulars, 13, 752
 - Peremptory writ, 13, 790
 - Petition, 13, 752
 - Pleadings, 13, 546
 - Records, 13, 545
 - Amendment useless, 13, 545
 - Compelling court to make amendment, 13, 545
 - Delay by relator, 13, 545
 - Discretion of court, 13, 545
 - Return, 13, 754
 - Rule to show cause, 13, 754
 - What amendments permitted, 13, 754
- Mandate, 13, 849
 - Amendment of pleadings, 13, 860
 - Causes triable *de novo* on appeal, 13, 862
 - Imposition of terms, 13, 862
 - Matters arising subsequent to decision, 13, 862
 - Presentation of new question, 13, 862
 - Remand generally, 13, 860
 - Remand with directions, 13, 861
- Master in chancery, 1, 501
- Mechanics' liens*, see **MECHANICS' LIENS**.
- Method of making amendments, 1, 640
 - Actual amendments, 1, 640
 - Averments of amended pleadings, 1, 643
 - Entry of record, 1, 641
 - Form of amended pleading, 1, 643
 - Interlineation, 1, 642
 - Order operating as amendment, 1, 641
 - Separate pleading, 1, 643
 - Signature of amended pleadings, 1, 644
 - Venue, 1, 643
 - Verification of amended pleadings, 1, 644
- Mills and milldams, 14, 8
- Minutes, 14, 29
- Miscellaneous proceedings, 1, 656
- Misnomer, 1, 535; 14, 304
 - Attachments, 1, 686
 - Indictments, 1, 691, 693
 - Process, 1, 663

AMENDMENTS, *cont'd.*

- Mistakes, 1, 498, 600
- Motion (see **MOTION**; and see *infra*, Notice of motion to amend, Orders granting leave):
 - Defeat of intervening motion, 1, 631
- Multifariousness, 1, 494; 14, 215
 - Leave to amend, 14, 215
- Municipal corporations, 1, 518
- Names, 14, 304
- Naturalization:
 - Records, 14, 314
- Ne exeat*, 14, 322
- Negotiable instruments, 14, 582
- New cause of action*, see *infra*, Cause of action.
- New trial:
 - Surprise by amendment or pleading, 14, 737
- Next friend, 14, 1031
 - Failure to appoint or irregular appointment, 14, 1021
- Notes of issue, 14, 1065
 - Amending old note, 14, 1065
 - In general, 14, 1065
- Notice, 1, 656, 658
- Notice of amendment, 1, 494
- Notice of motion to amend, 1, 639
 - Formal amendments, 1, 640
 - Prayer for general relief, 1, 639
 - Process, 1, 672
 - Service of proposed amendment, 1, 639
 - When required, 1, 639
- Notice or brief statement of defense, 14, 1083
- Nuisances:
 - Declaration and complaint, 14, 1116
- Number of amendments, 1, 519
- Objections and exceptions, 1, 571
 - Amendment stating new cause of action, 1, 571
 - General demurrer, 1, 572
 - Objection to filing amendment, 1, 573
 - Waiver of objection to amendment, 1, 575
- Offer of judgment, 15, 47
- Official bonds, 15, 130
- Orders (see **ORDERS**):
 - Order operating as amendment, 1, 641
- Orders granting leave, 1, 640
 - General leave, 1, 640
 - Limiting time, 1, 640
- Ordinances:
 - Complaint or petition, 15, 434
- Parties to action (see *infra*, Misnomer):
 - Adding defendants, 1, 542
 - Adding parties, 1, 666

AMENDMENTS, *cont'd.*

- Parties to action, *cont'd.*
 - Adding plaintiffs, 1, 541
 - Attachments, 1, 678, 679
 - Bills in equity, 1, 466
 - Changing nominal plaintiff, 1, 537
 - Corporations, 1, 539
 - Effect of making a new defendant, 1, 543
 - Entire change of parties, 1, 545
 - Equity, 15, 700
 - Misdescription of defendant, 1, 540
 - Misdescription of plaintiff, 1, 537, 538, 539
 - Nominal change, 1, 540
 - Omission of a party, 1, 666
 - Process, 1, 665
 - Representative capacity, 1, 538
 - Striking out defendants, 1, 544
 - Striking out plaintiffs, 1, 543
 - Substituting beneficiary, 1, 538
 - Substituting holder of legal title, 1, 538
 - Trusts and trustees, 22, 190
- Partition:
 - Bill or complaint, 15, 806
 - Report of the commissioners, 15, 818
- Partnership, 15, 929
 - Affidavit in attachment, 15, 976
 - Amendment changing form of action, 15, 850
 - Bill in equity, 15, 997
 - Bill or complaint for accounting, dissolution, and settlement, 15, 1002
 - Bond in attachment, 15, 980
 - Judgments, 15, 971
 - Parties, 15, 898
 - assengers, 15, 1145
- Patents:
 - Amendment of claim before appeal, 16, 12
 - Answer, 16, 117
 - Bill in equity for infringement, 16, 103
- Payment:
 - Plea of payment, 16, 189
- Penalties and penal actions (see **PENALTIES AND PENAL ACTIONS**), 1, 509; 16, 289
 - Actions before justices of the peace, 16, 290
 - Admiralty, 16, 289
 - At common law, 16, 289
 - Delay in asking amendment, 16, 290
 - In what particulars allowed, 16, 289
 - Parties, 16, 290
 - Statutes, 16, 289

AMENDMENTS, *cont'd.*

- Pendente lite*, matter arising, 1, 576
- Personal injuries, 16, 406
- Petitions, 1, 655; 16, 517
 - Costs, 16, 522
 - Supplemental petition, 16, 518
- Pleading, what constitutes, 1, 654
- Pleas, 1, 495
 - Pleas in abatement, 1, 519
 - After pleas in abatement, 1, 591
 - Amendment to *ad damnum*, 1, 588
 - Criminal proceedings, 1, 701
 - Pleas in equity*, see **PLEAS IN EQUITY**.
 - Poor and poor laws, 16, 667, 668
 - Poor debtor acts, 16, 731
 - Charges of fraud, 16, 735
 - Notice or citation to creditor, 16, 708
- Power to amend, 1, 508
- Præcipe, 16, 773
- Prayers, 1, 484
- Prayers for relief, 16, 790
 - Changing to prayer for relief, 1, 631
 - In general, 16, 790
 - Notice of motion, 1, 639
 - Time of amendment, 16, 791
 - What amendments permissible, 16, 790
- Premature suits, 16, 874
- Presumptions:
 - In favor of trial court, 1, 532, 600
 - Leave to amend, 1, 636
- Probate and contest of wills:
 - Adding parties by amendment, 16, 1017
 - Contestant's pleading, 16, 1025
- Process, 1, 501, 658; 20, 1182
 - Ad damnum*, 1, 668
 - Adding new parties, 1, 666
 - Bearer of process, 1, 658
 - Caption, 1, 661
 - Date, 1, 669
 - Direction, 1, 662; 20, 1130
 - For want of an appearance, 1, 665
 - How far federal practice is controlled by state practice, 1, 660
 - Indorsement, 1, 662
 - Inserting Christian names, 1, 664
 - Leave to amend, 1, 671
 - Misdescription of a party, 1, 665
 - Misnomer, 1, 663
 - Modern statutes, 1, 659
 - Name or style, 1, 669
 - Notice of motion of leave to amend, 1, 672
 - Of writ of summons, 1, 658
 - Omission of party, 1, 666
 - Parties, 1, 665
 - Place, 1, 666

AMENDMENTS, *cont'd.*Process, *cont'd.*

- Retroactive effect, 1, 665
- Return, 1, 666
- Scire facias, 1, 670
- Seal, 1, 670
- Signature, 1, 669
- Striking out party, 1, 666
- Teste, 1, 668
- Time, 1, 666
- Titles, 1, 661
- Writ of attachment, 1, 685

Proof:

- To conform to proof, 1, 578
 - Ad damnum*, 1, 588
 - After judgment, 1, 582
 - After reversal and remand, 1, 584
 - After verdict, 1, 581
 - Allowance by referee, 1, 581
 - Appellate court, 1, 582
 - At what stage of proceedings, 1, 581
 - Authority to allow, 1, 578
 - Codes, 1, 579
 - Confined to original cause of action, 1, 583
 - Failure of proof, 1, 586
 - How power derived, 1, 578
 - Increasing *ad damnum*, 1, 584
 - Only in furtherance of justice, 1, 584
 - Rule stated, 1, 578
 - Sufficiency of proof, 1, 585
 - Where the evidence was objected to, 1, 585

Publication:

- Affidavit for publication, 17, 79
- Declaration and complaint, 17, 52
- Proof of publication, 17, 115
- Public lands, 17, 134
- Public officers, 17, 181
 - Official character of plaintiff, 17, 153

Quieting title, 17, 346

Qui tam actions, see PENALTIES AND PENAL ACTIONS.*Quo warranto*, 17, 478

Railroads:

- Amendment changing foundation of action, 17, 547
- Declaration and complaint for injuries to animals, 17, 587

Real actions, 17, 672

- Right, writ of, 17, 672

Receivers, 17, 737

- Order granting or refusing, 17, 751

Records, see RECORDS.

Redemption, 17, 969

References, see REFERENCES.

Rehearing:

- Petition, 18, 68

AMENDMENTS, *cont'd.*Remand (see *infra*, APPEALS), 1, 617

- After remand, 1, 618

- Directions to amend, 1, 617

Removal of causes, see REMOVAL OF CAUSES.*Repleader*, see REPLEADER.*Replevin*, see REPLEVIN.

Replications and replies, 18, 680

- Equity, 1, 495

Repugnancy, 18, 740

Rescission, cancellation, and reformation of contracts, 18, 842

Rescue, 7, 922

Retroactive effect, 1, 621, 665

- Executions, 1, 675

- In general, 1, 621

- Statute of limitations, 1, 621

Returns (see RETURNS), 1, 666

Review:

- Petition, 18, 1012

Review of right, 18, 1040

- As respects parties, 18, 1041

- Of pleadings in proceedings for review, 18, 1040

- Original pleadings, 18, 1041

Revival of judgments:

- Judgment, 18, 1085

- Scire facias, 18, 1082

Right of property, trial of, 18, 1175, 1178, 1192

Right to, see *infra*, Discretion of court; Leave to amend.

Sales, 19, 35, 110

Scire facias, see SCIRE FACIAS.

Seals:

- Affixing seal to process, 1, 670

- Attachments, 1, 687

- Executions, 1, 674

Sentence, see SENTENCE.Service of process (see *infra*, Process):

- Acceptance or acknowledgment of service, 19, 700

- Amended pleadings, 1, 645

- Notice of amendment, 1, 494

- Service of amended complaint, 1, 630

- Service of proposed amendment, 1, 639

- Where pleadings amended after service, 19, 573

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.*Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.

Sheriffs and constables:

- Declaration and complaint, 20, 150

Sheriffs' sales, see SHERIFFS' SALES.

Signature:

- Amended pleadings, 1, 644

AMENDMENTS, *cont'd.***Signature, *cont'd.***

- Attachments, 1, 687
- District attorney, 1, 692
- Executions, 1, 674
- Process, 1, 669

Something to amend or amend by, 1, 509

Specific performance, 20, 463

Statement of claim, see STATEMENT OF CLAIM.

Statement of facts on appeal, 20, 567

Statutes:

- Adding defendants, 1, 542
- Adding plaintiffs, 1, 541
- Affidavits, 1, 680
- Declaratory of the common law, 1, 509
- Discretion of trial court, 1, 528
- Indictments, 1, 692
- Information, 1, 698
- Introducing a new cause of action or defense, 1, 547
- Liberal construction, 1, 518
- Misnomer, 1, 536
- Striking out defendants, 1, 545
- Striking out plaintiffs, 1, 544
- Stipulation, 1, 504; 2, 304
- Stock and stockholders, 20, 754, 794
- Streets and highways*, see STREETS AND HIGHWAYS.
- Subpœna, 1, 494, 501
- Substitution for lost pleadings, 1, 508
- Summary proceedings:
 - Notice, 20, 1085
- Summons and process (see *infra*, Process), 1, 658; 20, 1182
- Direction, 20, 1139
- Supplemental pleadings (see SUPPLEMENTAL PLEADINGS), 21, 78
- Distinction between supplemental pleadings and amendments, 21, 9
- Surplusage, irrelevant or redundant matter, 21, 262

Descriptio personæ, 21, 295

Terms, 1, 506, 646

- Ad damnum*, 1, 650
- After nonsuit, 1, 651
- After reversal on appeal, 1, 652
- After verdict set aside, 1, 652
- Appellate court, 1, 650
- Arbitrary exercise of power, 1, 649
- Bringing in new plaintiffs, 1, 651
- Controlling considerations, 1, 651
- Costs, 1, 649
- Customary to exact terms, 1, 648
- Discretion of court, 1, 506, 646, 647
- During the trial, 1, 653
- Effect of accepting terms, 1, 648
- Equity, 1, 506

AMENDMENTS, *cont'd.***Terms, *cont'd.***

- Mere clerical mistake, 1, 653
- Noncompliance with terms, 1, 648
- Objections to rulings, 1, 648
- Payment of costs, 1, 507
- Power to impose or dispense with, 1, 646
- Prejudice, 1, 650
- Proper terms, 1, 648
- Review for abuse, 1, 647
- Surprise, 1, 650
- Waiver of exception, 1, 648
- What terms may be exacted, 1, 649
- When dispensed with, 1, 649
- Without terms, 1, 653
- Teste, 1, 668
 - Attachments, 1, 687
- Time of amendment*, see *infra*, At what stage of proceedings.
- Title, ownership, and possession, 21, 716, 743
- Titles, 1, 661
- Tort:
 - Changing contract to tort and *vice versa*, 1, 567
 - Changing tort to contract and *vice versa*, 1, 678
- Trespass, 21, 858
- Trover and conversion*, see TROVER AND CONVERSION.
- Trusts and trustees:
 - Establishment and enforcement of trusts, 22, 129
- Unavailing amendments, 1, 523
- Unconscionable defense, 1, 520
 - Laches of applicant, 1, 522
 - Statute of limitations, 1, 520
 - Usury, 1, 520
- United States courts, 22, 301
 - Amendment of process, 1, 660
 - Amendments to cure omissions or defects, 22, 270
 - Appeals, 1, 607
 - How far federal practice is controlled by state practice, 1, 660
 - Jurisdictional averments, 1, 512
 - Relation between federal and state practice, 1, 510
- Unnecessary amendments, 1, 523
- Usury, 22, 443
 - Unconscionable defense, 1, 520
- Variance, 1, 465, 577; 22, 624
 - Example, 1, 577, 578
 - Jeofails, 22, 541
 - Materiality of variance, 1, 577
 - Opportunity to amend pleading, 22, 630
 - Time to answer amendment, 1, 578
 - To obviate a variance, 1, 577

AMENDMENTS, *cont'd.*

- Venditioni exponas, 22, 650
- Venire facias, 12, 345
 - List of veniremen serving on action, 12, 370
 - Return of venire, 12, 354
- Venue, 1, 643
 - Indictments, 1, 691
- Verdict (see VERDICT):
 - After verdict, 1, 604
 - Defects cured by verdict, 1, 604
- Verification, 1, 495, 505
 - Amended pleadings, 1, 644
 - Amendment:
 - Of sworn bills, 1, 478
 - Bill in equity, 22, 1022
 - Bill or petition, 22, 1020
 - Divorce, 7, 86
 - Verified pleadings, 1, 464
- Waiver:
 - Amendment as waiver of error in previous ruling, 1, 624
 - Filing without leave, 1, 636
 - Objection to process, 1, 671
 - Right to amend, 1, 631
- Waiver of objection, 1, 573
- Warrants, 1, 699
- Waters and watercourses, 22, 1154
- Winding up corporations, 22, 1274
- Work and labor, see WORK AND LABOR.
- Writ, see *infra*, Process.
- Writing, 1, 503

AMICUS CURIAE, see FRIEND OF THE COURT.**AMOTION, see PUBLIC OFFICERS.****AMOUNT:**

- Abbreviations, 1, 47

AMOUNT IN CONTROVERSY, 1, 702

- Aggregated amount, 1, 721
 - Divided claims or debt, 1, 723
 - Several claims in one suit, 1, 722
 - Several defendants, 1, 722
 - Several items in one demand, 1, 723
 - Several plaintiffs, 1, 721
- Alternative, 1, 735
- Amendments, 1, 705, 710
- Amount, see *infra*, Value distinguished from amount.
- Amount claimed, 1, 703
 - Actions *ex delicto*, 1, 705
 - Amendments, 1, 705
 - Amount alternatively stated, 1, 704
 - Amount need not be in declaration, 1, 704
 - Counterclaims and set-offs, 1, 704
 - In general, 1, 703
 - Suit on bonds, 1, 706
 - Unliquidated claims, 1, 704
- Amount remitted, 1, 707
 - Amendments, 1, 710

AMOUNT IN CONTROVERSY, *con.*

- Amount remitted, *cont'd.*
 - Amount remitted on appeal, 1, 709
 - Credits or payments, 1, 708
 - Divided debt, 1, 709
 - Jurisdiction conferred, 1, 707
 - Jurisdiction not conferred on appeal, 1, 710
 - Jurisdiction ousted, 1, 709
 - Jurisdiction unaffected, 1, 708
 - Set-off, 1, 709
 - Voluntary credit, 1, 708
 - Waiver of amount of recovery, 1, 709
 - Waiver of interest, 1, 708
- Appealable amount, 1, 731
 - Amount claimed below, 1, 733
 - Counterclaim filed, 1, 734
 - Intermediate appeals, 1, 735
 - No counterclaim filed, 1, 732
 - On appeal from a refusal by the court to enter a judgment, 1, 732
 - When defendant appeals, 1, 732
 - When plaintiff appeals, 1, 731
- Appeals:
 - Where no amount is subscribed, 2, 21
- Appearance, 1, 718
- Attorney's fees, 1, 715
- Bills *quia timet*, 1, 727
- Bonds, 15, 89
 - Suit on bonds, 1, 706
- Certified cases, 3, 931
- Chancery, 12, 132
- Costs, see COSTS.
- Counterclaims, see *infra*, SET-OFF, RECOURPMENT, AND COUNTERCLAIM.
- Declaration and complaint:
 - Whether the amount need be in declaration, 1, 704
- Dismissal, discontinuance and non-suit, 6, 889
- Double damages, 1, 715
- Ejectment, 1, 727
- Equity, 12, 132
- Ex delicto*, see *infra*, Tort.
- Exemplary damages, 1, 711, 715
- Fictitious amount, 1, 710
 - Appeals, 1, 712
 - Discretion of court, 1, 711
 - Exemplary damages claimed, 1, 711
 - General rules, 1, 710
 - Honest mistakes, 1, 711
 - Set-off, 1, 712
- Immaterial, 1, 728
- Injunctions, 10, 883, 943
- Interest, 1, 719
 - Accrued interest, when calculable, 1, 719

AMOUNT IN CONTROVERSY, *con.*Interest, *conf'd.*

Accrued interest, when not calculable, 1, 720

Waiver of interest, 1, 708

Judgments, uniting on appeal, 1, 725

Jurisdiction, 12, 132

In general, 12, 132

Justices of the peace:

New trial upon the merits or mere review of error, 12, 811

Liens, 1, 727

Local provision, see *infra*, Statutory amount.

Mandamus, 13, 826

Negotiable instruments, 14, 363

Office, 1, 728

Official bonds, 15, 89

Ordinances, 15, 420

Partnership:

Accounting, dissolution, and settlement, 15, 1057

Patents, 16, 44

Payment:

Reduction of debt by payment below jurisdictional limit:

Costs, 16, 222

Discretionary costs, 16, 224

In general, 16, 222

Limited costs, 16, 225

Reduction by set-off, 16, 223

Where plaintiff recovers no costs, 16, 222

Pecuniary nature, 1, 719

Prohibition, 16, 1119

Public officers, 17, 205

Quo warranto, 17, 422, 466

Railroads:

Actions for injuries to animals, in justices' courts, 17, 615

Injuries to animals, 17, 552

Real amount, 1, 712

Amount must appear, 1, 716

Amount not dependent on collateral effect of judgment, 1, 718

Amount recovered, 1, 714

Amount unaffected by agreement of parties, 1, 717

Appearance and appeals, 1, 718

Appellant's right to appeal, 1, 716

As shown by the evidence, 1, 712

Attorney's fees, 1, 715

Dismissal by court where real amount does not appear, 1, 717

Double damages, 1, 715

Exemplary damages, 1, 715

In general, 1, 712

Investigation by the court, 1, 715

Presumption, 1, 717

AMOUNT IN CONTROVERSY, *con.*Real amount, *conf'd.*

Real value, 1, 715

Where real amount appears, 1, 712

Removal of causes, see REMOVAL OF CAUSES.

Replevin, 18, 499

Appeal from justice's court, 18, 501

Courts other than justices' courts, 18, 500

Excess of jurisdictional amount, 18, 501

How amount in controversy ascertained, 18, 501

In justices' courts, 18, 500

Statutory provisions, 18, 499

Scope of subject, 1, 703

Set-off, recoupment, and counterclaim, 1, 704, 709, 734; 19, 727

Appeal by defendant where no counterclaim is filed, 1, 734

Appeal by plaintiff where no counterclaim is filed, 1, 734

Appellate courts, 19, 728

Claims and set-off united, 1, 725

Counterclaim disregarded, 19, 729

Courts of original jurisdiction, 19, 727

Defendant's appeal, 19, 729

Defendant's claim, 19, 765

Defendant's claim below jurisdiction, 19, 728

Fictitious, 1, 711, 712

Judgment and counterclaim consolidated, 1, 724

Plaintiff's appeal, 19, 729

Remittitur of excess, 19, 728

Several defendants, 1, 722

Divided claim or debt, 1, 723

Judgment and counterclaim consolidated, 1, 724

Several claims in one suit, 1, 722, 724

Several counts, 1, 723

Several items in one demand, 1, 723

Several penalties, 1, 723

Several plaintiffs, 1, 72

Statutory amount, 1, 735, 749

Summary proceedings, 20, 1078

Sum recovered, 1, 704, 714

Supplementary proceedings, 21, 107

Tort, 1, 705

TRESPASS, 21, 794

Trove and conversion, 21, 1035

Unaggregated amount, 1, 724

Claims and set-off cannot be united, 1, 725

Judgment on appeals, 1, 725

AMOUNT IN CONTROVERSY, *con.*Unaggregated amount, *cont'd.*

Separate lien claims in one suit, 1, 725

Separate promise on one instrument, 1, 724

Several claims in one suit, 1, 724

United States courts, see UNITED STATES COURTS.

Value distinguished from amount, 1, 726

Bills *quia timet*, 1, 727

Enforcing liens against land, 1, 727

Property rights involved, 1, 726

Specific personal property, 1, 728

Suits annulling instruments, 1, 727

Suits in ejectment, 1, 727

Where no amount is subscribed, 2, 21

ANCILLARY RELIEF:

Divorce:

Joinder of causes, 7, 83

ANIMALS (see CRUELTY TO ANIMALS AND CHILDREN; TRESPASSING, VICIOUS, AND DISEASED ANIMALS):

Estrays, 8, 16

Injuries to, see RAILROADS; STREET RAILWAYS.*Larceny*, see LARCENY.*Malicious mischief*, see MALICIOUS MISCHIEF.

Variance, 22, 600

ANNULMENT OF MARRIAGE, see MARRIAGE (ANNULMENT).**ANOTHER SUIT PENDING**, 1, 750

See SIMULTANEOUS ACTION; SUPERSEDEAS AND STAY OF PROCEEDINGS.

Abatement, ground for, 1, 750

At law, 1, 750

Between the same parties, 1, 757

Former suit, 1, 752

For the same cause of action, 1, 761

Garnishments in foreign jurisdictions, 1, 765

General statement of the rule, 1, 750

In equity, 1, 752

In the same jurisdiction, 1, 764

Pending suit, 1, 754

Where the former suit is defective, 1, 766

Actions *in rem* and *in personam*, 1, 751

Admiralty, 1, 258, 776

Appeals, 1, 756

Continuance, 1, 767

Attachments:

Attachments in other states, 1, 766

Attachment suits and personal actions, 1, 762

Between same parties, 1, 757

ANOTHER SUIT PENDING, *cont'd.*

Cause of action:

Interest of suit being for same cause of action, 1, 761

Code pleading, 1, 775

Answers in abatement, 1, 776

At what stage of proceedings, 1, 775

How objection taken, 1, 775

Judgment on sustaining answer, 1, 776

Continuance, 1, 767

Appeal between other parties, 1, 768

Appeal pending, 1, 767

As ground for continuance, 1, 767

Cross action, 1, 768

Garnishment of defendant, 1, 767

Suit in equity, 1, 768

Costs:

Payment of costs in first suit, 1, 756

Defective former suit, 1, 766

Demurrers, 1, 772, 773; 6, 324

Waiver of defects by failure to demur, 6, 376

Demurrers in chancery, 6, 406

Discontinuance, 1, 755

Dismissal, 1, 755

Dismissal, discontinuance, and non-suit, 6, 932

Election of remedies, 1, 751

Equity, 1, 752

Equity, 1, 752, 773

Continuance, 1, 768

Demurrer, 1, 773

Form of plea, 1, 773

Pendency of action at law, 1, 752

Pleas, 1, 773

Proceedings upon plea, 1, 774

Stay of proceedings, 1, 770

Suit pending in equity, 1, 751

Verification, 1, 774

Error, writ of, 1, 756

Stay of proceedings, 1, 769

Writ of error subsequently sued out, 1, 753

Exceptions and objections, see *infra*, Taking the objection.

Foreclosure of mortgages, 9, 247

Foreign jurisdictions, 1, 764, 765

Stay of proceedings, 1, 770

Former suit, 1, 752

At different times on same day, 1, 753

Defective former suit, 1, 766

Priority determined, 1, 752

Suits simultaneously commenced, 1, 753

Writ of error subsequently sued out, 1, 753

ANOTHER SUIT PENDING, *cont'd.***Garnishments:**

- Continuance, 1, 767
- Garnishments in foreign jurisdictions, 1, 765
- Identity of parties, 1, 760
- Stay of proceedings, 1, 770

Identity of cause of action, 1, 761

- Attachment suits and personal actions, 1, 762
- Different relief, 1, 763
- Enforcement of liens or mortgages and personal actions for debt, 1, 763
- Formal differences, 1, 763
- Rules stated, 1, 761
- Splitting of actions, 1, 762
- Subsequent suit upon a new or different title, 1, 762
- Test of identity, 1, 762

Identity of parties, 1, 757

- Compulsory set-off, 1, 759
- Counterclaims, 1, 759
- Identity of defendants, 1, 760
- Identity of plaintiffs, 1, 758
- In *qui tam* actions for penalties, 1, 759

- Parties in privity, 1, 760
- Pendency of garnishments, 1, 760
- Substantial identity, 1, 757
- Suits by one of a class, 1, 759
- Test of identity, 1, 758
- Where parties are reversed, 1, 758

Judgment, 1, 773**Jurisdiction, 1, 764**

- Garnishments in foreign jurisdictions, 1, 765
- Stay of proceedings where suit is in foreign jurisdiction, 1, 770
- Suit in foreign jurisdiction, 1, 764
- What jurisdiction regarded as foreign, 1, 764

Mandamus, 1, 751; 13, 728

- Interfering by mandamus with other proceedings, 13, 502

Mechanics' liens, 13, 996**Objection, see *infra*, Taking the objection.****Official bonds, 15, 152****Parol evidence:**

- Pendency, 1, 755

Penalties and *qui tam* actions, 1, 771

- Identity of parties, 1, 758

Pending suit:

- Commencement of suit, 1, 754
- Discontinuance, 1, 755
- Discontinuance after plea, 1, 756
- Discontinuance before trial, 1, 756
- Dismissal, 1, 755
- Parol evidence of pendency, 1, 755

ANOTHER SUIT PENDING, *cont'd.***Pending suit, *cont'd.***

- Payment of costs in first suit, 1, 756
- Process necessary, 1, 754
- Reversal on appeal, 1, 757
- Void appeal, 1, 757
- Writ of error or appeal, 1, 756
- Pleas in abatement, 1, 757
 - Requisites of the plea, 1, 771
- Pleas in equity, 16, 600
 - Replication, 16, 621
- Probate and contest of wills, 16, 1019
- Replication, 1, 772
- Same jurisdiction, 1, 764
- Set-off, recoupment, and counterclaim:

- Identity of parties, 1, 759

Splitting actions, 1, 762**Stay of proceedings, 1, 768**

- Discretion, 1, 769
- In general, 1, 768
- Pendency of garnishment, 1, 770
- Pendency of writ of error, 1, 769
- Suit in equity, 1, 770
- Suit in foreign jurisdiction, 1, 770

Suits:

- What constitutes a suit, 1, 751

Summons and process:

- Process necessary, 1, 754
- Taking the objection, 1, 770
 - Admiralty, 1, 776
 - At common law, 1, 770
 - At what stage of proceedings, 1, 771, 775
 - Code systems, 1, 775
 - Demurrer, 1, 772
 - Demurrer in equity, 1, 773
 - Dismissal on motion, 1, 773
 - How taken, 1, 770
 - In equity, 1, 773
 - Judgment, 1, 773
 - Pleas in equity, 1, 773
 - Proceedings subsequent to plea, 1, 772
 - Proceedings upon plea in equity, 1, 774
 - Replication, 1, 772
 - Requisites of the plea, 1, 771
 - Verification in equity, 1, 774

Verification, 1, 774

- What constitutes action, 1, 751

ANSWERS, 1, 863

- See ADMIRALTY; CORPORATIONS; DEFINITENESS AND CERTAINTY IN PLEADINGS.

Accounts and accounting, 1, 99**Affidavits of merits or defense:**

- Extension of time to answer, 1, 355
- Jurat, 1, 869
- Verified answer as substitute, 1, 354

ANSWERS, *cont'd.*

Agency, see AGENCY.
 Amended bill, 1, 910
 Amendments, 1, 495, 632
 After hearing, 1, 500
 At hearing, 1, 500
 Discretion of court, 1, 497
 Facts occurring subsequent to answer, 1, 499
 How amendments are made, 1, 505
 In general, 1, 495
 Making a new defense, 1, 499
 Material amendments, 1, 496
 Mistake of facts, 1, 498
 New defense, 1, 632
 Original answer superseded by amended answer, 1, 626
 Previous knowledge, 1, 498
 Setting up statutes of frauds and limitations, 1, 497
 Statute of frauds, 1, 500
 Statute of limitations, 1, 500
 Time of amendment, 1, 500
 Titles, 1, 495
 Unconscionable defenses, 1, 499
 Appeals:
 Exceptions, 1, 906
 Presumption in favor of, 2, 469
 Time of taking an exception, 1, 904
 Assignment for benefit of creditors:
 Action to enforce assignment, 2, 892
 Attachments:
 To compel answer, 1, 894
 Bankruptcy, 22, 355
 Petition for discharge, 22, 383
 Belief, 1, 876, 944
Bills and notes, see NEGOTIABLE INSTRUMENTS.
 Bills in equity:
 Supporting and accompanying answers, see PLEAS IN EQUITY.
 Bills of particulars:
 Particulars of defense, 3, 525
Bona fide purchaser, 1, 880
Bonds, see BONDS.
Breach of promise of marriage, see BREACH OF PROMISE OF MARRIAGE.
Brief statement of defense, see NOTICE OR BRIEF STATEMENT OF DEFENSE.
 Caption, 1, 866
 Carriers, 3, 855
 Actions *ex contractu*, 3, 855
 Actions *ex delicto*, 3, 855
 Illegal charges, 3, 869
Certiorari, see CERTIORARI.
 Certainty, 1, 875
Codefendant, see *infra*, Evidence.
 Conclusion, 1, 866
 Conditions precedent, 4, 661, 662
 Index Pl. & Pr. — 4

ANSWERS, *cont'd.*

Contempt:
 Attachment to compel answer, 1, 894
Contracts, see CONTRACTS.
 Contradictory answer, 1, 942
Contributory negligence, see CONTRIBUTORY NEGLIGENCE.
Coram nobis and coram vobis, 5, 36
 Corporations, 1, 886
 Answer of corporation as evidence, 1, 956
 Exception, 1, 900
 How made, 1, 886
 Seals, 1, 886, 887
 Creditors' bills, 5, 579
 Discovery, 5, 587
Criminal conversation, see CRIMINAL CONVERSATION.
Cross-bills, see CROSS-BILLS.
 Cross-complaints, 5, 684
 Damages:
 Mitigation of damages, 5, 774
 Death by wrongful act, 5, 884
 Decrees (see DECREES):
 Taking bill *pro confesso*, 1, 895
Defaults, see DEFAULTS.
 Defenses, 1, 870
 Examples, 1, 884
 Inconsistent defenses, 1, 878
 Several defenses, 1, 870
 Substance, 1, 866
 What defenses taken by answer, 1, 878
 Definiteness and certainty in pleadings, 6, 251, 290
 Cure of defects, 6, 280
 Definition, 1, 865
 Demurrers:
 Answer accompanied by plea or demurrer, 1, 901
 Answer as demurrer, 6, 297
 Answer not demurrable, 1, 871
 Demurrer in answer, 11, 875
 Demurring answer to different parts of the bill, 1, 889
Demurrers in chancery, see DEMURRERS IN CHANCERY.
 Disclaimers, 6, 722
Discovery, see DISCOVERY; and see *infra*, Exceptions to answers.
 Distringas, writ of, 7, 33
Divorce, see DIVORCE.
Dower, see DOWER.
Duplicity, see DUPLICITY.
Ejectment, see EJECTMENT.
 Elections, 7, 388
Eminent domain, see EMINENT DOMAIN.
Equitable assignments, see EQUITABLE ASSIGNMENTS.
 Estoppel (see ADMISSIONS), 1, 915
 Evasive answers, 1, 893, 944

ANSWERS, *cont'd.*

Evidence (see ADMISSIONS), I, 910
 Action at law, I, 960
 Admission of answer of one defendant as evidence of the other, I, 953
 Admissions in answer, I, 927
 Answer alleging ignorance, I, 947
 Answer connected with responsive matter, I, 913
 Answer contradicted on material point, I, 943
 Answer denying knowledge, information, and belief, I, 947
 Answer entitling complainant to decree, I, 915
 Answer not direct and positive, I, 943
 Answer of codefendant, I, 951
 Answer of a defendant as evidence against codefendant, I, 954
 Answer of a defendant as evidence for codefendant, I, 954
 Answer of evidence, I, 910
 Answer on hearsay, I, 947
 Answer overthrown, I, 938
 Answers containing new matter, I, 920
 Answers not responsive illustrated, I, 919
 As evidence in general, I, 910
 Belief, I, 944
 Bills sworn to, I, 940
 Charging and stating part of bill, I, 911
 Circumstances alone in rebuttal, I, 941
 Circumstances in rebuttal, I, 932
 Codefendant privies in estate, I, 954
 Codefendant's answer, I, 951
 Conclusive answer, I, 914
 Contradictory answers, I, 942
 Corporations, I, 956
 Corroborating circumstances, I, 939
 Denial of fraud, I, 915
 Directness of answer, I, 943
 Discharge in same sentence as charge, I, 924
 Dismissal of bill, I, 937
 Estoppel of defendant, I, 915
 Evasive answers, I, 944
 Facts of answer distinct from those in bill, I, 919
 Fraud, I, 942
 Fraudulent confession between codefendants, I, 954
 Full proof, I, 935
 Harmless error, I, 953
 Hearing on bill and answer, I, 924

ANSWERS, *cont'd.*

Evidence, *cont'd.*
 Hearing on bill, answer, and replication, I, 926
 Hearsay, I, 947
 Ignorance, I, 947
 Illustration of answer containing new matter, I, 921
 Impeaching credibility of defendant, I, 942
 Inconsistent answer, I, 942
 Infants, I, 955
 Information, I, 944
 Injunction proceedings, I, 957
 Interested or incompetent parties, I, 957
 Knowledge, I, 946, 947
 Knowledge and belief, I, 946
 Material facts, I, 917
 Matter in avoidance of discharge, I, 920, 923
 Nominal defendant's answer, I, 952
 Oath waived, I, 949
 Opinion and belief, I, 946
 Other causes, I, 959
 Other suits in equity, I, 959
 Overcoming answers, I, 932
 Personal knowledge, I, 947
 Positiveness of answer, I, 943
 Qualifications of rule, I, 954
 Replication filed, I, 925
 Responsive answers, I, 816, 910, 916
 Responsive answers illustrated, I, 916
 Statutory rule as to hearing on bill and answer, I, 926
 Sworn bill and answer, I, 914
 Sworn bills, I, 940
 Test of responsiveness, I, 918
 Two defendants denying same fact, I, 939
 Unsworn answer, I, 948
 Waiver of oath, I, 949
 What is not responsive, I, 918
 What is responsive, I, 916
 Witnesses, I, 939
 Witness in rebuttal, I, 932
Examination of parties before trial, see EXAMINATION OF PARTIES BEFORE TRIAL.
 Exceptions to answers (see EXCEPTIONS AND OBJECTIONS), I, 895
 Amended bill, I, 910
 Answer accompanied by plea or demurrer, I, 901
 Answer of corporation, I, 900
 Answer of the attorney-general, I, 900
 Appeal, I, 906
 Bill stating new case, I, 910
 Confined to discovery, I, 897

ANSWERS, *cont'd.*

- Exceptions to answers, *cont'd.*
 - Definition, 1, 895
 - Disallowance, 1, 906
 - Disclaimer, 1, 899
 - Discretion, 1, 903
 - Disposal, 1, 905
 - Exceptions for insufficiency, 1, 896
 - Express leave, 1, 901
 - Filing further answer, 1, 908
 - Form, 1, 902
 - Form of further answer, 1, 909
 - Frivolous exceptions, 1, 897
 - Further answer, 1, 907
 - General interrogatory, 1, 898
 - Injunctions, 1, 807
 - Interrogatories substantially answered, 1, 899
 - Interrogatory as to books and papers, 1, 899
 - Liberty qualified, 1, 901
 - Material allegations or interrogatory unanswered, 1, 897
 - New exceptions, 1, 909
 - New matter, 1, 898
 - Not filed in time, 1, 904
 - Oaths, 1, 900
 - Object, 1, 896
 - Plea standing for answer, 1, 901
 - Procedure where further answer is necessary, 1, 908
 - Proceedings, 1, 905
 - Prohibiting exceptions, 1, 901
 - Setting down for hearing, 1, 905
 - Signature of counsel, 1, 902
 - Specific, 1, 903
 - Time, 1, 903
 - Time in appellate court, 1, 904
 - Waiver, 1, 898
 - What should be stated, 1, 903
 - When exceptions do not lie, 1, 898
- Factors and brokers, 8, 835
- False imprisonment, 8, 850
- Filing (see *infra*, Striking answer from file), 1, 891
- Filing further answer, 1, 908
- Form of answer, 1, 865
- Frame of answer, 1, 865
- Fraud, 1, 883
 - Conclusive answer, 1, 914
- Frauds, statute of (see FRAUDS, STATUTE OF), 1, 882
- Frivolous exceptions, 1, 897
- Fulness, 1, 873
 - Examples of exceptions, 1, 875
 - Exceptions, 1, 875
 - Irrelevant matter, 1, 874
 - Method of compelling a full answer, 1, 874
 - Necessity that answer be full, 1, 873

ANSWERS, *cont'd.*

- Fulness, *cont'd.*
 - Penalty or forfeiture, 1, 875
 - Professional privilege, 1, 874
 - Scandalous or impertinent, 1, 874
- Further answer, 1, 907
- Garnishment, see GARNISHMENT.
- Guaranty, see GUARANTY.
- Guardian ad litem, see GUARDIAN AD LITEM.
- Guardians, see GUARDIANS.
- Hearsay, 1, 947, 961
- Homesteads and exemptions, 10, 81
- Husband and wife, see HUSBAND AND WIFE.
- Ignorance, 1, 947
- Impeachments, see *infra*, Evidence.
- Incompetent parties, 1, 957
- Inconsistent defenses, 1, 878
- Infants (see INFANTS), 1, 886
 - Answer of infant as evidence, 1, 955
- Information, 1, 876, 944
- Injunctions (see INJUNCTIONS):
 - Evidence, 1, 957
 - Exceptions, 1, 907
- Innocent purchase, 1, 880
- Insanity, 1, 886
- Insurance, see INSURANCE.
- Interested parties, 1, 957
- Interrogatories, see *infra*, Exceptions to answers.
- Irrelevant:
 - Answer to irrelevant matter, 1, 874
- Irrigation, 11, 595
- Issues to the jury:
 - Introducing and reading answer, 11, 684
- Joinder of defenses, 1, 889
- Joinder of parties:
 - Misjoinder under codes, 15, 760, 762, 764
 - Nonjoinder under codes, 15, 754
- Judgments:
 - Frivolous answers, 11, 1037
 - Judgment for defendant who fails to answer, 11, 884
 - Judgment for failure to answer or reply, 11, 1034
 - Judgment on answer, 11, 1031
 - Judgment on insufficient pleadings, 11, 1031
- Jurat, 1, 869
 - Oath, 1, 867
- Jurisdiction:
 - Want of jurisdiction, 1, 883
- Justices of the peace, see JUSTICES OF THE PEACE.
- Knowledge, 1, 876, 946
- Laches (see LACHES), 1, 880
- Libel and slander, see LIBEL AND SLANDER.

ANSWERS, *cont d.*

- Limitation of actions, 1, 880
- Limitations*, see LIMITATIONS.
- Limited partnerships, 15, 1118
- Lost instruments and records*, see LOST INSTRUMENTS AND RECORDS.
- Malicious prosecution*, see MALICIOUS PROSECUTION.
- Mandamus*, see MANDAMUS.
- Marriage (annulment), 13, 880
- Married women, 1, 885
 - Answer jointly with husband, 1, 885
 - Husband complainant, 1, 886
 - Separate answer by wife, 1, 885
 - Suppressing answer, 1, 885
- Master and servant*, see MASTER AND SERVANT.
- Mechanics' liens*, see MECHANICS' LIENS.
- Mistake (see MISTAKE), 1, 884
- Multifariousness, 14, 212
 - Objection raised in answer, 14, 210
- Municipal corporations, 14, 243
- Municipal securities*, see MUNICIPAL SECURITIES.
- Must be full*, see *infra*, Fulness.
- Nature of answer, 1, 870
- Negligence*, see NEGLIGENCE.
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- New matter*, see *infra*, Replications and replies.
- Nominal defendant, 1, 952
- Notice*, see NOTICE.
- Notice or brief statement of defense*, see NOTICE OR BRIEF STATEMENT OF DEFENSE.
- Nuisances*, see NUISANCES.
- Oath, 1, 867
 - Before whom taken, 1, 868
 - Exception, 1, 900
 - How administered, 1, 867
 - Jurat, 1, 869
 - Necessity of oath, 1, 867
 - Several defendants, 1, 867
 - Striking answer from the files, 1, 893
 - Waiver of oath, 1, 949
- Objections*, see *infra*, Exceptions to answers.
- Officers of private corporations, 15, 78
- Official bonds*, see OFFICIAL BONDS.
- Ordinances, 15, 435
- Parties to actions (see PARTIES TO ACTIONS), 1, 865
- Partition, 15, 808
 - In general, 15, 808
 - Issue as to title, 15, 809
 - Probate courts, 15, 827
 - Statutory provisions, 15, 809

ANSWERS, *cont d.*

- Partnership (see PARTNERSHIP), 15, 997
- Patent cases, 1, 887
 - Defense allowed by statute, 1, 887
 - Examples, 1, 888, 889
 - In general, 1, 887
 - Other defenses, 1, 889
 - Prior use, 1, 888
 - Waiver, 1, 888
- Patents*, see PATENTS.
- Penalties and penal actions*, see PENALTIES AND PENAL ACTIONS.
- Perpetuation of testimony, 16, 361
- Personal injuries, 16, 409
- Plea and answer compared, 16, 588
 - Defense by plea or answer, 16, 588
 - Plea as evidence, 16, 588
 - Special answer, 16, 588
 - To avoid answering, 16, 588
 - To avoid expense of answering, 16, 588
- Pleas:
 - Answer accompanied by plea or demurrer, 1, 901
 - Plea and answer to different parts of the bill, 1, 889
- Pleas in equity (see PLEAS IN EQUITY):
 - Plea to part and answer to part, 16, 606
- Pledges*, see PLEDGES.
- Privileged communication, 1, 875
- Pro confesso*, 1, 895
- Production of documents, 6, 783
 - To aid in framing pleadings, 6, 789
- Prohibition, 16, 1140
- Public lands, 17, 134
- Public officers*, see PUBLIC OFFICERS.
- Quieting title*, see QUIETING TITLE.
- Quo warranto*, see QUO WARRANTO.
- Receivers, 17, 826, 830
- Recording, 1, 891
- Release*, see RELEASE.
- Remedy at law*, see REMEDY AT LAW.
- Remembrance, 1, 876
- Replevin*, see REPLEVIN.
- Replications and replies (see REPLICATIONS AND REPLIES):
 - Evidence, 1, 925
 - Hearing on bill, answer, and replication, 1, 926
- Requirement of answer, 1, 873
- Rescission, cancellation, and reformation of contracts*, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
- Reservation, 1, 866
- Res judicata*, 1, 882

ANSWERS, *cont'd.*

- Revivor of suits and actions, 18, 1112, 1118, 1119
- Sales, see SALES.
- Scandal and impertinence, see SCANDAL AND IMPERTINENCE.
- Scandalous or impertinent, 1, 874
- Necessity of answer to scandalous matter, 1, 874
- Striking answer from the files, 1, 894
- Seals:
 - Corporations, 1, 887
- Seduction, 19, 411
- Service of process, 1, 891, 892; 19, 577
- Set-off, recoupment, and counterclaim (see SET-OFF, RECOUPMENT, AND COUNTERCLAIM), 1, 884
- Several defendants, see *infra*, Evidence.
- Sham and frivolous pleadings, see SHAM AND FRIVOLOUS PLEADINGS.
- Sheriffs and constables, see SHERIFFS AND CONSTABLES.
- Signature, 1, 868
 - Exceptions signed by counsel, 1, 902
 - Striking answer from the files, 1, 893
- Specific performance, see SPECIFIC PERFORMANCE.
- Stock and stockholders, see STOCK AND STOCKHOLDERS.
- Striking answer from file, 1, 892
 - Evasive, 1, 893
 - Illustration, 1, 892, 894
 - In general, 1, 892
 - Interlineation, 1, 893
 - Irregularity in form or frame, 1, 892
 - Oath, 1, 893
 - Scandal, 1, 894
 - Signature, 1, 893
 - When court refuses to strike out answer, 1, 894
- Subrogation, 20, 999
- Substance, 1, 866
- Supplemental pleadings, see SUPPLEMENTAL PLEADINGS.
- Suretyship, see SURETYSHIP.
- Taxation, 21, 411
- Telegraphs and telephones, 21, 521, 540
- Time:
 - Exceptions, 1, 903
 - Time to plead, see TIME TO PLEAD.
- Tolls, 21, 746
- Trespass, see TRESPASS.
- Trespassing, vicious, and diseased animals, 21, 896
- Trespass on the case, see TRESPASS ON THE CASE.

ANSWERS, *cont'd.*

- Trespass to try title, see TRESPASS TO TRY TITLE.
- Trover and conversion, see TROVER AND CONVERSION.
- Under the codes:
 - Elections, 7, 368
- Undue influence, 1, 882
- Usury (see USURY), 1, 878
 - General charge of usury insufficient, 1, 879
 - Illustration, 1, 879
 - Relying on usury, 1, 878
 - Waiver, 1, 879
 - What must be set up, 1, 878
- Vendor and purchaser, see VENDOR AND PURCHASER.
- Vendor's liens, see VENDOR'S LIENS.
- Verification, see VERIFICATION.
- Waiver, 1, 872
 - Cross-bill, 1, 872
 - Exception, 1, 898
 - Filing, 1, 891
 - Inconsistent defense, 1, 879
 - Signature, 1, 868
 - Usury, 1, 879
- Warehouseman, 22, 1069
- Water and watercourses, 22, 1172
- Wills, see WILLS.
- Winding up corporations, 22, 1275
- Work and labor, 22, 1372
- ANSWERS* IN CODE PLEADING, 1, 779**
- See ANSWERS.
- Abatement:
 - Matter in abatement and matter in bar, 1, 854
- Accord and satisfaction, 1, 835, 849
- Admissions:
 - Allegations admitted by failure to deny, 1, 789
 - Aggravation, 1, 792
 - Allegations of status and capacity, 1, 796
 - Bills, 1, 794
 - Corporations, 1, 796
 - Damages, 1, 792
 - Denial of immaterial allegations, 1, 791
 - Divorce proceedings, 1, 796
 - Evidentiary matters, 1, 792
 - Findings, 1, 792
 - In general, 1, 789
 - Legal effect on instruments, 1, 794
 - Libel and slander, 1, 795
 - Mandamus, 1, 796
 - Material allegations, 1, 789, 790
 - Notes, 1, 794
 - Nullifying effect on admissions, 1, 791
 - Ownership, 1, 793

ANSWERS IN CODE PLEADING,

*cont'd.*Admissions, *cont'd.*Allegations admitted by failure to deny, *cont'd.*

Partnership, 1, 796

Payments, 1, 795

Pleading a different contract or tort, 1, 796

Possession, 1, 793

Release, 1, 795

Sales, 1, 795

Time, 1, 793

Value, 1, 792

What are material allegations, 1, 790

With legal conclusions, 1, 793

General denial coupled with admission, see infra, General denial coupled with admissions.

Inconsistent defense, 1, 860

Negatives pregnant, 1, 797

Evasive denial, 1, 789

Agency:

Presumption of knowledge of agent's acts, 1, 813

Allegations admitted by failure to deny, see infra, Admissions.

Alteration of instrument:

General denial, 1, 820

Alternative denial, 1, 797

Arbitration and award, 1, 849

Argumentative denials, 1, 799

Contracts, 1, 800

Definition, 1, 799

Effect of, 1, 801

General denial and argumentative denial both pleaded, 1, 802

Matters showing that facts do not exist, 1, 801

Ownership, 1, 800

Torts, 1, 800

Waiver of objection, 1, 801

What constitutes, 1, 800

Assault and battery:

Joinder of general denial and justification, 1, 858

Avoidance, by all matter in. 1, 851

Belief:

Information and belief, see infra, Knowledge, denials of.

Bills of exchange and promissory notes:

Allegations admitted by failure to deny, 1, 794

General denials, 1, 820

Knowledge of contents of notes, 1, 814

Suit on notes, 1, 787

Bona fide purchaser, 1, 850

Categorical denial, 1, 784

Champertry, 1, 849

ANSWERS IN CODE PLEADING,

cont'd.

Color, giving, 1, 832

Conditions precedent, 1, 830

Conjunctive denials, 1, 797

Consideration, 1, 834, 848

Construction:

Denials of knowledge, 1, 808

Joint and several answers, 1, 861

Specific denial, 1, 787

Contents of answer, 1, 779

General decision, 1, 779

Provisions of the various codes, 1, 780, 781

Contracts:

Argumentative denials, 1, 800

General denial, 1, 818

Bills and notes, 1, 820

Failure of plaintiff to perform contract, 1, 819

Invalidity of contract, 1, 819

Sales, 1, 820

Want of consideration, 1, 819

What the defendant may show under a general denial, 1, 818

Knowledge of contents of contract, 1, 814

Specific denial, 1, 788

Contributory negligence, 1, 836, 847

General denials, 1, 824

Conversion (see *infra, Trover*):

General denials, 1, 821

Corporations:

Allegations of status and capacity, 1, 796

Existence of a corporation, 1, 828

Counter averments, 1, 783

Cross-complaints, 5, 684

Damages (see *infra, Mitigating circumstances*):

Allegations admitted by failure to deny, 1, 792

Deeds:

Specific denial, 1, 789

Definiteness and certainty in pleadings, 6, 251

*Denials, see infra, General denial; Specific denial.**Divorce, see DIVORCE.**"Duly," 1, 807*

Duress, 1, 835

Ejectment:

Equitable defense, 1, 838

General denials, 1, 825

Abandonment, 1, 825

Limitation of action, 1, 826

Paramount title in defendant, 1, 825

Statute of frauds, 1, 827

Title in third person, 1, 825

What facts may be proved under general denial, 1, 825

ANSWERS IN CODE PLEADING,*cont'd.*

- Election of remedies:
 - Inconsistent defense, 1, 860
- Eminent domain*, see **EMINENT DOMAIN**.
- Equitable defense, 1, 836, 837
 - Abolition, 1, 837
 - Action at law, 1, 838
 - Action of ejectment, 1, 838
 - Distinguished from counter-claim, 1, 838
 - Pleadings, 1, 836
 - Waiving equitable defense, 1, 839
- Estoppel *in pais*, 1, 835, 843
- Evidence:
 - Allegations admitted by failure to deny, 1, 792
 - Evidence of the defense not set up, 1, 831
 - To what evidence defendant limited under general denial, 1, 817
- Exceptions and objections*, see **EXCEPTIONS AND OBJECTIONS**.
- False imprisonment:
 - Justification, 1, 846
- Forcible entry and detainer:
 - General denials, 1, 826
- Former recovery:
 - General denials, 1, 821
- Form of denial, 1, 781
 - Counter averments, 1, 783
 - Denial of material allegation, 1, 782
 - Each and every allegation denied, 1, 782
 - Form of the general issue, 1, 783
 - Introductory words, 1, 781
 - "No allegation true," 1, 783
 - What constitutes a good general denial, 1, 782
 - What constitutes a good specific denial, 1, 783
- Fraud, 1, 833, 844
 - General denial, 1, 820, 823
 - General denial of replevin, 1, 823
 - Joinder of fraud and breach of warranty, 1, 859
 - Legal conclusions, 1, 806
- Frauds, statute of, 1, 837, 847
 - General denials, 1, 827
- General denial (see *infra*, Joinder of defense):
 - Actions on contracts, 1, 818
 - Conditions precedent, 1, 830
 - Ejectment and other matters pertaining to real estate, 1, 825
 - General denial and argumentative denial both pleaded, 1, 802
 - General denial as plea in abatement, 1, 827

ANSWERS IN CODE PLEADING,*cont'd.*

- General denial, *cont'd.*
 - General issue, 1, 816
 - Judgments, 1, 820
 - Mitigating circumstances, 1, 827
 - Nature of general denial, 1, 816
 - Payments, 1, 817
 - Specific general denial in same pleadings, 1, 785
 - The general denial limited in scope by statute, 1, 829
 - Torts, 1, 821
 - To what evidence defendant is limited, 1, 817
 - What constitutes a good general denial, 1, 782
 - What may be proved under a general denial, 1, 816
- General denial coupled with admissions, 1, 802
 - Answer must be definite and specific as to admissions, 1, 804
 - Effect of, 1, 802, 804
 - Generally, 1, 802
 - Proper form, 1, 804
 - Right to use, 1, 802
 - Whether valid, 1, 802
- General issue (see *infra*, General denial), 1, 783, 816
- Hypothetical denial, 1, 785
- Illegality of contracts, 1, 835, 844
- Inconsistent defenses*, see *infra*, Joinder of defense.
- Indebtedness, denials of, 1, 805
- Infants*, see **INFANTS**.
- Information*, see *infra*, Knowledge, denials of.
- Insolvency and bankruptcy:
 - Discharge in bankruptcy, 1, 849
- Intent*, see *infra*, Knowledge, denials of.
- Interpretation*, see *infra*, Construction.
- Introductory, 1, 779
- Joinder of defense, 1, 852
 - Admissions of inconsistent defenses, 1, 860
 - All affirmative defenses may be joined, 1, 859
 - Allegations inconsistent in different defenses, 1, 860
 - Completeness, 1, 852
 - Consistency question of facts, 1, 857
 - Defendant pleading more than one defense, 1, 852
 - Fraud and breach of warranty, 1, 859
 - General denial and affirmative defense, 1, 857
 - General denial of payment, 1, 857
 - How stated, 1, 854

ANSWERS IN CODE PLEADING, - ANSWERS IN CODE PLEADING,

*cont'd.*Joinder of defense, *cont'd.*

Manner of pleading several defenses, 1, 852

Matter in abatement and matter in bar, 1, 854

Remedies for inconsistency, 1, 860

Separate statement, 1, 853

States where inconsistent defenses are allowed, 1, 855, 856

Statutes of limitations joined with other affirmative defenses, 1, 859

Waiver, 1, 860

What defenses are inconsistent, 1, 856

What defenses may be pleaded with general denial, 1, 857

Joint and several answers, 1, 860

Adoption of the answer, 1, 862

How a joint answer is construed, 1, 861

The defense in one answer inuring to all, 1, 861

The right to interpose a separate answer, 1, 861

The right to join in an answer, 1, 860

Judgments, 1, 820

Nul tiel record, 1, 820

What is put in issue by general denial, 1, 820

Justification, 1, 834, 845

Knowledge, denials of, 1, 808

Act of agent presumptively within defendant's knowledge, 1, 813

Contents of contracts and notes presumptively within defendant's knowledge, 1, 814

Contents of records presumptively within defendant's knowledge, 1, 813

Denying knowledge of a fact presumptively within defendant's knowledge, 1, 812

Form, 1, 809

How such denials construed, 1, 808

• Information, 1, 809

Information and belief, 1, 810

Judgments presumptively within defendant's knowledge, 1, 814

Negatives pregnant, 1, 808

Ownership presumptively within defendant's knowledge, 1, 815

Personal acts presumptively within defendant's knowledge, 1, 813

Practice where the defendant does not recollect, 1, 812

*cont'd.*Knowledge, denials of, *cont'd.*

Protest, 1, 815

Questions of law, 1, 815

Sales presumptively within defendant's knowledge, 1, 813

What matters are presumptively within defendant's knowledge, 1, 813

When a denial of knowledge or information cannot be interposed, 1, 811

Landlord and tenant, 12, 866

Legal conclusions, 1, 805

Allegations admitted by failure to deny, 1, 793

Answer containing a legal conclusion, 1, 807

Denial of capacity, 1, 807

Denial of indebtedness, 1, 805

Denial of the facts impliedly denies the conclusion of law, 1, 808

Duly done, 1, 807

Fraud, 1, 806

In general, 1, 805

Libel and slander:

Allegations admitted by failure to deny, 1, 795

General denial and justification joined, 1, 858

Literal denials, 1, 799

License, 1, 848

Liens, 1, 850

Limitation of actions, 1, 836, 846

General denials, 1, 826

Joinder of general denial and statute of limitations, 1, 858

Statute of limitations joined with other affirmative defenses, 1, 859

Literal denials, 1, 798

"Maliciously," 1, 798

Malicious prosecution:

General denials, 1, 823

"Manner and form," 1, 799

Material allegations, 1, 789, 790

Mines, 1, 851

Mistake, 1, 851

Mitigating circumstances, 1, 841

Facts of complete defense, 1, 841

Hypothetically, pleading, 1, 841

Libel and slander, 1, 858

Option of pleader, 1, 841

Proved under general denial, 1, 827

Negatives pregnant, 1, 796

Conjunctive denials, 1, 797

Definition, 1, 796

Facts, 1, 797

In general, 1, 796

Literal denials, 1, 798

ANSWERS IN CODE PLEADING,

*cont'd.*Negatives pregnant, *cont'd.*

- "Maliciously," 1, 798
- "Manner and form," 1, 799
- Particular amount, 1, 798
- Slander, 1, 799
- Specific denial, 1, 796
- Time, 1, 799
- "Wrongfully," 1, 798

Negligence:

- General denials, 1, 824

New matter, 1, 830

- Accord and satisfaction, 1, 835, 849
- Allegation of legal notice, 1, 832
- Award, 1, 849
- Bona fide* purchaser, 1, 850
- Champerty, 1, 849
- Contract not properly performed, 1, 851
- Contributory negligence, 1, 836, 847
- Definition, 1, 830
- Discharge in bankruptcy, 1, 849
- Duress, 1, 835
- Equitable defense, 1, 836, 837
- Equitable defenses are to be distinguished from counter-claims, 1, 838
- Estoppel *in pais*, 1, 835, 843
- Evidence of the defense not set up, 1, 831
- False imprisonment, 1, 846
- Fraud, 1, 844
- General nature, 1, 830
- Giving color, 1, 832
- Illegality of contracts, 1, 835, 844
- Immaturity of the indebtedness, 1, 849
- Justification, 1, 834, 845
- Leave, 1, 848
- License, 1, 848
- Liens, 1, 850
- Limitation of actions, 1, 836, 846
- Manner of pleading, 1, 831
- Matter in abatement, 1, 838
- Matter in avoidance, 1, 851
- Mining rules and customs, 1, 851
- Mistake, 1, 851
- Mitigating circumstances, 1, 841
- Must be pleaded, 1, 830
- Objection to statute or ordinance, 1, 850
- Partial defenses, 1, 840
- Payment, 1, 833, 842
- Ratification, 1, 849
- Release, 1, 840, 851
- Rescission, 1, 849
- Res judicata*, 1, 836, 843
- Statute of frauds, 1, 837, 847
- Tender, 1, 849
- Title in action of trespass, 1, 850

ANSWERS IN CODE PLEADING,

*cont'd.*New matter, *cont'd.*

- Usury, 1, 835, 850
- Waiving equitable defense, 1, 839
- Want and failure of consideration, 1, 848
- Want of consideration, 1, 834
- What constitutes new matter, 1, 837

Ordinance, objection to, 1, 850

Ownership:

- Allegations admitted by failure to deny, 1, 793
- Argumentative denial, 1, 800
- Denials of knowledge, 1, 815
- Inconsistent defenses, 1, 858
- Specific denial, 1, 786

Partial defenses, 1, 840

Partnership:

- Existence of a partnership, 1, 829

Payments, 1, 833, 842

- Joinder of payment and general denial, 1, 857

- Proved under general denial, 1, 817

Pleas in abatement, 1, 838

- Abolition under the code, 1, 838
- General denials, 1, 827
- Matter in abatement and matter in bar, 1, 854
- Specially pleaded, 1, 839

Possession:

- Allegations admitted by failure to deny, 1, 793
- Specific denial, 1, 788

Presumptions, see *infra*, Knowledge, denials of.

Public officer:

- Justification, 1, 846

Ratification, 1, 849

Real action:

- What may be proved under general denials, 1, 825

Records:

- Presumption of knowledge of contents of records, 1, 813

Release, 1, 849, 851

- Joinder of general denial and general release, 1, 858

Replevin:

- General denials, 1, 822
- A general denial put in issue, 1, 822
- Frauds, 1, 823
- Replevin by mortgagees, 1, 823

Repugnancy, 18, 741

Rescission, 1, 849

Res judicata, 1, 836, 843

- General denials, 1, 821

ANSWERS IN CODE PLEADING,*cont'd.***Sales:**

General denials, 1, 820

Several answers, see *infra*, Joint and several answers.Specific denial (see *infra*, Negatives pregnant), 1, 783, 786

Construction, 1, 787

Contracts, 1, 788

Deeds, 1, 788

Optional to use specific denial, 1, 785

Ownership, 1, 788

Plaintiff's right to sue, 1, 788

Possession, 1, 788

Precludes a general denial, 1, 785

Scope, 1, 785

Suit on instrument for payment of money, 1, 786

Suit on notes, 1, 787

Torts, 1, 788

What constitutes a good denial, 1, 783

Categorical, 1, 784

Denial of what is between certain specified words or in folios or paragraphs, 1, 784

Enumeration of particulars, 1, 785

Hypothetical, 1, 785

In general, 1, 783

Statute, objection to, 1, 850

Suretyship:

Discharge of sureties, 1, 851

Tender, 1, 849

Time:

Allegations admitted by failure to deny, 1, 793

Denials, 1, 799

Torts:

Argumentative denials, 1, 800

General denials, 1, 821

Specific denials, 1, 788

Trespass:

Title in action of trespass, 1, 850

Trespass *quare clausum fragit*:

General denials, 1, 826

Trover:

General denials, 1, 821

Usury, 1, 850

Warranty:

General denials, 1, 826

Joinder of fraud and breach of warranty, 1, 859

Wrongfully, 1, 798

ANSWERS IN EQUITY PLEAD-

ING, see ANSWERS.

APARTMENT HOUSE:

Burglary, 3, 765

APOSTLES:

Admiralty, 1, 281

APOTHECARY, see DRUGGISTS.**APPEAL BONDS AND UNDERTAKINGS, 1, 965**

Adverse party, 1, 970, 971

Affidavit:

Affidavit of surety worth, 1, 1003

Forma pauperis, 1, 999**Agency:**

Execution by agent, 1, 976

Amendments, 1, 990

Clerical and formal errors, 1, 996

Common-law bonds, 1, 998

Construction of statutes, 1, 994

Curative statutes, 1, 993

Discretion of court, 1, 994

Dismissal for substantial errors, 1, 996

Effect of lack of jurisdiction, 1, 990

Estoppel of appellant from denying jurisdiction, 1, 991

Forma pauperis, 1, 1000

Motion to amend, 1, 997

Official misconduct, 1, 990

Orders, 1, 997

Power to amend, 1, 993

Recognizance, 1, 993

Review of order allowing or refusing amendment, 1, 995

Right of appellee, 1, 996

Strict compliance with substantial requirements, 1, 993

Surplusage, 1, 992

Time of motion to amend, 1, 997

Trivial errors, 1, 997

Varying from language of statute, 1, 991

When bond is void, 1, 990

When unnecessary, 1, 991

Where motion to amend is made, 1, 997

Amount, 1, 977

Amount of judgment, 1, 979

Cash deposited, 1, 978

Compliance with statute, 1, 980

Costs, 1, 979

Discretion, 1, 980

Effect of giving new bonds, 1, 981

In suits affecting real property, 1, 978

Larger amount than required, 1, 978

Less amount than required, 1, 979

Order granting appeal, 1, 981

Reduction of amount, 1, 978

Several appeals, 1, 980

Statutory directions, 1, 977

Unsecured judgments, 1, 978

Amount of judgment, 1, 1015

Appellants exempted, see *infra*, Exemption.

APPEAL BONDS AND UNDERTAKINGS, *cont'd.*

- Approval of bonds, 1, 1007
 - Approval of irregular bond, 1, 1009
 - Effect, 1, 1009
 - Execution, 1, 1010
 - Filed without objection, 1, 1008
 - How made, 1, 1008
 - How shown, 1, 1009
 - Indorsement on bond, 1, 1008
 - In general, 1, 1007
 - Judicial or ministerial power, 1, 1008
 - Objections, 1, 1010
 - Obligation of sureties, 1, 1008
 - Review of approval, 1, 1010
 - Subsequent insolvency, 1, 1010
 - When reviewable, 1, 1010
- Attorney, 1, 976
 - Attorney as surety, 1, 1004
- Bail and recognizance, 3, 164
- Blank, execution in, 1, 975
- Bonds, *see infra*, Approval of bonds.
- Bonds in court, *see infra*, Approval of bonds.
- By whom given, 1, 967
- Cash deposit, 1, 978
- Common law:
 - Invalid statutory bonds good as common-law obligations, 1, 998
- Conditions, 1, 983
 - Altering condition of statute, 1, 985
 - Construction of conditions, 1, 984
 - Contents more onerous than statute requires, 1, 985
 - Illustrations of sufficiency, 1, 983
 - In general, 1, 983
 - Reference to amounts, 1, 985
 - Statutes, 1, 983
 - Substantial compliance, 1, 983
 - Waiver of defects, 1, 983
 - When costs only recoverable, 1, 984
- Construction of conditions, 1, 984
- Construction of contract, 1, 1011
 - Amount of judgment, 1, 1015
 - Change of issue, 1, 1017
 - Contract of suretyship joint, 1, 1015
 - Costs, 1, 1016
 - Discharge of sureties, 1, 1016
 - Dismissal, abandonment, or withdrawal of the appeal, 1, 1014
 - Final judgment, 1, 1012
 - General rule, 1, 1011
 - Intention of the parties, 1, 1011
 - Joint bonds, 1, 1014
 - Judgment interlocutory, 1, 1014
 - Measure of liability, 1, 1015
 - Penalty, 1, 1016

APPEAL BONDS AND UNDERTAKINGS, *cont'd.*

- Construction of contract, *cont'd.*
 - Return of the execution against appellant, 1, 1012
 - Strict construction, 1, 1012
 - Tender, 1, 1017
 - Variance, 1, 1012
 - Variation in names, 1, 1012
 - When liability accrues, 1, 1012
- Construction of statutes, 1, 965
 - Time for filing security, 1, 986
- Contents, 1, 977, 979
- Costs, 2, 36
 - Amount of bonds, 1, 979
- Criminal proceedings:
 - Description of offense in criminal appeal, 1, 982
- Date of filing, 1, 989
 - Effect of, 1, 989
 - Examples, 1, 989
 - In general, 1, 989
 - When bond takes effect, 1, 989
- Definitions, 1, 964
- Delivery, 1, 977
 - Necessity, 1, 977
 - Sufficiency, 1, 977
 - What constitutes, 1, 977
- Discretion:
 - Judgment, 1, 981
- Discretion of court:
 - Amendments, 1, 994
- Dismissal of appeal, 1, 967, 987
 - Breach of condition in appeal bond, 1, 1014
 - Motion to dismiss, 1, 1002
 - Motion to dismiss by appellant, 1, 1002
 - Substantial defects, 1, 996
- Eminent domain, 7, 643
- Estoppel:
 - Denying jurisdiction of the court, 1, 991
 - Sureties, 1, 1020
- Executors, 1, 973
- Executors and administrators, 1, 968
- Exemption, 1, 968
 - Executors and administrators, 1, 968
 - Married women, 1, 969
 - Public corporations, 1, 968
 - Public officer, 1, 968
 - Sureties, 1, 1005
 - Towns, 1, 969
 - Trustees, 1, 969
 - What appellants are exempt, 1, 968
- Filing, *see infra*, Date of filing; Time for filing security.
- Final judgment:
 - Decrees, 1, 1013
- Forcible entry and detainer, 9, 79

APPEAL BONDS AND UNDERTAKINGS, *cont'd.*

- Forma pauperis*, 1, 999
- Allegations, 1, 1000
- Amendments, 1, 1000
- Identified judgment, 1, 1000
- Requisite of affidavit, 1, 999
- Statutory authority necessary, 1, 999
- Time for filing, 1, 1000
- Whether pauper is first relieved from giving bond, 1, 999
- Form disregarded, 1, 967
- Frauds, 1, 1018
- Guaranty companies, 1, 1003
 - Where statutes require sureties, 1, 1005
- Ignorance, 1, 1018
- Insolvency:
 - Subsequent insolvency, 1, 1011
- Interpretation*, see *infra*, Construction of contract.
- Joint and several liability, 1, 1014
- Joint bonds, 1, 1014
- Joint obligees, 1, 971
- Judgment:
 - Amount, 1, 979
 - Description of judgment, 1, 981
 - Condition of bonds, 1, 983
 - Description of court, 1, 983
 - Description of offense in criminal appeal, 1, 982
 - Omission of recital, 1, 982
 - Sufficiency of description, 1, 981
 - Undertaking, 1, 983
- Final interlocutory judgment, 1, 1013, 1014
- Jurisdiction:
 - Effect of lack of jurisdiction, 1, 990
- Married women, 1, 969, 974
- Measure of liability, 1, 1015
- Misconduct of officer, 1, 990
- Motion to amend*, see *infra*, Amendments.
- Motion to dismiss, 1, 1002
- Municipal corporations, 1, 968
- Names:
 - Variance, 1, 1012
- Notice of appeal, 1, 989
- Novation, 1, 1020
- Official capacity, 1, 968
- Official misconduct, 1, 990
- Orders, 1, 981
 - Amendments, 1, 995, 997
- Orders of the court, 1, 967
- Partnership, 1, 974, 977
- Party, 1, 967
- Payee, 1, 970
- Penalty, 1, 1016
- Presumptions, 2, 438
- Public officers, 17, 208

APPEAL BONDS AND UNDERTAKINGS, *cont'd.*

- Quo warranto, 17, 489
- Ratification, 1, 977
- Records:
 - Record on appeal, 1, 1020
- Remedies of obligee, 1, 1018
 - Conditions unperformed, 1, 1018
- Fraud, 1, 1018
- Ignorance, 1, 1018
- In general, 1, 1018
- Statutory remedies cumulative, 1, 1018
- Statutory remedy mandatory, 1, 1018
- Removal of causes*, see REMOVAL OF CAUSES.
- Representative, 1, 968
- Seals, 1, 973
- Second appeal, 1, 973
- Separate adverse parties, 1, 971
- Separate appeals, 1, 972
- Signature, 1, 973
 - Joint appellees, 1, 974
- Statutes (see *infra*, Conditions; Suretyship), 1, 964
 - Accepting security of different character, 1, 966
 - Amendments, 1, 993
 - Common law, 1, 965
 - Common-law bonds, 1, 998
 - Construction of statute, 1, 965, 986
 - Construction of statute amendment, 1, 994
 - Curative statutes, 1, 993
 - Dismissal of appeal for want of bonds, 1, 967
 - Dispensing statutory security, 1, 966
 - Invalid statutory bonds good as common-law bonds, 1, 998
 - Purely statutory, 1, 965
 - Qualifications of sureties, 1, 1003
 - Recognizance, 1, 993
 - Right to appeal, 1, 996
 - Statutory requirements mandatory, 1, 966
 - Strict compliance with substantial requirements, 1, 993
 - Substantially complying with statute although varying in language, 1, 991
 - Supersedeas bond, 1, 965
 - Time for filing security, 1, 895
- Statutory amount, 1, 977, 980
- Stipulations, 20, 637
- Streets and highways, 20, 895
- Subrogation, 1, 1020
- Substitution of parties, 20, 1065
- Successive appeals, 1, 1020
- Sufficiency, 1, 977

APPEAL BONDS AND UNDERTAKINGS, *cont'd.*

Supersedes and stay of proceedings,
see SUPERSEDEAS AND STAY OF PROCEEDINGS.

Surety companies, 1, 1003
Where statutes require sureties,
1, 1005

Suretyship (see *infra*, Construction
of contract):

Common law, 1, 1006
Contract of suretyship joint, 1,
1015

Discharge of sureties, 1, 1016
Change of issue, 1, 1017
In general, 1, 1016
Legal satisfaction, 1, 1016
Tender, 1, 1017

Effect of failure to justify, 1,
1006

Estoppel of sureties, 1, 1019
Impeachment of judgment,
1, 1019

Jurisdictional defects, 1,
1019

Sufficiency of appeal bond,
1, 1019

Excepting to surety under code
procedure, 1, 1005

Exception to sureties, 1, 1005

Ordering sureties, 1, 1004

Qualifications of sureties, 1,
1002

Acceptance of a surety, 1,
1003

Affidavit of worth, 1, 1003

Attorney as surety, 1, 1004

Effect of disqualification of
surety, 1, 1003

Necessary party to appellant
proceedings, 1, 1002

Parties, 1, 1002

Pecuniary responsibility, 1,
1004

Representative party, 1, 1002

Statutory qualifications, 1,
1003

Surety companies, 1, 1003

Signature of sureties, 1, 974

Strict construction, 1, 1011

Surety companies where statute
requires surety, 1, 1005

Surety on bonds in suit, 1, 1004

Time when sureties were justi-
fied, 1, 1007

Surplusage, 1, 992

Time for filing security, 1, 985

Appeal granted in term, 1, 987

Construction of statutes, 1, 986

Dismissal of appeal, 1, 987

Extension of time, 1, 988

Forma pauperis, 1, 1000

In general, 1, 985

APPEAL BONDS AND UNDERTAKINGS, *cont'd.*

Time for filing security, *cont'd.*

No time fixed by statute, 1,
986

Statutes, 1, 985

Waiver, 1, 987

Whether compliance with the
order is not essential to juris-
diction, 1, 987

To whom payable, 1, 970

Towns, 1, 969

Trustees, 1, 969

Variance, 1, 1012

Waiver of defects by appellee, 1,
100

Acceptance, 1, 1001

General rule, 1, 1000

Objections must be timely, 1,
1001

Purely for appellee's benefit, 1,
1000

Right of appellant, 1, 1000

Special proceedings, 1, 1001

Statements of the case, 1, 1001

What amounts to waiver, 1,
1001

APPEALS, 2, 1

See APPEAL BONDS AND UNDERTAK-
INGS; ERROR, WRIT OF; REPORT
AND CASE MADE.

Abandonment:

Docketing, 2, 321

Second appeal, 2, 356

Abatement, 2, 202

Abatement, see *infra*, Death.

Abstract of record, 2, 313

Agreed abstracts, 2, 317

Amended abstract, 2, 317

Appellee's additional abstract,
2, 316

Consequence of defects uncor-
rected, 2, 318

Evidence *dehors* the abstract, 2,
315

Filing amended abstract, 2,
317

In general, 2, 313

Jurisdictional facts, 2, 315

Omissions, 2, 314

Presumption, 2, 315

Presumption as to additional
abstract, 2, 317

Presumption of correctness, 2,
440

What the abstract is, 2, 314

Accord and satisfaction:

Whether accord and satisfaction
may be shown to appellate
court, 1, 75

Accounts and accounting, 1, 103; 2,
127

Finality of order, 2, 67, 70

APPEALS, *cont'd.*

- Additional allowance of costs:
 - Appeal from order granting or refusing additional allowance, 1, 218
 - Discretionary allowance, 1, 220
 - General term, 1, 218
 - Jurisdiction of court of appeals, 1, 219
 - Merits, 1, 219, 220
 - Remitting case back, 1, 219
- Effect of, 2, 324
- Adjournment:
 - Presumption in favor of adjourning term, 2, 459
- Administration, see SETTLEMENT OF DECEDENTS' ESTATES.
- Admiralty, see ADMIRALTY.
- Adoption, 10, 849
- Adverse possession, 2, 45
- Affidavit:
 - Affidavit on appeal, 2, 234
 - Date, 2, 236
 - Entitling, 2, 236
 - Examples, 2, 234, 236
 - Filing, 2, 236
 - In general, 2, 234
 - What is sufficient compliance, 2, 235
 - Consideration on appeal, 1, 336
 - Impeachment of record, 2, 300
 - Service of process, 2, 228
 - Transcript on appeal, 2, 270
- Affidavits of merits or defense, 1, 348
- Aggrieved party, 2, 167
 - Appeals by, 2, 167
 - Appeals from probate, 2, 170
 - Construction of statutes, 2, 168
 - Corporations, 2, 168
 - Creditors, 2, 168
 - Examples, 2, 168, 170
 - In general, 2, 167
 - Meaning of the word "aggrieved," 2, 170
 - Statutory provisions, 2, 167
 - Taxpayers, 2, 168
- Agreed case, see AGREED CASE.
- Alimony, see ALIMONY.
- Alteration of instrument:
 - Transcript of record, 2, 292
- Amendments, 2, 110
 - Abstracts, 2, 317
 - Amendments in appellate court, 1, 468
 - Amendment to conform to proof, 1, 582
 - Costs, 1, 650
 - Discretion of court, 2, 411, 412
 - Discretion of trial court, 1, 524, 596
 - Equity, 1, 464

APPEALS, *cont'd.*

- Amendments, *cont'd.*
 - Error in granting or denying application, 2, 545
 - Final judgments and decrees, 2, 254
 - In general, 1, 524
 - Judgments, 15, 228
 - Method of review, 1, 534
 - Notice of appeal, 2, 231
 - Presumption in favor of, 2, 468
 - Review of exercise of discretion, 1, 464
 - Terms, 1, 647
- Amendments of record, 2, 301
 - Lost papers, 2, 303
 - Of original record, 2, 301
 - Of transcript, 2, 304
 - Stipulations, 2, 304
 - Time of amendment, 2, 303
 - While appeal is pending, 2, 303
- Amount in controversy, see AMOUNT IN CONTROVERSY.
- Another suit pending, 1, 756
 - Continuance, 1, 767
- Answers:
 - Exceptions, 1, 906
 - Presumption in favor of, 2, 469
- Appealable judgments and orders, 2, 52
 - Appeal from *ex parte* orders, 2, 96
 - Appeal from portion of decision, 2, 96
 - Appeal in equitable causes, 2, 63
 - Arrest, 2, 120
 - Attachment proceedings, 2, 118
 - Certiorari, 2, 131
 - Condemnation proceedings, 2, 136
 - Consent by judgments, 2, 99
 - Contempt, 2, 129
 - Correction of judgments, 2, 97
 - Costs, 2, 132
 - Criminal cases, 2, 146
 - Decisions affecting pleadings, 2, 110
 - Decisions vacating judgments and decrees, 2, 107
 - Dismissal, 2, 103
 - Executions, 2, 142
 - Ex parte* orders, 2, 96
 - Final judgments, 2, 52
 - Final orders, 2, 72
 - Habeas corpus, 2, 127
 - Injunctions, 2, 123
 - Interlocutory decisions, 2, 80
 - Judgments and orders of dismissal, 2, 103
 - Judgments reversing and remanding causes, 2, 98
 - Mandamus, 2, 132

APPEALS, *cont'd.*

Appealable judgments and orders,
cont'd.

Motion to vacate appealable
orders, 2, 95

New trial, 2, 137

Nonsuit, 2, 106

Official bonds, 2, 145

Orders in unappealable causes,
2, 96

Partition, 2, 144

Part of decision, 2, 96

Pleadings, 2, 110

Prohibition, 2, 132

Provisional remedies, 2, 118

Quo warranto, 2, 132

Receiverships, 2, 121

Reference, 2, 139

Subrogation, 2, 142

Supplementary proceedings, 2,
144

Void judgments, 2, 102

Appeal bonds, see APPEAL BONDS AND
UNDERTAKINGS.

Appearances, 2, 614

Argument of appeal, 2, 617

Attorney in want of authority, 2,
681

Case remanded, 2, 619

Effect of general appearance, 2,
618

Examples of what constitutes
appeal, 2, 616, 618

Jurisdiction of appeal, 2, 615

Motion to dismiss appeal, 2, 616

Noticing an appeal, 2, 617

Special appeal, 2, 615

Taking an appeal, 2, 614

Trial *de novo*, 2, 614

Voluntary appearance, 2, 195

Waiver as to time, 2, 618

Waiver of defects in notice, 2, 231

Waiver of process and notice, 2,
618

What constitutes appearance, 2,
616

What is a general appearance, 2,
233

Appellate jurisdiction, see infra, Juris-
diction.

Appellate process, 2, 209

Appeal taken in open court, 2,
209

Citation, 2, 211

In general, 2, 209

Service jurisdictional, 2, 210

Statutory notice of appeal, 2,
189, 207, 213

Apprenticeship, 10, 852

Discharge, 10, 853

Argument of counsel:

Improper language of counsel,
2, 539

APPEALS, *cont'd.*

Arraignment and plea:

Judgment on plea of guilty, 2,
783

Arrest:

Orders of arrest, 2, 120

Arrest of judgment (*see* ARREST OF
JUDGMENT), 2, 821

Assignment of errors, see ASSIGNMENT
OF ERRORS.

Assistance, writ of, 2, 985

Attachments, 2, 28, 48, 118

Affecting a substantial right, 2,
119

Pleas in abatement, 2, 119

Whether appeal lies from judg-
ments, 2, 118

Attorneys:

Attorney not of record, 2, 215

Attorney of record, 2, 214

Service of notice of appeal where
there is more than one attor-
ney, 2, 223

Service on attorney of record, 2,
222

Signature of notice of appeal, 2,
214

Substitution of attorneys, 2, 215

Attorney's fees:

Final judgments, 2, 58

Audita querela, see AUDITA QUERELA.

Authentication:

Transcript on appeal, 2, 283

Bail and recognizance:

Bail on appeal, 3, 164

Criminal cases, 3, 206

Forfeiture, 3, 238

Recognizance, 3, 232

Remission, 3, 244

Bankruptcy, see BANKRUPTCY; and *see*
infra, Insolvency and bankruptcy.

Bastardy, 3, 315

Appellate jurisdiction, 3, 316

Hearing and determination, 3,
319

Parties to proceedings to review,
3, 315

Perfection of appeal, 3, 318

Proceedings on appeal, 3, 318

What is appealable, 3, 316

Benefits to appellant, 2, 527

Bills of exceptions, see BILLS OF EX-
CEPTIONS.

Bills of particulars, 2, 113

Bills of review, see BILLS OF REVIEW.

Boundaries and fences, 3, 677

Briefs, see BRIEFS.

Calendars, 2, 361

Advancement of cause, 2, 361

Case made on appeal, see CASE MADE
ON APPEAL.

Cause of action, 2, 406

Certificate, 2, 449

APPEALS, *cont'd.*

- Certificate of clerk, 2, 284
- Certificate of doubt*, see CERTIFICATE OF DOUBT.
- Certificate of importance, 2, 206
 - Discretionary, 2, 208
 - Jurisdictional, 2, 208
 - Nature of question involved, 2, 208
 - Necessity, 2, 207
 - What certificate must show, 2, 208
 - When to be made, 2, 207
- Certified cases*, see CERTIFIED CASES.
- Certiorari (see CERTIORARI), 2, 33, 305
- Chambers and vacation, 2, 26; 4, 365
 - Correction of judgment, 2, 97
 - Examples, 4, 365, 367
 - In general, 4, 365
 - Proceedings to perfect appeals, 4, 349
- Chancery appeal, 2, 31
 - Divorce, 2, 33
 - Exclusive of appellate remedy, 2, 32
 - Extent, 2, 33
 - Illegal writs, 2, 31
 - In general, 2, 31
 - Statutes, 2, 31
- Change of venue, 4, 492
 - Bills of exceptions, 4, 497
 - Correcting errors made in awarding or denying, 4, 492
 - Determination, 4, 505
 - In general, 4, 492
 - Interlocutory, 2, 83
 - Objections below, 4, 493
 - Stay of proceedings, 4, 495
 - The record, 4, 496
 - What is appealable, 4, 495
 - What the court will consider, 4, 494
 - What will be reviewed, 4, 496
 - Who may object, 4, 493
- Citation, 2, 211
 - Appeal in open court, 2, 212
 - By whom served, 2, 211
 - By whom signed, 2, 211
 - Definition, 2, 211
 - Failure to furnish security, 2, 212
 - Formal requisites, 2, 211
 - Return, 2, 212
- Clerk of court:
 - Certificate of clerk, 2, 284
 - Neglect of clerk to file transcript in time, 2, 280
- Codefendants:
 - Appeal by portion of codefendants, 2, 334
- Code practice:
 - Writ of error, 2, 31
- Codes, 2, 17
 - Equity, 2, 18

APPEALS, *cont'd.*

- Codes, *cont'd.*
 - In general, 2, 17
 - Strict compliance, 2, 18
- Collateral matters, 2, 368
- Common law:
 - Right of appeal, 2, 15
- Complaint to review, 2, 35
- Conclusion of law:
 - Evidence presumed to support conclusions of law, 2, 492
- Condemnation proceedings, 2, 136
- Consent:
 - Jurisdiction by consent, 2, 24
- Consent, judgments by, 2, 99
- Cases stated, 2, 101
- Entry *pro forma*, 2, 100
- In general, 2, 99
- Judgments by default, 2, 102
- Remedy, 2, 102
- Consolidation of actions:
 - Consolidation of appeals, 4, 696
 - Orders, 4, 697
 - Suits on distinct causes of action, 4, 696
 - Whether discretion reviewable, 4, 688
- Constitutional law:
 - Jurisdiction depending on constitutionality of statute, 2, 40
 - Right of appeal, 2, 13
 - Abolition and impairment by statute, 2, 13
 - Failure by the legislature to provide for appeals, 2, 14
 - Failure of the constitution to define limits of appellate jurisdiction, 2, 14
 - In general, 2, 13
 - Original jurisdiction, 2, 13
 - Rules of procedure, 2, 14
- Construction of pleadings, 4, 757
- Construction of statutes:
 - Allowing appeals from interlocutory appeals, 2, 89
- Construction of statutory right of appeal, 2, 20
 - Complete abrogation, 2, 21
 - Legal intentment, 2, 20
 - Liberal construction, 2, 20
 - Mandamus, 2, 21
 - Presumption of jurisdiction, 2, 21
 - Trial *de novo*, 2, 20
- Contempt (see CONTEMPT), 2, 129, 147
- Contest of wills*, see PROBATE AND CONTEST OF WILLS.
- Continuances*, see CONTINUANCES.
- Continuation of original suit, 2, 35
- Coparty:
 - Error affecting only coparty, 2, 515

APPEALS, *cont'd.*

- Coram nobis* and *coram vobis* (see CORAM NOBIS AND CORAM VOBIS), 2, 27; 5, 37
- Corporations:
 - Aggrieved person, 2, 168
 - Service of notice of appeal, 2, 224
- Correction of judgments, 2, 97
- Chamber orders, 2, 97
- Unauthorized entry, 2, 97
- Costs (see COSTS; and see *infra*, Additional allowance of costs):
 - Costs in appellate court, 5, 219
 - Additional abstract, 5, 214
 - Affirmance, 5, 197
 - Appeals from commissioners, 5, 208
 - Appeals from magistrates, 5, 205
 - Appeals from probate court, 5, 208
 - Appellant generally charged, 5, 198
 - Appellant not obtaining more favorable judgment, 5, 195
 - Both parties successful, 5, 203
 - Case on exception, 5, 195
 - "Costs to abide the event," 5, 220
 - Cross appeals, 5, 203
 - Decree silent as to costs, 5, 220
 - Default as affecting costs, 5, 210
 - Defective pleading, 5, 211
 - Discretion subject only to statutory limitations, 5, 192
 - Dismissal, 5, 199
 - Dismissal for want of jurisdiction, 5, 200
 - Dismissal operates as an affirmance, 5, 199
 - Doubtful cases, 5, 194
 - Final judgment, 5, 202
 - General discretion, 5, 192
 - Improper conduct, 5, 210
 - Interpretation of decrees, 5, 219
 - Justices of the peace, 5, 205
 - Mistrial, 5, 200
 - Negligence as affecting costs, 5, 210
 - Neither party successful, 5, 203
 - Omission to file papers, 5, 211
 - Only necessary part of record taxable as costs, 5, 213

APPEALS, *cont'd.*

- Costs, *cont'd.*
- Costs in appellate court, *cont'd.*
 - Partial affirmance or reversal, 5, 202
 - Point not made below, 5, 212
 - Presumption in favor of costs allowed below, 5, 217
 - Prevailing party, 5, 194
 - Prolix transcript, 5, 212
 - Remittitur of amount, 5, 204
 - Remittitur of record, 5, 205
 - Reversal, 5, 200
 - Reversal of reversal, 5, 220
 - Revision of costs, 5, 216
 - Revision of costs in equity, 5, 218
 - Superfluous matter taxable to party in fault, 5, 214
 - "With costs," 5, 219
 - "With costs in both courts," 5, 220
 - Withholding of costs, 5, 198
 - Writs of error, 5, 196
- Courts:
 - Court of record, 2, 27
 - Intermediate appellate courts, 2, 36
 - Jurisdiction of trial court, 2, 23
 - Legal tribunal, 2, 25
 - Presumption as to organization of courts, 2, 458
 - Tribunal unknown to common law, 2, 28
- Courts of last resort, 2, 11
 - Creation, 2, 11
 - In general, 2, 11
 - Inherent power, 2, 12
 - Number of judges, 2, 12
- Creditors, 2, 152
 - Aggrieved person, 2, 168
- Criminal procedure (see SENTENCE), 2, 146
 - Arrest of judgment, 2, 148
 - At common law, 2, 146
 - Beneficial error, 2, 531
 - Demurrer, 2, 148
 - Escape as waiver of right of appeal, 2, 182
 - Finality of decisions, 2, 149
 - Interlocutory decisions, 2, 149
 - Judgment on special verdict, 2, 148
 - Preliminary payment of fees, 2, 320
 - Presence of prisoner, 2, 498
 - Presumption, 2, 497
 - Presumption in favor of jurisdiction, 2, 458
 - Questions of law, 2, 400
 - Transcript on appeal, 2, 262
 - Under modern practice, 2, 146
 - Upholding convictions, 2, 497

APPEALS, *cont'd.*

Criminal procedure, *cont'd.*

Verdict, 2, 495

Where an appeal may be taken, 2, 147

Cross-appeal:

Time for taking appeal, 2, 255

Cross-bills, see **CROSS-BILLS**.

Cross-complaints, 5, 686

Cross-examination, 2, 555

Waiver of objection to evidence, 2, 523

Cumulative evidence, 2, 557

Damages, 2, 406

As to award of damages where judgment is affirmed or dismissed, see *infra*, Judgments.

Items of damage, 2, 494

Death by wrongful act:

Objections raised for the first time, 5, 888

Death, 5, 794

Appeal in behalf of deceased party, 2, 196

By whom properly taken, 2, 197

Death after assignment of error, 2, 199

Death of joint appellant, 2, 199

Death of joint appellee, 2, 201

Death of plaintiff in error, 2, 198

Death of sole appellee, 2, 200

Examples, 2, 196, 197

General appearance as waiver, 2, 197

Indiana, 2, 197

In general, 2, 196

Process, 2, 200

Scire facias ad audiendum errores, 2, 200

Where judgment has been rendered, 2, 197

Whether an appeal may be taken, 2, 196

Death of defendant pending appeal or writ of error, 5, 823

Death of one of several defendants, 5, 836

Death of one of several plaintiffs, 5, 815

Death of plaintiff pending appeal, 5, 800

Death pending appeal or writ of error, 5, 794

Dismissal of appeal, 2, 351

Declaration and complaint, 2, 35

Error in complaint, 2, 543

Presumption in favor of, 2, 469

Decrees, 5, 965

Affirmance, 5, 965

APPEALS, *cont'd.*

Decrees, *cont'd.*

Effect of reversal, 5, 966

Rendition of new decree, 5, 966

Reversal, 5, 965

Review of ruling on application to open decrees *pro confesso*, 5, 1029

Deeds:

Setting aside deeds, 2, 46

Defaults, 2, 102, 106; 6, 223

Abuse of discretion, 6, 232

Appeal from defaults, 6, 223

Appeals from entry of default, 6, 230

Appeals from inferior courts, 6, 227

Appeals from orders made in proceedings on default, 6, 230

Appeals not encouraged, 6, 227

Appearance, 6, 244

Assignment of errors, 6, 235

At common law, 6, 223

By consent, 6, 224

Code procedure, 6, 223

Construction of statute, 6, 227

Effect of appeal, 6, 236

Effect of appeal from order, 6, 237

Effect of appeal upon magistrate, 6, 237

Effect of default in appellate court, 6, 239

Effect of reversal, 6, 240

Exception required, 6, 234

Final judgment, 6, 227

Findings of fact, 6, 231

General rule, 6, 223

Imposition of terms, 6, 218

Interlocutory orders, 6, 232

Judgment by default, 2, 456

Manner of rendition of judgment, 6, 242

Motion to set aside, 6, 230

Opening default in appellate court, 6, 239

Preliminary motion, 6, 228

Presumptions of regularity, 6, 235

Principles of review, 6, 234

Qualifications of the general rule, 6, 224

Recitals in record of service, 6, 242

Record in respect of service of process, 6, 240

Record on appeal from judgment by default, 6, 240

Record on appeal from magistrate, 6, 244

Review of facts, 6, 236

Statutory appeal, 6, 226, 233

Technical errors, 6, 234

APPEALS, *cont'd.*

Defaults, *cont'd.*

- To review assessment of damages on default, 6, 226
- Trial *de novo*, 6, 238
- What is brought up on appeal, 6, 236

Demurrers, 6, 367

- Criminal cases, 2, 148
- Defendant introducing evidence, 2, 548
- Error cured, 2, 548
- Error in overruling demurrer, 2, 547; 6, 367
- Error in sustaining demurrer, 2, 546
- Harmless error, 6, 368
- In general, 6, 367
- Judgment not rendered on bad plea, 6, 367
- Orders affecting demurrers, 2, 114
- Overruling demurrer, 6, 367
- Presumption as to ruling on demurrer, 2, 466

Demurrers in chancery:

- Orders affecting demurrers, 2, 117
- Overruling demurrer on appeal, 6, 432
- Sustaining demurrer on appeal, 6, 428

Demurrers to evidence, 2, 559; 6, 457

- Final judgment by appellate court, 6, 459
- Harmless error, 6, 458
- In general, 6, 457
- Review, 6, 457

De novo, see *infra*, Trial *de novo*.

Depositions, see DEPOSITIONS.

Deputy:

- Certificate of clerk, 2, 285
- Service of notice of appeal, 2, 225

Directing verdict, 6, 701, 702

Disbarment and suspension of attorneys, 6, 718

Discontinuance, 2, 104

Discretion of court, 2, 409

- Abuse of discretion, 2, 416
- Amendments, 2, 411
- Arbitrary exercise of discretion, 2, 415
- Certificate of importance, 2, 208
- Conduct of the jury, 2, 414
- Costs, 2, 412
- Decision of trial court resting in discretion, 2, 410
- Discretion defined, 2, 409
- Equity, 2, 418
- Extension of time to plead, 2, 412

APPEALS, *cont'd.*

Discretion of court, *cont'd.*

- Illustration of discretionary power, 2, 411
- Imposition of terms, 2, 420
- Injunction, 2, 415
- Instances of abuse of discretion, 2, 417
- Judicial discretion, 2, 416
- Mandamus, 2, 414
- Motion to strike out pleadings, 2, 411
- New trial, 2, 414
- Practice, 2, 411
- Presumption, 2, 418
- Qualifications of jurors, 2, 414
- Referee's report, 2, 415
- Refusal to act, 2, 417
- Rehearing, 2, 388
- Review, 2, 206
- Review of exercise of discretionary power, 2, 409
- Voir dire*, 2, 412
- What is within discretion of court, 2, 411

Dismissal, discontinuance, and non-suit (see *infra*, Reinstatement), 2, 335, 370, 371, 536; 6, 997

- Abstract propositions of law, 2, 342
- Appeals from judgments and orders of dismissal, 2, 103
- Appeals from judgments of non-suit, 2, 106
- Appeals in equity from decree dismissing bill, 2, 104
- By whom motion made, 2, 350
- Clear case not shown, 2, 347
- Collusive suit, 2, 342
- Costs, 2, 344
- Costs on dismissal, 2, 354
- Court's own motion, 2, 336
- Cross appeal, 2, 353
- Decease of party, 2, 351
- Defects of form in process, 6, 999
- Discontinuance, 2, 104
- Dismissal by appellant, 2, 351
- Dismissal for lack of prosecution, 2, 353
- Dismissals by appellate courts, 6, 1004
- Effect of dismissal, 2, 353
- Entry required, 6, 997
- Error not shown, 2, 346
- Escape, 2, 337
- Examination of merits on the motion, 2, 346
- Exceptions, 6, 1004
- Failure to file assignment of errors, 2, 924
- Failure to file transcript in time, 2, 278

APPEALS, *cont'd.*

Dismissal, discontinuance, and non-suit, *cont'd.*
 Fictitious suit, 2, 342
 Final judgment, 2, 61; 6, 997
 Findings, 6, 997
 For lack of actual controversy, 2, 341
 For lack of prosecution, 2, 340
 General principles of review, 6, 1004
 Ground of the motion, 2, 335
 Ground of the motion confined to the record, 2, 347
 Instances, 2, 337
 Insufficiency of papers, 2, 338
 Interlocutory orders, judgments, or decrees, 6, 1001
 Intermediate court, 2, 51
 Motion to strike from docket, 2, 352
 Notice of motion, 2, 348
 Official neglect, 2, 345
 Opinion or findings not required, 6, 997
 Party in default, 2, 352
 Preliminary fees, 2, 320
 Presumption on appeal from order of dismissal, 2, 352
 Record, 2, 337; 6, 1004
 Refusal to dismiss, 2, 105
 Requisites of motion, 2, 348
Res adjudicata, 2, 354
 Right of plaintiff in appellate courts, 6, 867
 Rules of court, 2, 338
 Scope of the inquiry, 2, 347
 Second appeal, 2, 354, 357
 Statement of the case, 2, 342
 Substantial rights affected, 2, 105
 Time of dismissal, 2, 339
 Time of motion, 2, 349
 Time when motion must be made, 6, 881
 Voluntary dismissal, 6, 1003
 Waiver of right to move for dismissal, 2, 349
 Want of jurisdiction, 2, 345
 When appeal lies from involuntary discontinuance, 6, 1001
 When appeal lies from involuntary dismissal, 6, 998
 When appeal lies from involuntary nonsuit, 6, 1000
 When appeal or writ of error will not lie, 6, 1001
 When motion must be made, 2, 348
 When writ of error lies, 6, 998
 Disorderly conduct, 7, 5
 Distress, 7, 26
Division of opinion, see DIVISION OF OPINION.

APPEALS, *cont'd.*

Divorce, 2, 33; 7, 132
 Appellant remarrying, 7, 138
 Code states, 7, 132
 Decision, 7, 137
 Effect of death on appeal, 7, 124
 Equity cases, 7, 132
 Final orders, 7, 134
 Indiana, 7, 134
 In general, 7, 132
 Kentucky, 7, 133
 Missouri, 7, 134
 Modification, 7, 137
 Ohio, 7, 133
 Order adjudging husband guilty of contempt, 7, 136
 Order as to children and property, 7, 136
 Order for temporary alimony, 7, 134
 Reversal, 7, 137
 Review of evidence, 7, 136
 Review of evidence where decree is based on findings of trial judge or referee, 7, 137
 Review of evidence where lower court saw and heard the parties and their witnesses, 7, 136
 Review where evidence is conflicting, 7, 137
 Special statutes, 7, 133
 Verdict, 7, 137
 Docket, 2, 361
 Docketing of appeal, 2, 321
 Dower, 2, 46; 7, 207
 Drainage, 7, 218
 Effect of appeal, 2, 323
 Appeal by portion of codefendants, 2, 334
 Appeals from orders affecting injunctions, 2, 326
 By writ of error, 2, 323
 Code procedure, 2, 323
 Execution, 2, 323
 Injunctions, 2, 326
 Interlocutory appeals, 2, 332
 Irregular appeals, 2, 333
 Receivers, 2, 326
 Statutory appeal, 2, 324
 Stay of proceedings, 2, 323, 333
 Supersedeas, 2, 323
 Suspension of judgment, 2, 323, 324
 Technical appeal, 2, 323
 Transference of jurisdiction by appeal, 2, 327
 Trial *de novo*, 2, 327
 Elections, 7, 394
 Reversal, 7, 396
 Review, 7, 395
 Right to appeal, 7, 394
Eminent domain, see EMINENT DOMAIN.

APPEALS, *cont'd.*

- Entitling, 2, 203
- Affidavit, 2, 236
- Entry:
 - Entry of judgment as waiver of right, 2, 180
 - Notice of entry under code procedure, 2, 250
 - Nunc pro tunc*, 2, 250
 - Time of taking appeal, 2, 250
- Entry of appeal, 2, 321
- Entry of judgments:
 - Final judgments, 2, 61
- Equitable causes, 2, 31, 64
 - Decision of equitable nature, 2, 30
- Finality of decree, 2, 64, 88
 - Accounting, 2, 67, 70
 - Collateral decrees, 2, 70
 - Decisions on relief demanded, 2, 66
 - Decrees affecting transfer of property, 2, 71
 - Decrees ordering references, 2, 68
 - Divorces, 2, 68, 72
 - Double appeals, 2, 71
 - In general, 2, 64
 - Interlocutory decree, 2, 66, 69, 88
 - Must decide controversy, 2, 67
- Question of fact, 2, 402
- Error, *see infra*, Reversible errors.
- Error, assignment of, *see* ASSIGNMENT OF ERROR.
- Error, writ of, *see* ERROR, WRIT OF.
- Escape:
 - Dismissal of appeal, 2, 337
 - Effect on pending appeal, 7, 294
 - Case decided without knowledge of escape, 7, 925
 - Conditional dismissal, 7, 927
 - Dismissal of appeal, 7, 925
 - Dismissal without notice to plaintiff or attorney, 7, 926
 - In general, 7, 924
 - Return or recapture before dismissal, 7, 927
 - Summary dismissal, 7, 925
 - Waiver of right of appeal, 2, 182
- Estoppel, 2, 246, 516
 - Error occurring through consent of appellant, 2, 516
 - Estoppel to complain of error, 2, 516
 - Failure to object, 2, 518
 - Instruction given at appellant's request, 2, 523
 - Invited error, 2, 519
 - Judgment by consent, 2, 516
 - Obtaining admission or exclusion of testimony, 2, 522

APPEALS, *cont'd.*

- Estoppel, *cont'd.*
 - Recognized validity of error, 2, 517
 - Request of court, 2, 519
- Evidence (*see infra*, Questions of law and fact: Reversible errors):
 - Admissibility of evidence, 2, 471
 - Omission of evidence from the record, 2, 441
 - Presumption as to evidence, 2, 471
 - Transcript on appeal, 2, 268
- Examination of parties before trial, 8, 67
 - Harmless error, 8, 69
 - Objections not raised below, 8, 69
 - Order directing examination over objections, 8, 68
 - Other orders touching the subject, 8, 68
 - Review of order granting examination or vacating such order, 8, 67
 - Setting aside default judgment, 8, 68
- Examination of the case on appeal, 2, 361
- Examination of witnesses:
 - Leading questions, 8, 84
- Exceptions and objections, *see* EXCEPTIONS AND OBJECTIONS.
- Executions, 2, 55
 - Decisions affecting executions, 2, 142
 - Effect of appeal, 2, 323
 - Motion to quash execution, 2, 367
 - Waiver of right of appeal, 2, 178
- Executions against the body and arrest in civil cases:
 - Motion to vacate order of arrest, 8, 619
- Executors and administrators:
 - Appeals by, 2, 158, 165, 171
 - Right to take appeal, 2, 197
- Exhibits:
 - Transcript on appeal, 2, 264
- Extension of time, 2, 244, 247
 - Filing transcript, 2, 279
- Facts, question of, 2, 27
- Favorable errors (*see infra*, Reversible errors), 2, 527
- Federal questions, 2, 38
- Fees:
 - As to preliminary payment of fees, see infra*, Preliminary payment of fees.
- Fictitious suit, 2, 160
 - Dismissal of appeal, 2, 341

APPEALS, *cont'd.*

Filing (see *infra*, Transcript on appeal):

Notice of filing, 2, 229

Presumptions, 2, 464

Final judgments and decrees, see FINAL

JUDGMENTS AND DECREES.

Findings, 2, 396, 486

Assumption as to facts, 2, 492

Beneficial error, 2, 585

Conclusions of law, 2, 492

Error in findings, 2, 584

General findings, 2, 491

Harmless error, 2, 584

Immaterial issue, 2, 585

In general, 2, 396, 486

Interlocutory, 2, 82

Omission of findings, 2, 489

Presumption of correctness, 2, 486

Referee, 2, 489

Reversible error, 2, 584, 585

Special findings, 2, 488, 491

Ultimate conclusion right, 2, 585

Waiver, 2, 491

When record contains evidence, 2, 489

Where no finding is made, 2, 489

Fines and costs in criminal cases, see

FINES AND COSTS IN CRIMINAL CASES.

Folioing papers, 9, 18

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Formal requisites to transfer of cause, 2, 203

Forma pauperis, see FORMA PAUPERIS.

Former appeal, see *infra*, Parties to appellate proceedings.

Forthcoming and delivery bonds:

Judgment on forthcoming bond, 9, 671

Franchises, 2, 43

Freehold, 2, 44, 47

Friendly suits, 9, 722

Friend of court, 2, 159

Frivolous appeal, 2, 363

Garnishment, see GARNISHMENT.

Guardians, see GUARDIANS.

Guardians ad litem, 10, 628

Questions as to appointment of guardian *ad litem* on appeal, 10, 731

Taking the appeal, 10, 729

Guardians and wards:

Final judgments, 2, 59

Habeas corpus, 2, 35, 127, 147

Review by appellate habeas corpus, 9, 1084

Review by writ of error or appeal, 9, 1072

Appellate practice and procedure, 9, 1081

APPEALS, *cont'd.*

Habeas corpus, *cont'd.*

Review by writ of error or appeal, *cont'd.*

Death of party pending appeal, 9, 1084

Exceptions and objections, 9, 1080

General appellate regulations, 9, 1079

Independent of statutory provisions, 9, 1072

Parties entitled to appeal or error, 9, 1081

Party regaining liberty pending appeal, 9, 1084

State courts, 9, 1072

Statement of facts, 9, 1079

Status of party not affected by determination, 9, 1083

Statutory provisions, 9, 1072

Supersedeas and stay of proceedings, 9, 1080

Transcript, 9, 1079

Trial and examination, 9, 1082

United States courts, 9, 1074

Harmless error, see *infra*, Reversible errors.

Highways, see STREETS AND HIGHWAYS.

Homestead, 2, 45

Homicide, 10, 188

Erroneous admission or rejection of evidence, 10, 189

Errors not noticed below, 10, 189

Manner of allowance, 10, 188

Sufficiency and weight of evidence, 10, 189

What judgment appealable, 10, 189

What questions considered, 10, 189

Husband and wife:

Joinder, 2, 195

Importance, see *infra*, Certificate of importance.

Infants, 2, 31, 55; 10, 729

Appeal bond, 10, 730

Before or after majority, 10, 730

Certiorari, 10, 731

Error in regard to appointment of guardian *ad litem*, 10, 731

Guardians *ad litem*, 10, 729

Infant prosecuting in his own name, 10, 729

Joinder, 2, 184

Next friend, 10, 730

Parties, 10, 731

Presumptions, 10, 733

Questions as to appointment of guardian *ad litem*, 10, 731

APPEALS, *cont'd.*

Infants, *cont'd.*

- Sale of infant's real estate, 10, 819, 839
- Service of process, 10, 733
- Taking the appeal, 10, 729
- What the record must show, 10, 732

Injunctions, 2, 46

- Decisions affecting injunctions, 2, 123
 - Discretion, 2, 123
 - Final decree, 2, 125
 - In general, 2, 123
 - Injunction bond, 2, 126
 - Orders for accounting, 2, 127
 - Statutory construction, 2, 125
 - When bill seeks no other relief, 2, 124
- Discretion of court, 2, 415
- Dissolution of injunction, 2, 326
- Effect of appeal, 2, 326

Insane persons, see INSANE PERSONS.

Insolvency and bankruptcy, 2, 201

- Assignee in bankruptcy, 2, 201
- Final judgments, 2, 57
- Substitution, 2, 201

Instructions (see INSTRUCTIONS), 2, 477

- Abstract charge, 2, 575
- Assumption of facts, 2, 573, 576
- Burden on appellant, 2, 483
- Charges of excessive length, 2, 481
- Charge to be reviewed as a whole, 2, 577
- Comment on the evidence, 2, 574
- Conflicting instructions, 2, 571
- Considered as a whole, 2, 479
- Contradictory instructions, 2, 579; 11, 150
- Criminal cases, 2, 570
- Erroneous definitions, 2, 575
- Erroneous instruction not affecting controverted issues, 2, 571
- Error cured by further instructions, 2, 577
- Error in detached phrase, 2, 578
- Error in giving or refusing instructions, 2, 567
- Error though verdict is manifestly correct, 2, 567
- Exceptions, 2, 480
- Expression of opinion, 2, 573
- Favorable to appellant, 2, 572
- Followed by jury, 2, 481
- Harmless error, 2, 567, 575
- Inadvertent errors, 2, 578
- Inconsistent instructions, 2, 579
- In general, 2, 477
- Instruction given at appellant's request, 2, 523
- Instruction not applicable, 2, 584
- Jury not misled, 2, 572

APPEALS, *cont'd.*

Instructions, *cont'd.*

- Prejudicial error, 2, 575
- Prejudicial to appellant, 2, 571
- Presumption of correctness, 2, 477
- Presumptions on appeal, 11, 136
- Presumption that the instructions are based on the evidence, 2, 484
- Record not containing whole charge, 2, 485
- Refusal to charge, 2, 580
- Refusal to instruct on immaterial matters, 2, 582
- Refused request, 2, 485
- Request of charge made by both parties, 2, 525
- Statements of charge, 2, 482
- Subsequent instruction calls attention to erroneous instruction, 2, 579
- Transcript on appeal, 2, 268
- Vague instructions, 2, 584
- Verdict manifestly correct, 2, 582
- Waiver of evidence from instructions of jury, 2, 560
- Weight of evidence, 2, 576
- Where record does not contain all instructions, 2, 482
- Interest, appealable, 2, 160
- Interlocutory appeals, 2, 332
- Jurisdiction, 2, 332
- Proceed with main cause, 2, 332
- Res adjudicata*, 2, 332, 381
- Interlocutory decisions, see FINAL JUDGMENTS AND DECREES.*
- Interlocutory judgments and decrees, 2, 369
- Notice of appeal, 2, 220
- Interpretation, see infra*, Construction of statutory right of appeal.
- Intervention, 2, 154; 11, 511
 - After final judgment, 2, 156
 - Appeal from order refusing leave, 11, 505
 - Appeal from what judgments or orders, 2, 155
 - Intervention subsequent to decree, 2, 156
 - Who may appeal, 2, 154
 - Who may intervene, 2, 155
- Invited error (see *infra*, Reversible errors), 2, 519
- Issues to the jury, see ISSUES TO THE JURY.*
- Joinder of counts and causes:
 - Joinder of good and bad counts, 2, 465
 - Misjoinder of counts, 2, 465
- Joinder of parties, see infra*, Joint parties.

APPEALS, *cont'd.*

- Joint parties, 2, 182
 - Action to review judgment, 2, 195
 - Appeal from justice's court, 2, 196
 - Assignee of coparty after judgment, 2, 196
 - Code practice, 2, 186
 - Coparties notified, 2, 190
 - Coparty not affected, 2, 191
 - Dismissal on failure to join, 2, 194
 - Distinct and separate interest, 2, 188
 - Equity practice as to summons and severance, 2, 186
 - General rule, 2, 182
 - Husband and wife, 2, 195
 - Infants, 2, 184
 - Involuntary joinder, 2, 185
 - Joinder of necessary parties jurisdictional, 2, 192
 - Joinder of summons and severance, 2, 186
 - Jurisdiction, 2, 192
 - Parties not joining not appellants, 2, 195
 - Parties not united in interest, 2, 189
 - Probate proceedings, 2, 196
 - Reason of rule, 2, 185
 - Records, 2, 190
 - Service of notification of appeal, 2, 192
 - Severance, 2, 185
 - Statutory coparties, 2, 190
 - Statutory notification, 2, 189
 - Summons and severance, 2, 185, 192
 - Test of interest, 2, 190
 - Voluntary appearance, 2, 195
 - When one joint party may appeal alone, 2, 186
 - When separate interests may appeal jointly, 2, 189
 - Who a necessary party, 2, 190
 - Who must be joined, 2, 182
 - Who must be joined as appellees, 2, 192
 - Writ of error, 2, 185
- Judgment roll, 2, 366, 367
- Judgments (see *infra*, Appealable judgments and orders; Correction of judgments; Dismissal, discontinuance, and nonsuit; and see FINAL JUDGMENTS AND DECREES; JUDGMENTS):
 - Appellant's favor, 2, 27
 - Effect of appeal, 2, 324
 - Entry of judgment, 2, 31
 - Judgment by confession, 11, 1018

APPEALS, *cont'd.*

- Judgments, *cont'd.*
 - Judgments by consent (see *infra*, Consent, judgments by):
 - Judgments on pleadings, 2, 113
 - Number of judges, 2, 12
 - Judgments on appeal*, see JUDGMENTS.
- Judicial sales:
 - Appeal by purchaser at judicial sale, 2, 166
 - Order of sale, 2, 367
 - Orders setting aside judicial sales, 2, 110
- Jurisdiction, 2, 11
 - Abstracts, 2, 315
 - Action involving liens, 2, 49
 - Appropriate method of review, 2, 26
 - By whom appellate jurisdiction decided, 2, 24
 - Certificate from intermediate court, 2, 51
 - Certificate of importance, 2, 208
 - Certiorari, 2, 33
 - Chambers, 2, 26
 - Chancery appeal, 2, 31
 - Complaint to review judgment, 2, 35
 - Constitutional court of last resort, 2, 11
 - Constitutionality of statutes, 2, 40
 - Constitutional question, 2, 40
 - Constitutional right of appeal, 2, 13
 - Construction of statutory right of appeal, 2, 20
 - Continuation of original suit, 2, 35
 - Creation of court of last resort, 2, 11
 - Definition, 2, 11
 - Dismissal by intermediate court, 2, 51
 - Dismissal of appeal, 2, 345
 - Entry of appeal by consent, 2, 25
 - Extent of jurisdiction, 2, 24
 - Franchises, 2, 43
 - Incompetent person, 2, 31
 - Inherent power of appellate tribunals, 2, 12
 - Interlocutory appeals, 2, 332
 - Intermediate appellate courts, 2, 36, 40
 - Joinder of necessary parties, 2, 192
 - Judicial action only appealable, 2, 25
 - Jurisdictional questions, 2, 40
 - Jurisdiction by consent, 2, 24
 - Legality of tribunal, 2, 26
 - Loss of right, 2, 31
 - No jurisdiction of court below, 2, 23

APPEALS, *cont'd.*

- Jurisdiction, *cont'd.*
 - Number of judges, 2, 12
 - Presumption as to jurisdiction, 2, 21, 448
 - Courts exercising special statutory authority, 2, 452
 - Courts of general jurisdiction, 2, 448
 - Courts of inferior jurisdiction, 2, 450
 - Notice of proceedings before quasi-judicial board, 2, 453
 - Presumption as to service, 2, 453
 - Question affecting title, 2, 44
 - Record, 2, 438
 - Revenue involved, 2, 43
 - Right of appeal, 2, 13
 - Rules of court, 2, 12
 - Service of notice of appeal, 2, 210
 - Special jurisdiction, 2, 22
 - State as a party, 2, 42, 43
 - Statutes of limitations, 2, 239
 - Statutory right of appeal, 2, 15
 - Time for filing transcript, 2, 277
 - Transcript on appeal, 2, 265
 - Transference of jurisdiction by appeal, 2, 327
 - Amendment of record, 2, 331
 - Collateral proceedings, 2, 330
 - In general, 2, 327
 - Property in controversy, 2, 331
 - Release of lien, 2, 331
 - Subsequent proceedings, 2, 328
 - Trial court, 2, 23, 36
 - United States supreme court, 2, 38
 - Vacation, 2, 26
 - Where there is no jurisdiction below, 2, 23
 - Writ of error, 2, 26
- Jurisdiction of person, 2, 453
- Jury, see JURY.*
- Issues to the jury, see ISSUES TO THE JURY.*
- Justices of the peace, see JUSTICES OF THE PEACE.*
- Laches, 12, 840
- Landlord and tenant:
 - Summary proceedings, 12, 900
- Liens, 2, 46, 48, 49
 - Release of lien, 2, 331
- Limitations (*see infra*, Time for taking appeal), 2, 36; 13, 187, 269
 - Equity, 13, 270
 - Objections raised below, 13, 269
 - When complaint shows bar, 13, 270

APPEALS, *cont'd.*

- Local improvements, 13, 320
- Bond, 13, 332
- Discretion, 13, 331
- Effect, 13, 328
- Immaterial irregularities, 13, 331
- In general, 13, 320
- Issues involved, 13, 329
- Issues of lower tribunal, 13, 331
- Joint or several appeals, 13, 326
- Judgment, 13, 332
- Notice, 13, 326
- Time, 13, 327
- To what court, 13, 322
- To whom, 13, 324
- Trial *de novo*, 13, 330
- Waiver of appeal, 13, 332
- Loss of right, 2, 17
- Mandamus, 2, 47, 122; 13, 570, 823
 - Affirmance in part, 13, 831
 - Alternative mandamus, 13, 827
 - Amount in controversy, 13, 826
 - Appealable judgments and orders, 13, 823, 826
 - Bills of exceptions, 13, 576, 829
 - Contempt proceedings, 13, 831
 - Costs, 13, 828
 - Dismissal, 13, 832
 - Final orders, 13, 826
 - Harmless errors, 13, 830
 - In matters relating to appeal, 13, 570
 - Judgment, 13, 831
 - Mandamus instead of appeal or error, 13, 530
 - In general, 13, 530
 - When appeal or error inadequate, 13, 533
 - Motion for new trial, 13, 829
 - Objections not raised below, 13, 829
 - Order granting or refusing alternative mandamus, 13, 827
 - Order refusing peremptory mandamus, 13, 827
 - Peremptory mandamus, 13, 827
 - Peremptory writ awarded, 13, 831
 - Presumptions on appeal, 13, 830
 - Procedure, 13, 829
 - Review, 13, 829
 - Stay of proceedings, 13, 586
 - Strangers, 13, 828
 - Successors in office, 13, 828
 - Supersedeas, 13, 586
 - Supersedeas and stay, 13, 833
 - To compel appeal, 2, 21
 - To dismiss appeal, 13, 574
 - To entertain appeal, 13, 574
 - To grant appeal, 13, 570
 - Appeal a matter of discretion, 13, 572
 - Appeal and mandamus confused, 13, 571

APPEALS, *cont'd.*

Mandamus, *cont'd.*

To grant appeal, *cont'd.*

- Appeal unavailing, 13, 572
- Defects in application for appeal, 13, 572
- In general, 13, 570
- Irreparable injury, 13, 573
- Justice's court, 13, 571
- When no right to appeal, 13, 571

- When right to appeal not perfected, 13, 573

To perfect appeal, 13, 573

- Effect of laches, 13, 574
- Performance of necessary acts compelled, 13, 573

To reinstate appeal, 13, 573

Trial *de novo*, 13, 829

United States supreme court, 13, 824

When appeal lies, 13, 823

Who may appeal, 13, 828

Writ of error, 13, 826

Mandate, see MANDATE.

Mechanics' liens, see MECHANICS' LIENS.

Merger, 2, 202

Mills and milldams, 14, 14

Ministerial duties, 2, 25

Motions, see MOTIONS; and see *infra*, Dismissal, discontinuance, and nonsuit.

Multifariousness:

- Objection cannot be raised on appeal, 14, 208

Negligence, 2, 406

- Filing transcript in time, 2, 276, 280

- Officials, 2, 246, 345

New trial, see NEW TRIAL.

Next friend, 2, 159; 14, 1058

By whom taken, 14, 1058

- Failure to appoint or irregular appointment as raised on motion for new trial, 14, 1020

- Ordinary presumptions and rules of decision, 14, 1059

- Time of taking, 14, 1059

Nominal damages, 2, 535

***Non compos mentis*, 2, 31**

Nonresident defendants, 2, 157

***Nonsuit*, see *infra*, Dismissal, discontinuance, and nonsuit.**

Notice (see APPEAL BONDS AND UNDERTAKINGS):

- Jurisdiction, 2, 192

- Proceedings before quasi-judicial board, 2, 453

- Statutory notice of appeal, 2, 209, 213

- Acknowledgment of service, 2, 227

APPEALS, *cont'd.*

Notice, *cont'd.*

Statutory notice of appeal, *cont'd.*

- Affidavit of service, 2, 228

- Amendment of notice, 2, 231

- Amendment of return, 2, 229

- By whom service may be made, 2, 220

- Construction of notice, 2, 216

- Description of judgment, 2, 217

- Dismissal for obscurity, 2, 218

- Filing, 2, 229

- General requisite, 2, 213

- How service may be made, 2, 221

- Interlocutory judgments, 2, 220

- Orders, 2, 220

- Personal service, 2, 221

- Proof of service, 2, 227

- Publication, 2, 225

- Return of officer, 2, 228

- Service by publication, 2, 225

- Service on adverse party, 2, 222

- Service on attorney of record, 2, 222

- Service on clerk, 2, 224

- Service on corporations, 2, 224

- Service on deputy, 2, 225

- Service where more than one attorney, 2, 223

- Several appellants, 2, 220

- Signature, 2, 214

- Signature by attorney not of record, 2, 215

- Special appearance waiver, 2, 234

- Specification of errors required, 2, 217

- Strict compliance with statute, 2, 213

- Substitution of attorneys, 2, 215, 223

- Waiver of defects by general appearance, 2, 231

- Waiver of defects by joinder in error, 2, 232

- Waiver of defects in notice, 2, 231

- Waiver of objection to order of publication, 2, 227

- What it must specify, 2, 214

- What may be embraced in notice, 2, 219

- What record must show, 2, 230

- Where judgments distinct, 2, 220

- Where signature not required, 2, 215

- Writing, 2, 213

APPEALS, *cont'd.*Notice, *cont'd.*

Statutory notification of appeal
to codefendants, 2, 189

Transcript on appeal, 2, 266

Notice of motion to dismiss, 2, 348

Nuisances, see NUISANCES.

Nunc pro tunc, 2, 246

Entry *nunc pro tunc*, 2, 250

Obiter dicta, 2, 371

Objections, see EXCEPTIONS AND OBJECTIONS.

Official bonds:

Partial official bonds, 2, 145

Open and close, 15, 198

Whether denial of right reversible error, 15, 200

Opening, amending, and vacating judgments:

Amendment or correction on appeal, 15, 228

Appeal from decision on application, 15, 298

Cannot be used to extend time for appeal from judgment, 15, 300

General rule as to review, 15, 300

When appeal lies, 15, 298

Not substitute for appeal, 15, 213, 217

Opinions of courts, 15, 311

Examination of opinion by appellate court, 15, 311

State courts, 15, 311

United States courts, 15, 313

Order of proof:

Discretion of court not reviewable, 15, 385

Orders (see *infra*, Appealable judgments and orders; Dismissal, discontinuance, and nonsuit), 2, 16

Appeal from portion of decision, 2, 96

Appeal or motion to vacate orders, 15, 356

Appellate review of orders, 15, 372

Ex parte orders, 2, 96

Final orders, 2, 72

Notice of appeal, 2, 220

Presumption in favor of, 2, 447

Transcript on appeal, 2, 267, 269

Unappealable causes, 2, 96

Waiver of right of appeal, 2, 181

Ordinances, see ORDINANCES.

Parol evidence:

Records, 2, 298, 299, 300

Partial appeal, 2, 96

Parties to appellate proceedings (see *infra*, Joint parties, and see SUBSTITUTION OF PARTIES), 2, 151

APPEALS, *cont'd.*Parties to appellate proceedings, *con.*

Actual controversy must exist, 2, 160

Aggrieved, 2, 170

Amicus curia, 2, 159

Appealable interest, 2, 160

Appellant must be party to judgment, 2, 159

By quasi-judicial boards, 2, 171

Claimants of fund, 2, 162

Constructive party, 2, 160

Creditor, 2, 152

Definition of appealable interest, 2, 161

Distributors of funds, 2, 164

Entitling case, 2, 203

Executors and administrators, 2, 152, 158, 165, 171

Former appeal, 2, 151

Heirs, 2, 152

In general, 2, 151

Intervenors, 2, 154

Intervention after final judgment, 2, 156

Intervention subsequent to decree, 2, 156

Next friend, 2, 159

Nonresident defendants, 2, 157

Parties failing to appeal, 2, 157

Party or person aggrieved, see *infra*, Aggrieved party.

Presumptions, 2, 461

Privity, 2, 152

Purchasers of judicial sale, 2, 166

Quasi-parties, 2, 164

Record, 2, 151, 203

Representative parties, 2, 158

Subsequent conveyance of interest, 2, 166

Successful party, 2, 157

Waiver of right of appeal, see *infra*, Waiver of right of appeal.

Whether all parties may appeal, 2, 156

Who are in privity, 2, 152

Partition, 2, 45, 144

Partnership, see PARTNERSHIP.

Party aggrieved, see *infra*, Aggrieved party.

Patents, see PATENTS.

Payment of judgment by appellant, 2, 181

Payments:

Waiver of right of appeal, 2, 174

Perfection of appeal, 2, 238

Person aggrieved, see *infra*, Aggrieved party.

Petition for appeal, 2, 205

Pleadings, decisions affecting, 2, 110

Abuse of discretion, 2, 111

Amendments of pleadings, 2, 112

Bill of particulars, 2, 113

APPEALS, *cont'd.*

- Pleadings, decisions affecting, *cont'd.*
 - Judgments on pleadings, 2, 113
 - Orders affecting demurrers, 2, 114
 - Striking out pleadings, 2, 112
 - Supplemental pleadings, 2, 113
- Pleas:
 - Presumption in favor of, 2, 469
- Poor and poor laws*, see POOR AND POOR LAWS.
- Poor debtor acts, 16, 735
 - Charges of fraud, 16, 736
- Portions of judgment, 2, 365
- Prayer for appeal, 2, 203
 - After the term, 2, 205
 - Compliance with order, 2, 206
 - Discretion of court, 2, 206
 - In general, 2, 203
 - Open court, 2, 205
 - Orders granting appeal, 2, 203
 - Petition for appeal, 2, 205
 - Record, 2, 205
 - Reviewal, 2, 206
 - Time, 2, 204, 205
 - When appeal taken, 2, 207
 - When leave to appeal discretionary, 2, 206
- Prejudicial errors*, see *infra*, Reversible errors.
- Preliminary examination, 16, 870
 - Proceedings in the nature of appeal from examination, 16, 870
- Preliminary payment of fees, 2, 318
 - Construction of appeal bonds, 2, 321
 - Construction of statutory requirements, 2, 319
 - Criminal cases, 2, 320
 - Dismissal, 2, 320
 - In general, 2, 318
 - Payment shown by record, 2, 321
 - Statutory, 2, 318
- Presumptions on appeal, 2, 420
 - Abstract, 2, 440
 - Abstract of record, 2, 315
 - Additional abstract of record, 2, 317
 - Admissibility of evidence, 2, 471
 - Amendments, 2, 468
 - Assumption of fact, 2, 431
 - Bill of exceptions, 2, 439
 - Burden of proof, 2, 423, 424
 - Case on appeal, 2, 440
 - Certificate, 2, 440
 - Complaints, 2, 469
 - Conflict in record, 2, 436
 - Construction in favor of validity, 2, 425
 - Contingency, 2, 432
 - Correctness of instruction, 2, 444
 - Correctness of pleadings, 2, 462

APPEALS, *cont'd.*

- Presumptions on appeal, *cont'd.*
 - Courts of general jurisdiction, 2, 448
 - Courts of inferior jurisdiction, 2, 450
 - Criminal cases, 2, 458, 497
 - Depositions, 2, 475
 - Discretion of court, 2, 418
 - Evidence, 2, 471
 - Fact admitted which is essential to establish error, 2, 508
 - Facts constituting judicial error will not be assumed, 2, 427
 - Failure of inferior tribunals, 2, 420, 421
 - Filing pleadings, 2, 464
 - Findings*, see *infra*, Findings.
 - Identity of exhibit, 2, 462
 - Inclusiveness of record, 2, 435
 - Indictments, 2, 471
 - In general, 2, 420
 - Instructions*, see *infra*, Instructions.
 - Issues, 2, 463
 - Joinder of good and bad counts, 2, 465
 - Judgment by default, 2, 456
 - Juries, 2, 459
 - Jurisdiction, 2, 448
 - Jurisdiction of courts exercising special authority, 2, 452
 - Jurisdiction of person, 2, 453
 - Limitations of the rule, 2, 426
 - Misjoinder of counts, 2, 465
 - Motions, 2, 446
 - Notice, 2, 447
 - Notice of proceedings before quasi-judicial board, 2, 453
 - Omission in record, 2, 425
 - Omission of evidence generally, 2, 441
 - Orders, 2, 447
 - Orders granting new trial, 2, 448
 - Organization of courts, 2, 458
 - Parties, 2, 461
 - Pleadings, 2, 462
 - Pleas and answers, 2, 469
 - Presence of prisoner, 2, 498
 - Presumption as to jurisdiction, 2, 448
 - Presumption of fact without proof, 2, 442
 - Presumption on appeal from order of dismissal, 2, 352
 - Presumption that omitted portions of record would sustain judgment, 2, 427
 - Proceedings essential on appeal, 2, 438
 - Questions of law and fact, 2, 408
 - Questions of witness, 2, 475
 - Rebuttal, 2, 423

APPEALS, *cont'd.*

- Presumptions on appeal, *cont'd.*
 - Recitals in judgment or decree, 2, 436
 - Record, 2, 424, 434
 - Referred causes, 2, 497
 - Rejection of evidence, 2, 475
 - Rulings, 2, 444
 - Rulings on demurrer, 2, 466
 - Secundum allegata*, 2, 474
 - Service, 2, 453
 - Striking out pleadings, 2, 464
 - Substituted service, 2, 455
 - Time to prepare transcript, 2, 437
 - To sustain the decision appealed from, 2, 428
 - Truth of record, 2, 434
 - Undertaking, 2, 438
 - Verdicts*, see *infra*, Verdict.
 - Where error is shown, 2, 532
 - Without prejudice, 2, 433
 - Witnesses, 2, 474
- Privilege:
 - Raising question on appeal, 16, 988
- Privity:
 - Who are in privity, 2, 152
- Probable cause*, see CERTIFICATE OF DOUBT.
- Probate and contest of wills*, see PROBATE AND CONTEST OF WILLS.
- Process and summons*, see *infra*, Appellate process; Summons and process.
- Pro confesso*, 2, 100
- Production of documents, 6, 816
- Prohibition*, see PROHIBITION.
- Prosecuting attorneys, 17, 3
- Provisional remedies, 2, 118
- Publication, 2, 225
 - Construction of statute, 2, 226
 - Necessity of personal service, 2, 225
 - Notice by publication, 2, 226
 - Service of notice of appeal, 2, 225
 - Supreme court of the United States, 2, 225
 - Waiver of objection, 2, 227
 - When substituted service may be made, 2, 226
- Public officers*, see PUBLIC OFFICERS.
- Puis darrein continuance*, 17, 269
- Questions of law and fact:
 - Examination of questions of fact, 2, 390
 - Action at law, 3, 390
 - Appeal in equity, 2, 402
 - Bill of exceptions, 2, 399
 - Cause of action, 2, 406
 - Code procedure, 2, 408
 - Construction of written instrument, 2, 407

APPEALS, *cont'd.*

- Questions of law and fact, *cont'd.*
 - Examination of questions of fact, *cont'd.*
 - Controverted questions of fact, 2, 409
 - Credibility of witnesses, 2, 390
 - Criminal cases, 2, 400
 - Damages, 2, 406
 - Equity, 2, 402
 - Evidence, 2, 391
 - Examining evidence in order to support judgment, 2, 408
 - Findings of court, 2, 396
 - Findings of court equal to special verdict, 2, 399
 - Negligence, 2, 406
 - Presumption on appeal from intermediate appellate court, 2, 409
 - Questions for the jury, 2, 390
 - Questions of facts, 2, 27
 - Questions of law, 2, 37
 - Questions of law based on fact, 2, 405
 - Referee's report, 2, 401
 - Refusal to find a fact, 2, 407
 - Rehearing, 2, 385
 - Review of findings of court, 2, 396
 - Uncontroverted facts, 2, 405
 - Verdict, 2, 391, 408
 - When the facts may be examined at law, 2, 404
- Quieting title, 17, 372
- Quorum, 2, 12
- Quo warranto (see QUO WARRANTO), 2, 122
- Railroads*, see RAILROADS.
- Real property:
 - Question affecting mortgage, 2, 46
 - Questions affecting title, 2, 44
- Reasons advanced below, 2, 372
- Receivers*, see RECEIVERS.
- Recitals in judgment or decree, 2, 436
- Recordari*, see RECORDARI.
- Records (see *infra*, Certiorari; Transcript on appeal; and see RECORDS):
 - Affidavit to impeach record, 2, 300
 - Amendment of record, 2, 331
 - Certificate as to fullness, 2, 440
 - Conflict in record, 2, 436
 - Contradiction of record, 2, 299
 - Dismissal of appeal, 2, 337
 - Error, 2, 203

APPEALS, *cont'd.*

Records, *cont'd.*

- Error must appear by the record, 2, 508
- Error not appearing on record, 2, 424
- Error not shown, 2, 294
- Evidence *dehors* the record, 2, 298
- Impeachment, 2, 296, 299
- Judgment by default, 2, 456
- Jurisdiction, 2, 438
- Names of parties, 2, 203
- Notice of appeal, 2, 190, 230
- Omission in record, 2, 425
- Omission of evidence, 2, 441
- Order granting appeal, 2, 205
- Parties, 2, 151
- Presence of prisoner, 2, 498
- Presumption, 2, 425
- Presumption as to truth of record, 2, 434
- Presumption of inclusiveness, 2, 436
- Rehearing, 2, 387
- Reversible errors, 2, 500
- Scope of review, 2, 363
- Service of process, 2, 453
- Time of taking appeal, 2, 257
- Transcript on appeal, 2, 266
- What the record must show, 2, 203

References, see REFERENCES.

Referred cause, 2, 497

Rehearing, see REHEARING; and see *infra*, Second appeal.

Reinstatement, 2, 358

- Appeal from order, 2, 360
- In general, 2, 358
- Lack of prosecution, 2, 358
- Motion, 2, 359
- Suspension of appeal, 2, 360
- Time, 2, 359

Remands, 2, 98

Remittitur, see REMITTITUR.

Removal of causes, see REMOVAL OF CAUSES.

Rendition of judgment:

- When judgment is rendered, 2, 249

Replevin, see REPLEVIN.

Report and case made, see REPORT AND CASE MADE.

Res adjudicata, 2, 354, 355

- Application of *res adjudicata* to appeal on the decision, 2, 373
- Error on prior decisions, 2, 379
- Implied adjudication, 2, 380
- Interlocutory appeals, 2, 332, 381
- Law of the case, 2, 373
- Second appeal, 2, 373
- Unnecessary questions, 2, 381

APPEALS, *cont'd.*

Residents:

Defendants, 2, 157

Restitution, see RESTITUTION.

Returns:

Service of notice of appeal, 2, 228

Revenue laws, 2, 43

Reversals, 2, 98

Reversible errors, 2, 499

- Abstract charge, 2, 575
- Admission of evidence, 2, 550
- Admitted facts, 2, 558
- Affecting substantial rights, 2, 500
- Affirmance where there is no error, 2, 506
- Amendments, 2, 545
- Answer, 2, 548
- Appearance waived, 2, 543
- Argument of counsel, 2, 539
- Assumption of facts, 2, 576
- Both parties request same erroneous instruction, 2, 526
- Challenge for cause, 2, 541
- Clearly misleading instructions, 2, 578
- Complaint, 2, 543
- Conceded facts, 2, 553
- Contradictory instruction, 2, 579
- Coparty, 2, 515
- Credibility of witnesses, 2, 577
- Cross-examination, 2, 555
- Cross-examination in respect to illegal evidence, 2, 523
- Cumulative evidence, 2, 557
- Cured by subsequent instruction, 2, 579
- Defendant's pleading, 2, 544
- Demurrer to evidence, 2, 559
- Erroneous definition, 2, 575
- Erroneous instruction in favor of appellant, 2, 572
- Erroneous instructions not affecting issue, 2, 570
- Error affecting evidence, 2, 549
- Error affecting one count, 2, 545
- Error cured, 2, 548, 559
- Error cured by further instruction, 2, 577
- Error favorable to appellant, 2, 525, 527
- Error in a detached phrase, 2, 578
- Error in admission of evidence, 2, 550
- Error in findings, 2, 584
- Error in pleadings, 2, 542
- Error in refusing or giving instructions, 2, 567
- Error in verdicts, 2, 586
- Error not affecting final result, 2, 552

APPEALS, *cont'd.*

- Reversible errors, *cont'd.*
 - Error not available on appeal, 2, 516
 - Error of calculation, 2, 534
 - Error of judgment, 2, 534
 - Error, reason of, 2, 499
 - Errors affecting only coparty, 2, 515
 - Error should appear on record, 2, 508
 - Errors occurring on the trial, 2, 537
 - Estoppel of complaint, 2, 516
 - Evidence, 2, 522, 549, 567
 - Evidence by agreement, 2, 555
 - Evidence only affecting immaterial issues, 2, 553
 - Excluding facts, 2, 577
 - Exclusion of evidence, 2, 562
 - Failure to object, 2, 519
 - Formal errors, 2, 500
 - Harmless errors, 2, 500, 537
 - Illustrations of reversible error, 2, 539
 - Improper submission of issues to jury, 2, 576
 - Inadvertent error of instruction, 2, 579
 - Instructions, 2, 523
 - Instructions at request of appellant, 2, 523
 - Instructions not prejudicial, 2, 571
 - Instructions on matter in evidence, 2, 577
 - Invited error, 2, 519
 - Irrelevant evidence, 2, 553
 - Judgment by consent, 2, 516
 - Jury, 2, 540
 - Leading questions, 2, 566
 - Misconduct of jury, 2, 541
 - Must be prejudicial, 2, 499
 - Nominal damages, 2, 535
 - Nonsuit, 2, 536
 - Notice of harmless error, 2, 538
 - Not responsive to issue, 2, 537
 - Overruling demurrers, 2, 547
 - Party cannot take advantage of his own wrong, 2, 519
 - Party's own error, 2, 519
 - Prejudice removed by further testimony, 2, 556
 - Prejudicial error in evidence, 2, 555
 - Presumption of regularity, 2, 513
 - Presumptions where error is shown, 2, 532
 - Questions erroneously allowed, 2, 565
 - Refusal to charge, 2, 580
 - Remittitur, 2, 560

APPEALS, *cont'd.*

- Reversible errors, *cont'd.*
 - Rulings given at party's own request, 2, 519
 - Rulings on demurrer, 2, 546
 - Separation of jury, 2, 542
 - Sustaining demurrer, 2, 546
 - Technical errors, 2, 500, 534
 - Testimony excluded or admitted at party's request, 2, 522
 - Trifling errors, 2, 534
 - Vague instruction, 2, 577
 - Variance, 2, 536
 - Verdict manifestly correct, 2, 582
 - Waiver of error to excluded evidence, 2, 565
 - Waiver of objection to evidence, 2, 555
 - What is meant by error, 2, 499
 - Who may allege error, 2, 514
 - Withdrawal of evidence, 2, 560
 - Withdrawing evidence from consideration of jury, 2, 561
 - Withholding issues, 2, 577
- Review (see **BILLS OF REVIEW; REVIEW**), 18, 1050
- Review of exercise of discretionary power*, see *infra*, Discretion of court.
- Rewards, 18, 1162
- Right of appeal (see *infra*, Construction of statutory right of appeal; Parties to appellate proceedings; Waiver of right of appeal), 2, 13
- Incompetent persons, 2, 31
- Legislative control of statutory right, 2, 19
- Loss of right, 2, 17, 31
- Right of property, trial of, 18, 1194
- Rules of court, 2, 12, 14; 18, 1254
- Dismissal of appeal, 2, 338
- Rulings:
 - Presumption in favor of, 2, 444, 466, 477
- Sales*, see **SALES**.
- Satisfaction and discharge of judgments, 19, 137
- Effect and right of appeal*, see **SATISFACTION AND DISCHARGE OF JUDGMENTS**.
- Set-off of judgment against judgment, 19, 163
- Vacating satisfaction, 19, 145
- Satisfaction performed, 2, 47
- Scandal and impertinence*, see **SCANDAL AND IMPERTINENCE**.
- Scire facias (see **SCIRE FACIAS**):
 - Death of parties, 2, 200
- Scope of review, 2, 363
- Collateral matters, 2, 368
- Costs, 2, 369

APPEALS, *cont'd.*

- Scope of review, *cont'd.*
 - Error apparent on the judgment roll, 2, 366
 - Interlocutory decree, 2, 369
 - Judgment on pleadings, 2, 371
 - Judgment rolls, 2, 366, 367
 - Motion to quash execution, 2, 367
 - Order of sale, 2, 367
 - Portion of judgment, 2, 365
 - Question of legal existence of trial court, 2, 370
 - Reasons advanced below, 2, 372
 - Record, 2, 363
 - Subsequent order, 2, 366
 - Void judgments, 2, 370
 - What is brought up by appeal, 2, 364

Seals:

- Transcript, 2, 283
- Second appeal, 2, 255, 354, 355, 373
- Abandonment of appeal, 2, 356
- Appellate court reviewing its own decisions, 2, 373
- Co-ordinate appellate courts, 2, 356
- Decisions at law or in equity, 2, 379
- Dismissal, 2, 354
- Dismissal on technical grounds, 2, 357
- Election of tribunal, 2, 356
- Error in prior decision, 2, 379
- Implied adjudication, 2, 380
- In general, 2, 355
- Interlocutory appeals, 2, 381
- Law of the case, 2, 373
- Limitation of action, 2, 255
- Question on second appeal, 2, 378
- Res adjudicata*, 2, 355, 373
- Subsequent proceedings in trial court, 2, 378
- Unnecessary questions, 2, 381
- Where a different state of facts is presented, 2, 379
- Where appellee differed, 2, 374
- Who is bound, 2, 380
- Withdrawal of first appeal, 2, 358

Sentence, see SENTENCE.

Sequestration, see SEQUESTRATION.

- Service of process (see *infra*, Appellate process; Notice), 2, 453
- Judgment by default, 2, 456
- Presumption as to service, 2, 453
- Record, 2, 456
- Substituted service, 2, 455
- Transcript of record, 2, 291

Service on clerks:

- Service of appeal, 2, 224

APPEALS, *cont'd.*

- Set-off, recoupment, and counter-claim, 19, 816
- Amendments, 19, 780
- Appellate courts, 19, 728
 - Amount in controversy, 19, 728
 - When trial is *de novo*, 19, 728
- From ruling on demurrer, 19, 817
- In general, 19, 816
- Objections taken for first time on appeal, 19, 818
- Settlement*, see CASE MADE ON APPEAL; STATEMENT OF FACTS ON APPEAL.
- Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.
- Severance, 2, 185
 - Code practice, 2, 186
 - Equity, 2, 186
 - Jurisdiction, 2, 192
 - Summons and severance, 2, 185
- Sham and frivolous pleadings*, see SHAM AND FRIVOLOUS PLEADINGS.
- Sheriffs and constables, 20, 179
- Signature of judgments, 2, 62
- Special interrogatories to juries*, see SPECIAL INTERROGATORIES TO JURIES.
- Special jurisdiction, 2, 21
- Specific performance*, see SPECIFIC PERFORMANCE.
- Stare decisis*, 2, 381
- State:
 - State of party, 2, 42
- Statement of facts on appeal*, see STATEMENT OF FACTS ON APPEAL.
- Statement of case on appeal*, see CASE MADE ON APPEAL.
- Statutes:
 - Construction of statutes allowing appeals from interlocutory appeals, 2, 89
 - Construction of statutory right of appeal, 2, 20
 - Effect of statutory appeal, 2, 18
 - Legislative control of statutory right, 2, 19
 - Regulation by statutes, 2, 16
 - Right of appeal, 2, 15
 - Strict compliance, 2, 16
- Statutes of limitations*, see *infra*, Time for taking appeal.
- Statutory appeal:
 - Construction, 2, 324
- Stipulations:
 - Amendments of record, 2, 304
 - Transcript on appeal, 2, 267
 - Waiver of right of appeal, 2, 173
- Street railways*, see STREET RAILWAYS.

APPEALS, *cont'd.*

- Streets and highways*, see **STREETS AND HIGHWAYS**.
- Strike from docket, 2, 352
- Striking out pleadings, 2, 464
- Subrogation, 2, 33, 142
- Substitution of attorneys:
 - Service of notice of appeal, 2, 221
 - Signature of notice of appeal, 2, 215
- Substitution of parties*, see **SUBSTITUTION OF PARTIES**.
- Successful party, 2, 157
- Successive appeals*, see *infra*, **Second appeal**.
- Summary proceedings, 2, 93
- Summons and process (see *infra*, **Appellate process**), 2, 185
 - Death of parties, 2, 200
 - Jurisdiction, 2, 192
 - Transcript on appeal, 2, 261
- Sunday, 2, 256
 - Transcript on appeal, 2, 278
- Supersedeas and stay of proceedings, 2, 323, 333
- Supplemental pleadings*, see **SUPPLEMENTAL PLEADINGS**.
- Supplementary proceedings*, see **SUPPLEMENTARY PROCEEDINGS**.
- Surplusage, irrelevant or redundant matter*, see **SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER**.
- Suspension of appeal, 2, 360
- Taxation*, see **TAXATION**.
- Tax deeds, 2, 46
- Technical errors*, see *infra*, **Reversible errors**.
- Tender:
 - Effect of tender on right to appeal, 21, 585
 - Tendering back the money paid, 2, 177
- Term, 2, 420
- Terms and sessions of court*, see **TERMS AND SESSIONS OF COURT**.
- Theory of the case*, see **THEORY OF THE CASE**.
- Time:
 - Extension of time by the legislature, 2, 19
 - Time, computation of, 2, 256
 - Time for filing transcript, 2, 276
 - Time for taking appeal:
 - Amendment or modification, 2, 254
 - Appeal from order, 2, 255
 - Computation of time, 2, 256
 - Construction of statutes, 2, 251
 - Counting days, 2, 256
 - Cross appeal, 2, 255
 - Disability must exist when statute begins to run, 2, 256
- Index Pl. & Pr. — 6

APPEALS, *cont'd.*

- Time for taking appeal, *cont'd.*
 - Entry *nunc pro tunc*, 2, 250
 - Entry of judgment, 2, 250
 - Estoppel, 2, 246
 - Exception in statutes of limitations, 2, 256
 - Extension of time, 2, 244
 - Final judgment, 2, 252
 - Motion for a new trial, 2, 252
 - Neglect of officials, 2, 246
 - Nonappealable decrees, 2, 254
 - Notice of entry under code procedure, 2, 250
 - Order of allowance, 2, 237
 - Party under disability, 2, 255
 - Protection of appeal, 2, 238
 - Reconsideration, 2, 253
 - Relief against accident, 2, 245
 - Rendition of judgment, 2, 249
 - Second appeal, 2, 255
 - Service of exceptions, 2, 238
 - Statutes of limitation jurisdictional, 2, 239
 - Statutory power to extend time, 2, 247
 - Sunday, 2, 256
 - Taxation of costs, 2, 252
 - Waiver, 2, 244
 - What constitutes final decree, 2, 253
 - What records must show, 2, 257
 - When an appeal is taken, 2, 237
 - When judgment is rendered, 2, 249
 - When the statute begins to run, 2, 248
- Title, 2, 47, 203
- Affidavit, 2, 236
 - Questions affecting titles, 2, 44
- Trade-marks and trade names, 21, 773
- Transcript on appeal, 2, 253
 - Abstract of record*, see *infra*, **Abstract of record**.
- Affidavits, 2, 270
- Affidavits to impeach record, 2, 300
- Affirmance of failure to file, 2, 279
- Amendments*, see *infra*, **Amendments**.
- Annexed papers, 2, 289
- Appeal bond, 2, 266
- Appeals from orders, 2, 267
- Appellant's mistake, 2, 280
- Arrangement of transcript, 2, 290
- Authentication, 2, 283
- Certiorari*, see *infra*, **Certiorari**.
- Collateral motions not embraced in record proper, 2, 275
- Contradiction of record, 2, 299

APPEALS, *cont'd.*

Transcript on appeal, *cont'd.*
 Copies of verdict and judgment, 2, 267
 Copy of final record, 2, 258
 Criminal appeal, 2, 259
 Criminal cases, 2, 262
 Depositions, 2, 262
 Directions to clerk, 2, 294
 Dismissal, 2, 278
 Duty of appellant in making transcript, 2, 292
 Effect of omissions, 2, 294
 Errors, how shown, 2, 263
 Evidence, 2, 268, 269
 Evidence *dehors* the record, 2, 298
 Exhibits, 3, 264
 Extension of time for filing, 2, 279
 Failure to file in time, 2, 280
 Impeachment of record, 2, 296
 In general, 2, 258
 Instances of omission, 2, 295
 Instructions, 2, 268
 Interlineations, 2, 291
 Intermediate appellate court, 2, 263
 Jurisdictional facts, 2, 265
 Matters properly included in bill of exceptions, 2, 268
 Minutes of trial court, 2, 276
 Motions, 2, 273
 Neglect of clerk to file, 2, 280
 Notice of appeal, 2, 266
 Omissions, 2, 260
 Opinions of court below, 2, 272
 Orders of court, 2, 269
 Original papers, 2, 258
 Papers on file, 2, 291
 Pleadings, 2, 263
 Presumption as to time, 2, 437
 Process, 2, 261
 Recopying, 2, 263
 Record at law, 2, 260
 Record imports verity, 2, 296
 Record in equity, 2, 261
 Record must show error, 2, 294
 Record not showing error, 2, 294
 Record of other cases, 2, 270
 Record of trial court, 2, 258
 Remand for repleader, 2, 264
 Requisites of application for extension of time to file, 2, 281
 Return on appeal, 2, 263
 Rules of trial court, 2, 276
 Rulings, 2, 273
 Satisfaction and judgment, 2, 267
 Service, 2, 291
 Stipulations of parties, 2, 267
 Sunday, 2, 278
 The record proper, 2, 260
 Time for filing transcript, 2, 276

APPEALS, *cont'd.*

Transcript on appeal, *cont'd.*
 Time jurisdictional, 2, 277
 Transcripts on several appeals, 2, 282
 Transmission to clerk, 2, 291
 Tribunal, 2, 260
 Unnecessary papers, 2, 293
 Waiver of objection to failure to file in time, 2, 82
 What the transcript includes, 2, 259
 What the transcript is, 2, 258
 Trial *de novo*, 2, 20, 324, 327, 611
 Appearances, 2, 614
 Trusts and trustees:
 Actions with third persons, 22, 197
 United States courts, 2, 38
 Adverse determination, 2, 39
 Federal question, 2, 38
 Jurisdictional questions, 2, 40
 Jurisdictional requisites, 2, 39
 Supreme courts, 2, 38
 Unnecessary questions, 2, 371, 381
Vacation of judgments and decrees, see
 OPENING, VACATING, AND AMENDING
 JUDGMENTS.
 Validity of judgment, 2, 324, 325
 Variance, 2, 536
 Verdict, 2, 391, 400, 408, 492
 Criminal cases, 2, 495
 Direction of verdict, 2, 587
 Errors cured by verdict, 2, 587
 Evidence presumed to support the verdict, 2, 492
 Informality, 2, 586
 Items of damage, 2, 494
 Presumption in favor of, 2, 492
 Reversible error, 2, 586
 Special findings, 2, 495
 Special interrogatories, 2, 586
 Trifling error, 2, 586
 View by jury, 22, 1056
 Void judgments, 2, 103
 Waiver:
 Error, 2, 565
 Failure to file transcript in time, 2, 282
 Failure to object, 2, 518
 Findings, 2, 491
 Motion for dismissal, 2, 349
 Nonsuit, 2, 536
 When objection to publication waived, 2, 227
 Waiver of defects in notice, 2, 231
 Acceptance of service, 2, 234
 By general appearance, 2, 231
 Joinder in error, 2, 232
 Special appearance, 2, 234
 Voluntary appearance, 2, 233
 What is a general appearance, 2, 233

APPEALS, *cont'd.*

- Waiver of right of appeal, 2, 173
 - Abandonment, 2, 180
 - Acceptance of benefits, 2, 174
 - By escaped prisoner, 2, 182
 - Conveyance, 2, 182
 - Entry of judgment, 2, 180
 - Examples of waiver, 2, 174, 177
 - Execution of judgment, 2, 178
 - Generally, 2, 173
 - Inconsistent position, 2, 179
 - Judgment for less than demand, 2, 178
 - Orders, 2, 181
 - Partial satisfaction by execution, 2, 179
 - Payment of costs, 2, 177, 182
 - Payment of judgment by appellant, 2, 181
 - Payment of or on the judgment, 2, 174
 - Release of errors, 2, 174
 - Stipulations, 2, 173
 - Tendering back the money paid, 2, 177

Ways, 22, 1183

What brought up by appeal, see infra,
Scope of review.

Wills:

- Suits in equity for construction of wills, 22, 1213

Winding up corporations, 23, 1292

Without prejudice, 2, 433

APPEARANCES, 2, 588

Admiralty, 1, 263

Affidavit, 2, 650

Agency:

- Appearance by agent, 2, 673

Ambiguous position, 2, 593

American practice, 2, 591

Amount in controversy, 1, 718

Appeals, 2, 814

- Argument of appeal, 2, 617

- Attorney in want of authority, 2, 681

Case remanded, 2, 619

Effect of general appearance, 2, 618

Examples of what constitutes appeal, 2, 616, 618

Jurisdiction of appeal, 2, 615

Motion to dismiss appeal, 2, 616

Noticing the appeal, 2, 617

Special appeal, 2, 615

Taking an appeal, 2, 614

Trial *de novo*, 2, 614

Voluntary appearance, 2, 195

Waiver as to time, 2, 618

Waiver of defects in notice, 2, 231

Waiver of process and notice, 2, 618

What constitutes appearance, 2, 616

APPEARANCES, *cont'd.*

Appeals, *cont'd.*

What is a general appearance, 2, 233

Attachments, 2, 608, 653

A general appearance in the action, 2, 608

Appearance and pleading a waiver of irregularities, 3, 83

Contesting the truth of the grounds, 2, 609

Garnishment, 2, 612

Moving to dissolve, 2, 609

Quashing the writ, 2, 610

Special appearance, 3, 66

Validating a void attachment, 2, 611

Waiving compliance with statute, 2, 611

Waiving process, 2, 610

Attorneys:

Appearance by attorney, 2, 675

Appeal, 2, 681

Attorney exceeding authority, 2, 692

Attorney's statement, 2, 679

Authorities, 2, 675

Authorities holding that a judgment is valid remedy against attorney, 2, 685

Authorities holding that a judgment resting on an unauthorized appearance is a nullity, 2, 690

Authority to appear questioned by opposite party, 2, 676

Burdened to show authority, 2, 679

Collateral attack from judgment, 2, 693

Contradicting record, 2, 684

Domestic judgments, 2, 685

Foreign judgments, 2, 684

How to question attorney's authority, 2, 680

How to raise the question of nullity, 2, 693

In general, 2, 675

Judgments on unauthorized appearance void as innocent purchaser, 2, 691

Laches, 2, 694

Motion, 2, 681

Motion to set aside or vacate judgment, 2, 693

Power to bind those for whom they make unauthorized appearance, 2, 682

Presumption of authority, 2, 679, 682

APPEARANCES, *cont'd.*

Attorneys, *cont'd.*

Appearance by attorney, *cont'd.*

Question of authority must be raised in trial court, 2, 681

Ratification, 2, 692

Relief in equity, 2, 693

Requiring attorney to show his authority, 2, 679

Service of process on defendant although appearance is unauthorized, 2, 692

Warrant of attorney, 2, 675

Who may raise question of authority, 2, 694

Written authority, 2, 675

Corporations, 2, 669; 5, 54

Default where there is unauthorized appearance by attorney, 6, 44

Withdrawal of appearance, 2, 697

Attorney's signature, 2, 627

Authority, see *infra*, Attorneys.

Bail and recognizance, 3, 219, 346

Excuse for nonappearance, 3, 248

Bastardy (see BASTARDY), 3, 294

Bills to impeach decrees and judgments:

Unauthorized appearance, 3, 617

Boards, 2, 620

By whom appearance can be made, 2, 665

Certiorari:

Objections not raised below, 4, 295

Change of venue, 2, 612

Effect of application, 2, 612

Entry of general appearance, 2, 612

Justices of the peace, 2, 613

To what court objection should be made, 2, 613

Waiver of irregularity, 4, 484

Waiver of objection to change, 2, 612

Code procedure:

Abolition of formalities, 2, 592

How to make a special appearance, 2, 625

Collateral attack:

Unauthorized appearance by attorney, 2, 693

Commissioners, 2, 620

Common law, 2, 590

Contempt, 4, 786

Continuance, 2, 646

Procuring or consenting to a continuance as general appearance, 2, 633

Corporations, 5, 54

Admission of corporate existence, 2, 670

APPEARANCES, *cont'd.*

Corporations, *cont'd.*

By attorney, 5, 54; 2, 669

Effect of general appearance, 5, 55

Manner of, 5, 54

Special appearance, 5, 56

United States courts, 5, 56

Waiver of right to be sued where corporation has its residence, 2, 660

Warrant of attorney, 5, 55

Who may make appearance, 2, 669

Costs:

Failure to appear, 5, 223

Moving a retaxation of costs, 2, 656

Councils, 2, 620

Courts, see *infra*, Jurisdiction; Withdrawal of appearance.

Courts of limited jurisdiction, 2, 659

Damages:

Assessment of damages, 2, 604

Defaults:

Appeals, 6, 244

Appearance to set aside default, 2, 653

General appearance, 6, 42

Special appearance, 6, 44

Unauthorized appearance by attorney, 6, 44

Upon nonappearance by defendant, 6, 70

Effect of withdrawal of appearance, 6, 72

In criminal cases, 6, 71

In general, 6, 70

Rule in Nebraska, 6, 71

What is an appearance, 6, 72

Where appearance made, 6, 72

Waiver of process, 6, 42

Withdrawal of appearance, 6, 44

Definition, 2, 590

Demurrers, 6, 326

Filing demurrer as general appearance, 2, 635

Depositions, 2, 652

Discontinuance, 2, 645

Distringas, writ of, 7, 33

Divorce, 7, 106

Prosecuting attorney, 7, 66

Docketing:

Entering attorney's name on the docket, 2, 598

Effect of general appearance, see *infra*, General appearance.

Ejectment:

Notice to appear, 7, 338

Eminent domain, 7, 478, 704

Special appearance, 7, 498

Waiver of notice, 7, 497

APPEARANCES, *cont'd.*

- Equity, 2, 591
- Estoppel:
 - Ratification of attorney's appearance, 2, 692
- Examination of parties before trial:
 - Effect of failure to appear or answer, 8, 61
 - Character of evasion or refusal, 8, 64
 - Copy of order, 8, 65
 - Crimination, 8, 63
 - Default or nonsuit, 8, 63
 - Extension of time, 8, 64
 - Improper questions, 8, 62, 63
 - In general, 8, 61
 - Nonsuit, 8, 63
 - Notice of examination, 8, 65
 - Operation as confession, 8, 64
 - Pleadings stricken out, 8, 63
 - Protection to party, 8, 62
 - Remedies provided, 8, 63
 - Service of notice of examination, 8, 65
 - Subpoena, 8, 65
 - Tender of witness fees, 8, 62
- Exceptions and objections, 8, 171
- Executors and administrators, 2, 674
- Failure to appear, 2, 601
 - Advantages from appearance, 2, 602
 - Default, 2, 602
 - Effect of, 2, 601
 - Justices of the peace, 2, 603
 - Steps by plaintiff, 2, 602
- Foreign corporations, 2, 642
- Foreign judgments:
 - Authority of attorney, 2, 684
- Garnishment, 2, 612
 - Effect of defendant's appearance in garnishment proceedings, 9, 811
 - Effect of defendant's appearance in principal suit, 9, 810
- General appearance, 2, 632
 - After entry of judgment, 2, 655
 - Appearance to vacate judgment, 2, 654
 - Argument, 2, 638
 - Continuance, 2, 633
 - Definition, 2, 632
 - Effect of, 2, 639
 - Affidavit, 2, 650
 - After discontinuance, 2, 645
 - Commencing by a wrong writ, 2, 649
 - Continuance, 2, 646
 - Defects in process, 2, 646
 - Depositions, 2, 652
 - Examples, 2, 651
 - Extraordinary and summary proceedings, 2, 650

APPEARANCES, *cont'd.*

- General appearance, *cont'd.*
 - Effect of, *cont'd.*
 - Foreign corporations, 2, 642
 - Illegal process, 2, 649
 - Jurisdiction over person, 2, 639
 - Making one a party, 2, 643
 - Misnomer, 2, 647
 - Nonresidents, 2, 640
 - Ousting jurisdiction, 652
 - Place mentioned, 2, 652
 - Political corporations, 2, 643
 - Prescribed form of process, 2, 648
 - Publication, 2, 650
 - Remedy at law, 2, 651
 - Return of process, 2, 648
 - Served by unauthorized person, 2, 648
 - Served on wrong person, 2, 649
 - Supplementary proceedings, 2, 653
 - Time in regard to process, 2, 648
 - Time of service, 2, 646
 - Variance between process and complaint, 2, 649
 - Waiver of process, 2, 644
 - Extension of time to plead, 2, 637
 - Filing demurrer, 2, 635
 - Intention, 2, 633
 - Making motions, 2, 637
 - Notice of retainer, 2, 634
 - Physical presence, 2, 633
 - Pleading to merits, 2, 636
 - Presumption, 2, 632
 - Restriction to one of the defendants, 2, 599
 - Service of notice of process, 2, 634
 - Special appearance converted into a general one, 2, 625
 - Action by defendant, 2, 626
 - Attacking complaint or entering into trial, 2, 628
 - Attorney's signature, 2, 627
 - In general, 2, 625
 - Notice of appearance, 2, 627
 - Notice of retainer, 2, 627
 - Securing extension of time, 2, 628
 - Technical forms not considered, 2, 629
 - Stipulations, 2, 638
 - Taking part in the proceedings, 2, 639
 - Waiver of process, 2, 638
 - What is, 2, 632
- Giving rights, 2, 595

APPEARANCES, *cont'd.*

- Guardian and ward, 2, 672
 - Appearance by guardian, 10, 594
 - Appearance by guardian or *prochein ami*, 10, 594
- Guardians *ad litem*, 2, 671

- Necessity of appearance of infant before appointment, 10, 654

Habeas corpus, 9, 1051

Husband and wife:

- Who may make appearance, 2, 669

Infants (see NEXT FRIEND), 2, 671; 10, 594

- Appearance by attorney, 10, 595

- Appearance by general guardian, 10, 594

- Appearance by guardian or *prochein ami*, 10, 594

- Appointment of guardian *ad litem*, 10, 637

- Effect of appearance by attorney, 10, 596

General guardian, 2, 672

Guardian *ad litem*, 2, 671

Next friend, 2, 671

Who makes appearance, 2, 671

Insanity, 2, 673

Introductory, 2, 590

Joint debtors, 2, 674

Judgments (see *infra*, Attorneys):

- General appearance as to entry of judgment, 2, 655

- Motion to set aside judgment, 2, 657

Setting aside default, 2, 653

Setting aside judgment, 2, 653

Special appearance to vacate judgment, 2, 653

Validating void judgments by subsequent appearance, 2, 653

What is special appearance to set aside judgment, 2, 654

When special appearance to set aside judgment becomes general, 2, 654

Judgments of sister states:

Contradicting record, 2, 600

Contradicting record as to jurisdictional facts, 2, 684

Jurisdiction (see *infra*, United States courts):

County courts, 2, 664

Courts of limited jurisdiction, 2, 659

Jurisdiction over person, 2, 639

Justices of the peace, 2, 663

Local courts, 2, 662

Nonresidents, 2, 640

Statutes prescribing venue, 2, 659, 660

APPEARANCES, *cont'd.*

Jurisdiction, *cont'd.*

Subject matter, 2, 657

Waiver of defects of jurisdiction, 2, 660

Jury:

Nonappearance as waiver of right to jury trial, 12, 259

Justices of the peace, 2, 603

Appearance as waiver of jurisdictional requirements, 2, 663

Change of venue, 2, 613

Presumption of appearance, 2, 597

Time to appear, 2, 607

Laches:

Unauthorized appearance by attorney, 2, 694

Local actions:

How affected by appearance, 2, 658

Local and transitory actions distinguished, 2, 658

Mandate, 13, 857

Misnomer, 2, 646, 647

Motions:

Attorney in want of authority, 2, 681

Making a motion as general appearance, 2, 637

Unauthorized appearance of attorney, 2, 693

Municipal corporations:

Corporate existence, 14, 226

Nonresidents, 2, 640

Notice of appearance, 2, 627

Service of notice of appearance as general appearance, 2, 634

Notice of retainer, 2, 627, 634

Examples, 2, 634, 635

General appearance, 2, 634

What constitutes notice, 2, 635

Official bonds, 15, 176

Opening, amending, and vacating judgments:

Unauthorized appearance by attorney, 15, 238

Parties to actions:

Necessity of appearance to constitute one a party, 15, 466

Partnership, see PARTNERSHIP.

Penalties and penal actions:

Voluntary appearance, 16, 268

Personal appearance, 2, 665

Plaintiff entering defendant's appearance, 2, 666

Pleadings:

Pleading to the merits as general appearance, 2, 636

Pleadings distinguished from appearances, 2, 594

Political corporations, 2, 643

APPEARANCES, *cont'd.*

- Poor debtor acts:
 - Failure of creditor to appear, 16, 720
 - Failure to attend and appear, 16, 718
 - Magistrates, 16, 720
 - Time for appearance, 16, 721
 - Waiver of objection to notice of service, 16, 718
- Power of court to make rules, 2, 592
- Presumptions:
 - Appearance presumed from recitals in the record, 2, 596
 - Authority of attorney to appear, 2, 679, 682
 - General appearance, 2, 632
- Privilege:
 - Appearing and answering to the merits, 16, 987
- Process*, see *infra*, Waiver of process.
- Publication, 2, 650
 - Effect of voluntary appearance, 17, 123
 - Appearance by guardian *ad litem*, 17, 124
 - In general, 17, 123
 - Irregularity in proof of publication, 17, 123
 - Procuring reversal of judgment, 17, 124
- Quasi-judicial boards, 2, 620
- Receivers, 2, 662
- Records:
 - Appearance presumed from recitals in the record, 2, 596
 - Contradicting record, 2, 600, 684
 - Plural form used in the record, 2, 599
- References*, see REFERENCES.
- Removal of causes:
 - Effect of petition as appearance, 18, 328
- Retainers*, see *infra*, Attorneys.
- Right of states to prescribe what is an appearance, 2, 595
- Rights acquired by technical appearance, 2, 604
- Rules of court, 2, 592
- Service of process (see *infra*, Summons and process):
 - Admission of service, 2, 638
 - Attorney admitting service, 2, 682
 - Right to appear without process being served, 2, 605
 - Waiver of defects, 2, 646, 649
 - Waiver of process, 2, 638
 - Withdrawal of appearance, 2, 606
- Several defendants, 2, 599
- Special appearance, 2, 620
 - Appearance in next term, 2, 624

APPEARANCES, *cont'd.*

- Special appearance, *cont'd.*
 - Attachment, 3, 66
 - Attacking complaint or entering into trial, 2, 628
 - Attorney's signature, 2, 627
 - Code procedure, 2, 625
 - Defects in process, 2, 622
 - Definition, 2, 620
 - How to make special appearance, 2, 624
 - Illegal and void process, 2, 621
 - Jurisdiction over subject matter, 2, 621
 - Lack of process, 2, 621
 - Nonresidents, 2, 623
 - Notice of appearance, 2, 627
 - Notice of retainer, 2, 627
 - Remand, 2, 631
 - Securing extension of time, 2, 628
 - States where special appearance is inhibited, 2, 622
 - Technical form not considered, 2, 629
 - Waiver of special appearance, 2, 629
 - When it may be made, 2, 621
 - When the special appearance is converted into a general one, 2, 625
- States, 2, 592
 - Right of states to prescribe what is an appearance, 2, 595
- Summary proceedings:
 - Waiver of notice, 20, 1086
- Summons and process (see *infra*, Waiver of process):
 - Time, 2, 646, 648
 - Waiver of defects in process, 2, 646
- Supersedeas and stay of proceedings, 2, 656, 657
- Supplementary proceedings, 2, 653; 21, 106
- Technical appearance, 2, 604
- Time to appear, 2, 606
 - Advantage of prompt appearance, 2, 607
 - In general, 2, 606
 - Justices of the peace, 2, 607
- Time to plead:
 - Obtaining extension of time to plead, 2, 637
- Unauthorized appearance*, see *infra*, Attorneys.
- United States courts, 2, 661, 671
 - In general, 2, 661
 - Receivers, 2, 662
 - Residents, 2, 661
 - Special appearance, 2, 662
 - State legislation, 2, 596
 - Waiver of jurisdiction, 2, 661

APPEARANCES, *cont'd.*

- Variance, 2, 649
- Venue, 2, 659, 660
- Waiver of process, 2, 638, 644
 - Executors and administrators, 2, 674
- Waiver of special appearance, 2, 629
- Waiving rights, 2, 595
- Warrant of attorney, 2, 675
- Withdrawal of appearance, 2, 695
 - Attorney's appearance withdrawn, 2, 697
 - Effect of withdrawal, 2, 696
 - Judgment by default, 2, 697
 - Leave of court, 2, 695
 - Plaintiff must commence *de novo*, 2, 696
 - Reappearance, 2, 697
 - Special withdrawal, 2, 697
 - When leave granted, 2, 695
 - Withdrawal of pleadings, 2, 697
- Written authority, 2, 675

APPELLATE COURTS (see APPEALS; COURTS):

- Bills of review, 3, 575

APPORTIONMENT:

- Costs*, see **COSTS**.

APPRAISAL:

- Admiralty*, see **ADMIRALTY**.

APPRAISEMENT:

- Extent, 8, 786
- Infants*, see **INFANTS**.
- Judicial sales*, see **JUDICIAL SALES**.

APPRENTICESHIP, 10, 850

- Appeals, 10, 852
 - Discharge, 10, 853
- Application, 10, 852
- Binding out, 10, 850
- Discharge, 10, 853
- Habeas corpus, 9, 1017
- Jurisdiction, 10, 850
- Justices, 10, 851
- Minor's presence in court, 10, 852
- Notice, 10, 852
- Records, 10, 851
- Remedies, 10, 853

ARBITRATION AND AWARD (see REFERENCES):

- Accord and satisfaction, 3, 142
- Actions*, see *infra*, Award as defense to action at law; Award as defense to equitable action; Setting aside award; Specific performance.
- Actions at law to enforce award (see *infra*, Pleas and defenses to actions on award), 3, 127
 - Assumpsit, 3, 129
 - Case, 3, 132
 - Covenant, 3, 131
 - Debt, 3, 130
- Declaration or complaint*, see **DECLARATION OR COMPLAINT**.
- Ejectment, 3, 132

ARBITRATION AND AWARD, *con.*

Actions at law to enforce award, *con.*

- Forms of action, 3, 129
- Right to bring action, 3, 127
- Time to bring action, 3, 128
- Trespass, 3, 132
- Trover, 3, 132

Amendments:

- Judgments on awards, 11, 1054

Answers in code pleading, 1, 849

Assumpsit, 3, 129

- Non-assumpsit, 3, 142

Award as defense to action at law, 3, 147, 156

- Agreement to submit to arbitration, 3, 147

Allegations, 3, 149

- How set forth, 3, 148

In general, 2, 147, 156

Judgments on awards, see JUDGMENTS.

Performance, 3, 149

Promise to perform, 3, 149

Award as defense to equitable action:

- How taken advantage of, 3, 157
- Plea of arbitrators, 3, 157

Bills of exceptions:

- Necessity of bill, 3, 409

Bond:

- Declaration or complaint in action on arbitration bond, 3, 136

Conditions precedent, 3, 135

- Reference to umpire or to arbitrators, 4, 645

Costs:

- Amount in controversy, 5, 168
- Power of arbitrator, 5, 116
- Prevailing party, 5, 123

Covenant, 3, 131

Debt, 3, 130

- Action for money award before date fixed for payment, 3, 131

Action of debt on award, 3, 130

Action of debt on bond, 3, 130

- Action of debt on bond after extension of time, 3, 130

Debt on award, 5, 906

Declaration or complaint, 3, 132

- Action on arbitration bond, 3, 136

Allegations, 3, 133

- Allegations and action on arbitration bond, 3, 136

Concurrent acts, 3, 134

Conditions precedent, 3, 135

Confirmation, 3, 137

Debt on bond, 3, 137

Demand for payment, 3, 136

- How to set forth award, 3, 132, 136

Necessary allegations, 3, 133

Notice, 3, 135

Oath of arbitrators, 3, 136

ARBITRATION AND AWARD, con.Declaration or complaint, *cont'd.*

Profert, 3, 136

Promise to perform, 3, 135

Readiness for delivery, 3, 134

Verification, 3, 137

*Defenses, see infra, Award as defense to equitable action; Pleas and defenses to actions on award.**Award as defense to action at law, see infra, Award as defense to action at law.*

Demand, 3, 136

Demurrers, 3, 146

Dismissal, discontinuance, and non-suit:

Termination of the suit by consent or submission to arbitration, 6, 955

Agreement must be entered, 6, 957

Attorney's rights, 6, 956

By consent, 6, 955

Construction of agreement, 6, 957

Effects no bar, 6, 961

Extent of principle, 6, 960

In general, 6, 955

Limitation of principle, 6, 960

Revocation of agreement, 6, 957

Submission to arbitration in general, 6, 957

Written consent, 6, 956

Ejectment, 3, 132; 7, 279

Eminent domain, 7, 562

Assessment by arbitrators, 7, 562

Award of arbitrators, 7, 618

Oath, 7, 569

Qualifications of arbitrators, 7, 562

Equitable action, see infra, Award as defense to equitable action.

Error, writ of, 7, 837

Exceptions and objections, 8, 299

Executions:

Judgments on awards, 11, 1055

Fraud, 3, 145

Setting aside award, 3, 154

Friendly suits, 9, 719

Infants, 10, 697

Judgments on awards, see JUDGMENTS.

Jurisdiction:

Actions to set aside award, 3, 154

Specific performance, 3, 150

Limitation of action, 3, 143

Mandamus, 13, 551

Misconduct of arbitrators, 3, 143

Misconduct of successful party, 3, 145

Mistake of arbitrators, 3, 143

ARBITRATION AND AWARD, con.

Mistakes:

Setting aside award, 3, 154

Next friend, 14, 1040

Notice, 3, 135

Averment of notice in actions on awards, 14, 1068

Notice, want of, 3, 139

Oaths:

Failure of arbitrators to take oath, 3, 146

Penalties and penal actions, 16, 236

Performance:

As defense to action at law, 3, 149

Promise to perform, 3, 149

Pleas and defenses to actions on awards, 3, 138

Accord and satisfaction, 3, 142

Alteration of award, 3, 141

Award not made in reasonable time, 3, 146

Excess of jurisdiction, 3, 138

Failure of arbitrators to take oath, 3, 146

Fraud, 3, 145

In general, 3, 138

Matters submitted not passed upon, 3, 142

Misconduct of arbitrators, 3, 143

Misconduct of the successful party, 3, 145

Mistake of arbitrators, 3, 143

Nil debet, 3, 142

No award, 3, 139

Non-assumpsit, 3, 142

Noncompliance of bond with statute, 3, 146

No submission, 3, 138

Opening award, 3, 142

Performance, 3, 141

Set-off, 3, 142

Statute of limitations, 3, 138

Waiver, 3, 146

Want of notice, 3, 139

Profert, 3, 136

Puis darrein continuance, 17, 266

Set-off, 3, 142

Setting aside award:

Actions to set aside, 3, 154

Allegations, 3, 155

Bill, 3, 155

Demurrer, 3, 156

Fraud, 3, 154

Jurisdiction, 3, 154

Mistake, 3, 154

Parties, 3, 155

Time to bring suit, 3, 155

Specific performance, 3, 150

Acquiescence in award unnecessary, 3, 153

Agreement to arbitrate, 3, 151

Allegations, 3, 153

ARBITRATION AND AWARD, *con.*Specific performance, *cont'd.*

Award concerning land, 3, 152

Award for payment of money, 3, 151

Bill, 3, 153

Court of equity, 3, 151

Demurrer, 3, 154

In general, 3, 150

Jurisdiction, 3, 150

Parties, 3, 153

Time to institute suit, 3, 153

Stipulations, 20, 628

Sundays and holidays, 20, 1194

Time to bring action, 3, 128

Time to institute suit, 3, 153

Specific performance, 3, 153

Trespass, 3, 132

Trespass on the case, 3, 132

Trover, 3, 132

Verification, 3, 137

Waiver, 3, 146

ARCHITECTS:

Conditions precedent:

Certificate of architect, 4, 643

ARGUMENTATIVE DENIALS, *see*

ANSWERS IN CODE PLEADING.

ARGUMENTATIVENESS:

Definiteness and certainty in pleadings, 6, 268

Instructions, see INSTRUCTIONS.

Pleas at law, 16, 565

ARGUMENTS OF COUNSEL, 2, 698

Abusive language, 2, 748

Affidavits:

Ex parte affidavits, 2, 757

Almanacs, 2, 741

Appeals:

Improper language of counsel, 2, 539

Appeals to sympathy and prejudice, 2, 742

Abuse, 2, 747

Abusive language, 2, 748

Appeal to sympathy, 2, 742

Denouncing Jews, 2, 743

Discretion of court, 2, 748

Invective, 2, 747

Local prejudice, 2, 742

National prejudice, 2, 742

Prejudice against corporations, 2, 744

Religious prejudice, 2, 743

Bills of exceptions, 2, 755; 3, 403

*Books, see infra, Reading from books; Reading or arguing law to the jury.**Briefs, see BRIEFS.*

Change of venue, 2, 732

Comments on matters not in evidence, 2, 727

Accusations of tampering with witnesses, 2, 733

ARGUMENTS OF COUNSEL, *con.*Comments on matters not in evidence, *cont'd.*

Almanac, 2, 741

Attorney for the losing party is the aggressor, 2, 732

Character, 2, 739

Closing argument of counsel, 2, 730

Commenting on continuance, 2, 732

Comments on character or credibility of parties or witnesses, 2, 738

Comments on result of former trial, 2, 734

Curing prejudice by rebuke of court, 2, 739

Diagram, 2, 741

Discussing change of venue, 2, 732

Facts calculated to prejudice, 2, 728

Facts of general history, 2, 736

Facts pertinent to the issue, 2, 727

Financial condition of a party, 2, 729

Indulgence to retorts, 2, 732

In general, 2, 727

Instructions to disregard, 2, 731

Maps, 2, 741

Matters of general knowledge, 2, 736

Matters of local knowledge, 2, 736

Presumption of prejudice, 2, 731

Reading extracts from newspapers, 2, 741

Reading from books, 2, 739

Reading from medical works, 2, 740

Replies to improper remarks, 2, 731

Result of irregularity, 2, 730

Retaliatory statements, 2, 731

Reversible errors, 2, 727

Statement as to how the former jury stood, 2, 734

Statements not confined to pertinent replies, 2, 733

Stating or commenting on excluded evidence, 2, 735

Use of papers, 2, 741

When not ground for reversal, 2, 735

Concluding arguments, 2, 708

Constitutional law:

Right to be heard by counsel, 2, 699

Continuance, 2, 732

Corporations:

Appeals to prejudice against corporations, 2, 744

ARGUMENTS OF COUNSEL, *con.*

Courts:

Interruption by court, 2, 750

Court's control over arguments, 21, 994

Criminal procedure:

Comment on failure of the accused to testify in the case, 2, 718

Limiting time, 2, 702

Opening arguments, 2, 706

Prosecuting attorney's expression of personal belief, 2, 726

Reading or arguing law to the jury, 2, 711

Right to be heard by counsel, 2, 699

Diagrams, 2, 741

Discretion of court:

Abusive language, 2, 748

Eminent domain, 7, 591

Evidence, see *infra*, Comments on matters not in evidence.

Excluded evidence, 2, 735

Exceptions and objections, 2, 755

Friend of court, 2, 758

Definition, 2, 758

How far recognized, 2, 759

Habeas corpus:

Order of argument of counsel, 9, 1051

Homicide, 10, 164

Husband and wife:

Comment on defendant's omission to call his wife, 2, 725

Instructions, 11, 367

As to consideration to be given arguments, 11, 367

Attorney's comment on defendant's failure to testify in criminal cases, 2, 724

Correcting improper arguments by instructions, 11, 368

Instruction to disregard comments on matters not in evidence, 2, 731

Prejudice cured by, 2, 753

Interruptions, 2, 750

By counsel, 2, 751

By the court, 2, 750

Investive, 2, 747

Jury, see *infra*, Reading or arguing law to the jury.

Law, see *infra*, Reading or arguing law to the jury.

Legitimate debate, 2, 713

Arguing conclusions from testimony, 2, 716

Comment on absence of witnesses, 2, 714

Comments on facts proved or admitted, 2, 713

Credibility of witnesses, 2, 715

ARGUMENTS OF COUNSEL, *con.*

Legitimate debate, *conf'd.*

Illogical argument, 2, 717

Mere exaggeration, 2, 717

Motives of party, 2, 715

Limiting number, 2, 705

Limiting time, 2, 701

Civil cases, 2, 704

Criminal cases, 2, 702

Examples of restriction, 2, 702, 703

Matter of discretion, 2, 701

Power to limit time, 2, 701

Mandamus, 13, 804

Maps, 2, 708, 741

Motions, 14, 167

Newspapers:

Reading extracts from newspapers, 2, 741

New trials:

Absence of trial judge, 2, 755

Abuse of argument, 2, 751

Bill of exceptions, 2, 755

By the appellate courts, 2, 752

By the trial court, 2, 751

Comment of counsel on failure of the accused to testify in criminal cases, 2, 724

Comments on matters not in evidence, 2, 750

Exceptions, 2, 755

Ex parte affidavits, 2, 755

Objection for improper remarks, 2, 753

Prejudice cured by instruction, 2, 753

Prejudice cured by withdrawal of remarks, 2, 753

Rebuke and instructions, 2, 753

Time of making objections to improper remarks, 2, 753, 754

When point is sufficiently saved for review, 2, 757

Number, limiting, 2, 705

Objections and exceptions:

Improper remarks, 2, 753

Open and close, see OPEN AND CLOSE.

Opening arguments, 2, 706

Anticipation of defense, 2, 707

Good faith of offers of proof, 2, 708

In general, 2, 706

Map, 2, 708

Noticing all evidence, 2, 707

Topics not pertinent, 2, 707

Order of proof:

Reopening the case before, during, and after argument, 15, 401

Order, regulating, 2, 705

Pleadings, 2, 717

Amended pleading, 2, 718

Reading pleadings to the jury, 2, 717

Use of pleadings, 2, 717

ARGUMENTS OF COUNSEL, *con.*

Prejudice, see *infra*, Appeals to sympathy and prejudice.

Prosecuting attorney:

Prosecuting attorney's expression of personal belief, 2, 726

Questions of law and fact, see *infra*,

Reading or arguing law to the jury.

Railroads:

Appeals to prejudice against corporations, 2, 744

Reading extracts from newspapers, 2, 741

Reading from books, 2, 739

As illustration merely, 2, 740

Illustrations, 2, 739, 740

Medical books, 2, 739

Reading or arguing law to the jury, 2, 709

Amount of verdict, 2, 710

Arguing in court in the presence of the jury, 2, 711

Bad law, 2, 710

Criminal cases, 2, 711

Criminal cases where juries are judges of law, 2, 712

In civil cases, 2, 709

Regulating order, 2, 705

Regulating time, number, and order of arguments, 2, 701

Rehearing:

Important point not argued, 18, 43

Order of argument, 18, 26

Religion:

Appeals to religious prejudice, 2, 743

Reopening the case, 15, 401

Right to be heard by counsel, 2, 699

Civil case, 2, 699

Criminal cases, 2, 699

Definition, 2, 700

Right to plead to the jury, 2, 717

Rules of court, 18, 1253

Stenographers:

Use of reporter's stenographic notes, 2, 741

Sympathy, see *infra*, Appeals to sympathy and prejudice.

Time of argument, see *infra*, Limiting time.

Witnesses:

Accusations of tampering with witnesses, 2, 733

Comment on absence of witnesses, 2, 714

Comment on character or credibility of parties or witnesses, 2, 738

Comment on defendant's omission to call his wife, 2, 725

Comment on failure of a party to testify in a civil case, 2, 726

ARGUMENTS OF COUNSEL, *con.*

Witnesses, *con't d.*

Comment on failure of the accused to testify in criminal cases, 2, 718

Comments in advance, 2, 720

Construction of statutes, 2, 718, 723

Defendant's failure to produce witnesses, 2, 722

Effect of improper comments, 2, 724

General scope and effect of statutory provisions, 2, 718

Improper comment where evidence is conclusive, 2, 725

Instruction by the court, 2, 724

New trial, 2, 724

What allusions are too remote, 2, 723

What constitutes improper comment, 2, 723

Where defendant elects to testify, 2, 721

Credibility of witnesses, 2, 715

ARRAIGNMENT AND PLEA, 2, 760

Admissions, 2, 774

Amendments:

Amendment of record, 2, 792

Appeals:

Judgment on plea of guilty, 2, 783

Arraignment, 2, 761

Calling prisoner to bar by name, 2, 768

Change of venue, 2, 763

Copy of indictment, 2, 764

Definition, 2, 761

Different offenses, 2, 762

Guilty or not guilty, 2, 770

Joint arraignment, 2, 768

Misdemeanor, 2, 762

Mode, 2, 766

Necessity in general, 2, 761

New trial, 2, 763

Object, 2, 761

Parts, 2, 768

Presence of accused, 2, 767

Reading indictment, 2, 769

Right to counsel, 2, 767

Sanity of accused, 2, 767

Time, 2, 764

Voluntary pleading, 2, 769

Waiver, 2, 764

Within what time, 2, 764

Autrefois acquit, 2, 786

Change of venue, 2, 767; 4, 421, 429, 489

Necessity of new arraignment, 4, 489

ARRAIGNMENT AND PLEA, *con.*

Criminal procedure:

Presence of the accused, 2, 792

Demurrer:

Plea of not guilty in demurrer,
2, 776

Failure to plead, 2, 773

Felonies, 2, 761

Former acquittal, 2, 786

General issues, *see infra*, Plea.

Guilty or not guilty, 2, 770

Guilty, *see infra*, Plea.

Homicide, 10, 163

Insanity, 2, 767

General issue, 2, 785

Misdemeanor, 2, 762

New trial, 2, 767

Nolo contendere, 2, 787Not guilty, *see infra*, Plea.

Plea, 2, 770

Acceptance of plea of guilty, 2,
780

Admissions, 2, 774

Appeals from judgment on plea
of guilty, 2, 783

By whom made, 2, 772

Defenses under not guilty, 2, 784

Demurrer, 2, 776

Effect of plea of guilty, 2, 782

Effect of withdrawal, 2, 779

General issue, 2, 784

How plea of guilty made, 2, 780

Judgment upon plea of guilty,
2, 782

Motion to quash, 2, 778

Necessity in general, 2, 770

Nolo contendere, 2, 787

Not guilty, 2, 784

Defenses under not guilty,
2, 784

General issue, 2, 784

In general, 2, 784

Insanity, 2, 785

Jurisdiction, 2, 785

Plea of *nolo contendere*, 2, 787

Several pleas, 2, 786

Trial, 2, 786

Plea of guilty, 2, 779

Plea of not guilty and demurrer,
2, 776

Second trial, 2, 771

Standing mute, 2, 773

Substitution of plea, 2, 775

Time of withdrawal, 2, 777

Time when made, 2, 771

Viva voce, 2, 772

Waiver, 2, 774

What plea of guilty amounts to,
2, 779

When and how made, 2, 771

When withdrawal allowed, 2,
777

Withdrawal, 2, 775

ARRAIGNMENT AND PLEA, *con.*

Presence of accused, 21, 971

Assignment of errors, 3, 932

Records, 2, 787

Amendments of record, 2, 792

Arraignment sufficiently shown,
2, 790

Felony cases, 2, 792

Misdemeanor, 2, 788

Mode of recording, 2, 791

Presence of accused, 2, 792

Presumption of regularity, 2, 789

Records showing plea, 2, 790

Terms, 2, 789

Time, 2, 790

Trial without objection, 2, 791

Whether record must show ar-
raignment and plea, 2, 787

Sentence, 19, 435

Necessity of plea, 19, 435

Plea of guilty, 19, 436, 437

Standing mute, 2, 773

Waiver, 2, 764

Waiver by plea, 2, 774

**ARREST, *see* EXECUTIONS AGAINST
THE BODY AND ARREST IN CIVIL
CASES; EXTRADITION; FALSE IMPRIS-
ONMENT; WARRANTS.**

Appeals:

Orders of arrest, 2, 120

Breach of promise of marriage, 3, 684

Civil cases, *see* EXECUTIONS AGAINST

THE BODY AND ARREST IN CIVIL CASES

Commitments, *see* COMMITMENTS.Escape, *see* ESCAPE.*Habeas corpus*, *see* HABEAS CORPUS.Obstructing justice, *see* OBSTRUCTING
JUSTICE.Resistance to officer, *see* OBSTRUCTING
JUSTICE.Warrants, *see* WARRANTS.**ARREST IN CIVIL CASES, *see* EX-
ECUTIONS AGAINST THE BODY AND
ARREST IN CIVIL CASES.****ARREST OF JUDGMENT, 2, 793**

Appeals, 2, 821

Appellate proceedings, 2, 795

Cause of action:

Defective statement of cause of
action, 2, 798Facts essential to cause of action
omitted, 2, 799No substantial cause of action,
2, 799

Chambers and vacation, 4, 348

Clerical error, 2, 810

Conditions precedent, 4, 662

Conspiracy, 4, 735

Contributory negligence, 5, 14

Costs, 2, 822; 5, 131

Courts:

Court acting on its own motion,
2, 816

ARREST OF JUDGMENT, *cont'd.*

Criminal cases:

Effect of motion when sustained,
2, 820

Limitation of actions, 2, 811

Damages:

Damages assessed entire, 2, 804

Deaths, 2, 798

Declaration and complaint:

Defective counts in declaration,
2, 800

Defects, 2, 796

Default, 2, 819

Defective pleadings, 2, 798

Damages assessed entire, 2, 804

Defective counts in declaration,
2, 800Defective counts in indictment,
2, 801Defective statement of cause of
action, 2, 798

Duplicity in pleading, 2, 802

Facts essential to cause of action
admitted, 2, 799Joinder of counts and causes, 2,
802No substantial cause of action,
2, 799

Uncertainty in indictment, 2, 799

Defects, formal, 2, 809

Definition, 2, 794

Dehors the record, 2, 812

Demurrer:

Errors fatal on demurrer, 2, 796

Motion after demurrer has been
overruled, 2, 818

Principles covering, 2, 819

Duplicity, 2, 802

Errors, 2, 796

Errors fatal on demurrer, 2, 796

Fatal defects in indictment or
declaration, 2, 796

Substantial errors, 2, 796

Verdict not answering issue, 2,
796

Error, writ of, 2, 821; 7, 835

Evidence, objections to, 2, 813

Formal defects, 2, 809

Grounds for arrest, 2, 794

Grounds, insufficient, 2, 809

Indictment:

Defective counts in indictment,
2, 801

Defects in indictment, 2, 796

Limitations, 13, 280

Statute repealed under which in-
dictment drawn, 2, 796

Uncertainty of indictment, 2, 799

Joinder of counts and causes, 2,
802

Jurisdiction, 2, 808

No jurisdiction over person, 2,
808**ARREST OF JUDGMENT, *cont'd.***Jurisdiction, *cont'd.*No jurisdiction over subject
matter, 2, 808

Jury and jury trials:

Competency of juror, 2, 806, 807

Irregularities in impaneling
jury, 2, 806Irregularities in summoning
jury, 2, 806

Juror legally disqualified, 2, 806

Jury illegally constituted, 2, 805

Misconduct on part of jury, 2, 807

Objections to the jury, 2, 805

Relationship, 2, 807

Limitations, 2, 811; 13, 185

Civil suits, 2, 811

In criminal cases, 2, 811

Indictment, 13, 280

Indictment not setting forth time
of offense, 13, 280

Penal actions, 13, 283

Mandamus, 2, 822

Misjoinder, 2, 803

Misnomer, 2, 797

Motion, 2, 815

After demurrer has been over-
ruled, 2, 818As waiver of motion for new
trial, 2, 818

Costs of motion, 2, 822

Counterclaims, 2, 817

Court acting on its own motion,
2, 816Effect of motion when overruled,
2, 822Effect of motion when sustained,
2, 820

Form of motion, 2, 815, 816

How and when made, 2, 815

How determined, 2, 819

Prosecution *de novo*, 2, 821What the motion should state, 2,
816

When made, 2, 817

Writ of error, 2, 821

New trial:

Motion in arrest as waiver, 2, 818

Waiver of motion for new trial
by moving for arrest of judg-
ment, 14, 899

Next friend:

Failure to appoint or irregular
appointment, 14, 1025

Nonresidence, 2, 797

Parties to action:

Defects and irregularities as to
parties, 2, 797*Pleadings*, see *infra*, Defective plead-
ings.

Records:

Defects in record, 2, 794

Matters *dehors* the record, 2, 812

ARREST OF JUDGMENT, *cont'd.*Records, *cont'd.*

Record showing that defendant should be released, 2, 797

Repeal of statute, 2, 796

Sentence:

Sentence pending motion in arrest or for new trial, 19, 444

Set-off, recoupment, and counter-claim, 2, 817

Similiter, 20, 264

Statutes, 2, 814

Statute repealed under which indictment drawn, 2, 796

Substantial errors, 2, 796

Summons and process:

Defects in process, 2, 810

Variance, 2, 813; 22, 639

Verdict:

Defective verdict, 2, 804

Insufficient to sustain judgment, 2, 805

Not conforming to issue or indictment, 2, 804

Upon an immaterial issue, 2, 805

Defects cured by verdict, 2, 810

Verdict not answering issue, 2, 796

Waiver:

Defects waived by going to trial, 2, 810

ARSON, 2, 823

Curtilage, 2, 826

Definition, 2, 823

Indictment, 2, 823

Allegations as to house, 2, 826

Allegations of burning, 2, 825

Buildings, 2, 826

Burning to defraud insurers, 2, 832

Curtilage, 2, 828

Degrees of crime, 2, 832

Dwelling houses, 2, 826

"Feloniously," 2, 825

Following statute, 2, 823

Houses, 2, 826

Human being in house, 2, 828

In general, 2, 823

Intent, 2, 831

Landlord and tenant, 2, 831

Malice, 2, 824

Ownership laid in occupant, 2, 830

Ownership of property, 2, 828

Place, 2, 826

Public buildings, 2, 831

"Unlawfully," 2, 825

Value, 2, 827

"Wilfully," 2, 824

Instructions, 2, 833

Landlord and tenant, 2, 831

Malice, 2, 824

"Wilfully," 2, 825

ASPORTATION:

Larceny, 12, 954

Assault and battery, 2, 835

ASSAULT AND BATTERY (see

FALSE IMPRISONMENT):

Actions, see *infra*, Civil action for damages.

Affidavit, 2, 836

Affray, 1, 382, 383

Against the peace, 2, 841

Aggravated assault (see *infra*, Indictment), 2, 857

Exemplary damages, 2, 863

Justices of the peace, 2, 837

Answers in code pleading:

Joinder of general denial and justification, 1, 858

Assault, 2, 835

Battery, 2, 836

Burglary, 3, 798

Joinder, 3, 783

Civil action for damages, 2, 863

Aggravated assault, 2, 863

Damages recoverable, 2, 862

Exemplary damages, 2, 863

How excessive force pleaded, 2, 862

Pleading justification, 2, 862

Setting forth damages, 2, 862

Clerical error, 2, 838, 839

Damages, see *infra*, Civil action for damages.

Definition, 2, 835

Degrees:

Conviction of lesser offense, 2, 856

Instruction, 2, 855

Exemplary damages, 2, 863

Feloniously, 2, 853

Force and arms, 2, 841

Homicide:

Averment of assault, 10, 125

Indictment:

Aggravated assault, 2, 843

Assaulting officer, 2, 846

Assault with special intent, 2, 846

Beating and wounding, 2, 845

In general, 2, 843

Intent of the gist of offense, 2, 847

Intent to do bodily harm, 2, 849

Intent to kill, 2, 842, 846, 847, 851

Intent to murder, 2, 851

Intent to ravish, 2, 848

Intent to rob, 2, 849

Joinder of counts, 2, 844

Language of statute, 2, 844

Matters of aggravation, 2, 843

ASSAULT AND BATTERY, *cont'd.*

- Indictment, *cont'd.*
 - Aggravated assault, *cont'd.*
 - Particulars as to intent, 2, 846
 - Serious damage, 2, 843
 - Simple and aggravated in one count, 2, 844
 - Surplusage, 2, 845
 - Simple assault, 2, 838
 - Against the peace, 2, 841
 - Assault by two on each other, 2, 843
 - Assault by two or more, 2, 842
 - Clerical error, 2, 838, 839
 - Contrary to the form of the statute, 2, 840
 - Description of offense, 2, 839
 - Force and arms, 2, 841
 - Intent to kill, 2, 842
 - Language of statute, 2, 840
 - Name of person assaulted, 2, 838
 - Necessary allegations, 2, 838
 - Peace of the state, 2, 841
 - Person assaulted unknown, 2, 838
 - Statutory offense, 2, 840
 - Surplusage, 2, 842
 - Time of assault, 2, 839
 - Unnecessary allegations, 2, 841
 - Venue, 2, 839
 - Words equivalent and statutory words, 2, 840
 - Two indictments, 2, 836
- Instructions, 2, 854
 - Curing defective instruction, 2, 856
 - Degrees, 2, 855
 - In general, 2, 854
 - Issue not raised, 2, 855
 - Language of statute, 2, 854, 855
 - Malice, 2, 855
 - Statutory definition, 2, 854
- Intent, 2, 842, 846, 851, 857
 - Assault with intent to do bodily harm, 2, 849
 - Assault with intent to murder, 2, 851
 - Assault with intent to ravish, 2, 848
 - Assault with intent to rob, 2, 849
 - Assault with special intent, 2, 846
 - Intent to murder, 2, 857
 - Intent to ravish, 2, 857
- Joinder of counts and causes, 2, 844
- Slander, 1, 188
- Judgments, 2, 861
- Jurisdiction:
 - Criminal procedure, 2, 837

ASSAULT AND BATTERY, *cont'd.*

- Justices of the peace:
 - Aggravated assault, 2, 837
 - Jurisdiction, 2, 837
- Libel and slander, 13, 61
- Joinder, 1, 188
- Malice, 2, 853
- Murder:
 - Assault with intent to murder, 2, 851
 - Averment of intent without qualifications, 2, 852
 - Feloniously, 2, 853
 - Instrument, 2, 852
 - Malice, 2, 853
 - Minor offense, 2, 851
 - Person intended, 2, 854
 - Setting out the assault, 2, 851
 - Statutory language, 2, 852
 - The intent, 2, 851
 - Wilfully, 2, 853
- Officers, 2, 846
- Pointing firearms, 16, 653
- Prize fighting, 16, 990
- Public officer, 2, 846
- Rape (see RAPE):
 - Assault with intent to ravish, 2, 848
 - Conviction of assault under indictment for rape, 17, 665
 - Verdict, 17, 665
- Remedies, 2, 836
- Riot, 18, 1204
- Robbery:
 - Assault with intent to rob, 2, 849
- Sentence, 2, 861
- Sheriffs and constables, 2, 846
- Simple assault, *see infra*, Indictment.
- Splitting causes of action, 1, 161
- Statutes:
 - Aggravated assault, 2, 844
 - Contrary to the form of the statute, 2, 840
- Surplusage, 2, 842, 845
- Survival of actions, 21, 346
- Trespass *vi et armis*, 2, 836
- Venue, 2, 839; 22, 782
- Verdict, 2, 856
 - Aggravated assault, 2, 857
 - Assault with intent to kill, 2, 859
 - Assault with intent to murder, 2, 857
 - Conviction of lesser offense, 2, 856
 - Simple assault, 2, 858
 - Sufficiency of verdict, 2, 859
 - Wilfully, 2, 853

ASSESSMENTS:

- Certiorari*, *see* CERTIORARI.
- Local improvements, *see* LOCAL IMPROVEMENTS.

ASSIGNMENT (see EQUITABLE ASSIGNMENTS):**Attachment:**

Motion for dissolution, 3, 67

Bonds, 3, 640

Nonpayment, 3, 647

Costs:

Assignor and assignee, 5, 150

Counts, paragraphs, and separate statements:

Separate counts, 5, 306

Declaration or complaint, 4, 598

Exceptions and objections, 8, 300

Executions, see EXECUTIONS.*Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.*Homesteads*, see HOMESTEADS AND EXEMPTIONS.**Judgments:**

Actions on judgments, II, III7

Leave to sue upon judgment, II 1006

Parties to action, II, III7

Landlord and tenant, see LANDLORD AND TENANT.*Mortgages*, see FORECLOSURE OF MORTGAGES.*Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.

Parties to actions (see PARTIES TO ACTIONS), 22, 170

Substitution of parties, see SUBSTITUTION OF PARTIES.**Partition:**

Assignees as parties plaintiff, 15, 786

Partnership, see PARTNERSHIP.*Patents*, see PATENTS.**Payment:**

Evidence of payment to assignor, 16, 210

Payment to assignor, 16, 197

Removal of causes, see REMOVAL OF CAUSES.

Review, 18, 1008

Specific performance, see SPECIFIC PERFORMANCE.

Splitting causes of action, 1, 158

Substitution of parties, see SUBSTITUTION OF PARTIES.

Supplemental pleadings, 21, 38

Supplementary proceedings:

Assignee of judgment, 21, 98

Surplusage, irrelevant or redundant matter, 21, 295

Trade-marks and trade names, 21, 756

Trover and conversion, see TROVER AND CONVERSION.**Vendor's liens:**

Parties in suit to enforce lien, 22, 715

Index Pl. & Pr. — 7

ASSIGNMENT FOR BENEFIT OF CREDITORS, 2, 865**Accounts and accounting:**

Cost of accounting, 2, 918

Final accounting of assignee, 2, 917

Party to till in equity, 1, 105

Action, see *infra*, Removal of assignee and appointment of receiver; Suits by creditors to protect assigned property; Suits to protect assigned property.

Action by third person against assignee, 2, 911

Assumpsit, 2, 912

Forms of action, 2, 912

In general, 2, 911

Replevin, 2, 912

Trover, 2, 913

Action for dividend, 2, 893

Action on assignee's bond, 2, 910

Actions to enforce assignment, 2, 883
Assignee as party defendant, 2, 889

Assignee as party, 2, 888

Assignor as party defendant, 2, 890

Assignor as party, 2, 889

Bill of complaint, 2, 885

Creditors as parties defendant, 2, 890

Creditor as party, 2, 886

Jurisdiction, 2, 883

Necessary averments, 2, 891

Parties defendant, 2, 889

Parties plaintiff, 2, 886

The answer, 2, 892

Time to institute action, 2, 885

Action to set aside assignment, 2, 894

Bill or complaint, 2, 903

Costs, 2, 909

Exceptions to rule requiring judgment and return of *nulla bona*, 2, 897

Fraudulent intent, 2, 906

Issue of execution and return of *nulla bona*, 2, 895

Jurisdiction, 2, 894

Necessary averments, 2, 906

Necessity of obtaining judgment, 2, 895

Parties defendant, 2, 904

Parties plaintiff, 2, 903

Requisite steps before suing, 2, 895

Return of judgment unsatisfied, 2, 908

Right of attaching creditors to sue, 2, 900

Right of simple contract creditors to sue, 2, 898

Time to bring action, 2, 894

ASSIGNMENT FOR BENEFIT OF CREDITORS, *cont'd.*

Action to set aside prior fraudulent conveyances, see infra, Fraudulent conveyances.

Answers:

Actions to enforce assignment, 2, 892

Assignee (see *infra*, Action by third person against assignee: Parties to action; Removal of assignee and appointment of receiver; Suits to protect assigned property):

Suits by creditors to protect assigned property, 2, 877

Assignor, see infra, Parties to action.

Attachments:

Action by assignee for discharge of attachment, 2, 872

Dissolution, 3, 67

Right to attach creditors to bring suit to set aside assignment, 2, 900

Bill in equity:

Actions to enforce assignment, 2, 885

Assignee, 2, 888, 889

Assignor, 2, 889, 890

Creditors, 2, 886, 890

Creditors in another class, 2, 891

Parties defendant, 2, 889

Parties plaintiff, 2, 886

Action to set aside assignment, 2, 903

Removal of assignee and appointment of receiver, 2, 916

Bonds:

Action on assignee's bond, 2, 910

Coming in under the assignment, 2, 866

Acceptance of benefits, 2, 867

Becoming party to assignment, 2, 867

How to come in, 2, 866

In general, 2, 866

Notice of consent, 2, 867

Statutory provisions as to time, 2, 868

Time to come in, 2, 867

Costs, 5, 151

Accounting, 2, 918

Action by assignee to protect property, 2, 876

Action to set aside assignment, 2, 909

Creditors, see infra, Action to set aside assignment; Parties to action; Removal of assignee and appointment of receiver; Suits by creditors to protect assigned property.

ASSIGNMENT FOR BENEFIT OF CREDITORS, *cont'd.***Deaths:**

Appointment of receiver, 2, 915

Declaration and complaint, 4, 597

Action by assignee to recover assigned property, 2, 875

Actions to enforce assignment, 2, 885

Removal of assignee and appointment of receiver, 2, 916

Defense, assignment as a, 2, 918

Dividend, actions for, 2, 893

Ejectment, 7, 278

Election of remedies, 7, 364

Enforcement of assignment, see infra, Actions to enforce assignment.

Executions:

Issue of execution and return of *nulla bona* before suit to set aside assignment, 2, 895

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Fraud of assignee, 2, 915

Fraudulent conveyances:

Actions to set aside prior fraudulent conveyances, 2, 879

At common law, 2, 879

By statute, 2, 881

Equitable action to set aside conveyance, 2, 880

Exhaustion of legal remedies, 2, 880

Fraudulent intent:

Action to set aside assignment, 2, 906

Injunction, 2, 875

Insolvency:

Appointment of receiver, 2, 915

Intent:

Averment of fraudulent intent in action to set aside assignment, 2, 906

Intervention, 2, 873

Judgment:

Necessity of creditor obtaining judgment before he can bring a suit to set aside assignment, 2, 895

Return of judgment unsatisfied, 2, 908

Jurisdiction:

Actions to enforce assignment, 2, 883

Action to set aside assignment, 2, 894

Removal of assignee and appointment of receiver, 2, 914

Negotiable instruments:

Jurisdiction at law or in equity, 14, 363

ASSIGNMENT FOR BENEFIT OF CREDITORS, *cont'd.*

- Parties to action, 2, 876
- Actions to enforce assignment, 2, 886, 889
- Action to set aside assignment, 2, 903
 - Parties defendant, 2, 904
 - Parties plaintiff, 2, 903
- Partition, 2, 875
- Presentation of claim, 2, 867
- Property, see *infra*, Suits by creditors to protect assigned property; Suits to protect assigned property.
- Receivers, see *infra*, Removal of assignee and appointment of receiver.
- Removal of assignee and appointment of receiver, 2, 913
 - Bill or complaint, 2, 916
 - Cost of accounting, 2, 918
 - Death of assignee, 2, 915
 - Final accounting of assignee, 2, 917
 - Fraud of assignee, 2, 915
 - Incompetency, 2, 915
 - In general, 2, 913
 - Insolvency of assignee, 2, 915
 - Jurisdiction, 2, 914
 - Necessity of attachment on action of lien, 2, 913
 - When assignee may be removed, 2, 915
 - When creditor may maintain action, 2, 913
- Replevin:
 - Action against assignee, 2, 912
 - Assignee, 2, 871
- Security for costs, 19, 351
- Setting aside assignment, see *infra*, Action to set aside assignment.
- Substitution of parties, 20, 1036
- Suits by creditors to protect assigned property, 2, 877
 - Examples, 2, 877, 879
 - Necessary steps before supplanting assignee, 2, 877
 - When creditors may sue, 2, 877
- Suits to protect assigned property, 2, 870
 - Complaint, 2, 875
 - Costs, 2, 876
 - Injunction, 2, 875
 - Intervention, 2, 873
 - Parties, 2, 876
 - Qualification of assignee, 2, 874
 - Replevin, 2, 872
 - Suits by assignee, 2, 870
 - Suits to avoid attachment proceedings, 2, 872
 - Usual form of action, 2, 871
- Time to bring action to set aside assignment, 2, 894

ASSIGNMENT FOR BENEFIT OF CREDITORS, *cont'd.*

- Time to come in, 2, 867
- Trover and conversion:
 - Action against assignee, 2, 913
- ASSIGNMENT OF ERRORS, 2, 920**
- Additional assignment, 2, 972
- Admiralty, 1, 281
- Amendments, 2, 972
- Briefs, see BRIEFS.
- Certiorari, 4, 293
 - Certainty in assignments, 4, 294
 - General and special assignments, 4, 294
 - Necessity of, 4, 293
- Clerical mistake, 2, 942
- Conclusions of fact, 2, 963
- "Contrary to the law and evidence," 2, 955
- Criminal procedure:
 - Necessity of assignment, 2, 929
 - Precision, 2, 944
 - Presence of accused, 2, 932
- Cross assignment, 2, 970
 - Affirmative relief, 2, 971
 - Effect, 2, 971
 - In general, 2, 970
 - Rules governing assignments, 2, 972
- Cross-bills, 5, 671
- Declaration and complaint:
 - Sufficiency of complaint, 2, 964
- Decree, 2, 954
- Defaults, 6, 235
- Defective assignments aided by brief, 2, 961
- Defenses, see *infra*, Objections for generality.
- Definition, 2, 921
- Demurrer, 2, 954, 969
- Dismissal of appeal, 2, 924
- Entitling the assignment, 2, 958
 - Dismissal on motion, 2, 959
 - Name of the court, 2, 958
 - Names of the parties, 2, 958
 - Omissions, 2, 959, 960
 - Omission supplied, 2, 960
 - Representative capacity of parties, 2, 959
 - Waiver of defect, 2, 960
- Equity:
 - Necessity of assignment, 2, 930
- Error in fact or law, 2, 956
- "Errors of law," 2, 944
- Error, writ of, 7, 850
- Evidence:
 - Assignment upon the evidence, 2, 945
 - "Contrary to the law and evidence," 2, 955
- Exceptions:
 - Founded on exceptions, 2, 965
 - Several exceptions, 2, 945

ASSIGNMENT OF ERRORS, *con.*

- Fact, conclusions of, 2, 963
- Facts, statement of improper, 2, 967
- Failure to file*, see *infra*, Necessity.
- Filing and service, 2, 931
 - Effect of failure to file within time, 2, 935
 - Husband and wife, 2, 933
 - Joint and several or joint or several assignment, 2, 933
 - Joint assignment, 2, 933
 - Refiling, 2, 937
 - Service before filing, 2, 938
 - Service of the assignment, 2, 937
 - Time of filing, 2, 934
 - Where to be filed, 2, 934
 - Who may assign errors, 2, 931
- Findings, 2, 954
- General assignments (see *infra*, Objections for generality):
 - Scope of assignment, 2, 962
- Generality*, see *infra*, Objections for generality.
- Husband and wife, 2, 933
- Instructions, 2, 948
 - No error in part of charge, 2, 951
 - Reference to bill of exception, 2, 951
 - Scope of assignment, 2, 962
 - Specific assignment, 2, 948
 - Specification for each instruction, 2, 950
 - Where the charge or instruction is lengthy, 2, 949
- Judgments, 2, 954
 - Judgment for the wrong party, 2, 963
- Misnomer, 2, 958
- Motions, 2, 952
- Name of the court, 2, 958
- Names of the parties, 2, 958
- Nature, 2, 921
- Necessity, 2, 922
 - Affirmance of judgment, 2, 924
 - Appeals from intermediate appellate courts, 2, 930
 - Criminal cases, 2, 929
 - Cross errors, 2, 929
 - Dismissal of appeal, 2, 924
 - Effect of failure to file, 2, 923
 - Equity cases, 2, 930
 - Errors not considered, 2, 925
 - Fundamental errors, 2, 928
 - In general, 2, 922
 - Waiver of errors assigned, 2, 927
- New trial*, see *NEW TRIAL*.
- Number of errors assigned, 2, 960
 - In general, 2, 960
 - Needless repetition, 2, 960
- Objections for generality, 2, 942
 - Allegation of error in overruling plea, demurrer, or exception, 2, 945

ASSIGNMENT OF ERRORS, *con.*

- Objections for generality, *cont'd.*
 - Assignment by reference, 2, 946
 - Assignment upon decree, 2, 954
 - Assignment upon instructions, 2, 948
 - Assignment upon motion, 2, 952
 - Assignment upon requests, 2, 948
 - Assignment upon rulings, 2, 952
 - Assignment upon the evidence, 2, 945
 - Assignment upon the judgment, 2, 954
 - Assignment upon the pleadings, 2, 944
 - Assignment upon verdict, 2, 954
 - Compared with assignments on motion for new trial, 2, 944
 - "Contrary to law and evidence," 2, 955
 - Criminal cases, 2, 944
 - Degree of precision required, 2, 943
 - Demurrers, 2, 954
 - Errors in fact or law, 2, 956
 - "Errors of law," 2, 944
 - Findings, 2, 954
 - General assignment, 2, 942
 - In general, 2, 942
 - Instruction unwarranted by evidence, 2, 949
 - Judgment for the wrong party, 2, 956
 - Lengthy charge of instruction, 2, 949
 - Mere allegation of error in pleadings, 2, 944
 - Motion based on several grounds, 2, 952
 - No error in part of charge, 2, 951
 - "On the grounds therein stated," 2, 953
 - "Other errors," 2, 944
 - Quoting, 2, 952
 - Reference to bill of exceptions, 2, 951
 - Several exceptions, 2, 945
 - Specific assignments, 2, 942
 - Specification for each instruction, 2, 950
 - Verdict, 2, 957
- Office, 2, 921
- "On the grounds therein stated," 2, 953
- "Other errors," 2, 944
- Pleading to the assignment, 2, 968
 - Common joinder, 2, 969
 - Demurrer, 2, 969
 - In general, 2, 968
- Precision*, see *infra*, Objections for generality.

ASSIGNMENT OF ERRORS, *con.*

- Records, 2, 965
 - Assignment attached to the record, 2, 968
 - Confined to record, 2, 965
 - Contradicting record, 2, 967
 - Founded on exceptions, 2, 965
 - Relation to the record, 2, 965
 - Statement of facts improper, 2, 967
- Reference, 2, 951
- Rehearing, 2, 973
- Rules of court:
 - Disregard of rules, 2, 941
- Rulings, 2, 952
- Scope of assignment, 2, 962
 - Amount of verdict, 2, 964
 - Conclusions of fact, 2, 962
 - General assignments, 2, 962
 - In general, 2, 962
 - Instructions, 2, 962
 - Judgment for wrong party, 2, 963
 - Overruling motion for new trial, 2, 965
 - Sufficiency of complaint, 2, 964
- Service*, see *infra*, Filing and service.
- Signature, 2, 960
- Specifications (see *infra*, Objections for generality: Sufficiency), 2, 921
- Stipulations, 20, 643
- Sufficiency, 2, 938
 - Assignments made for delay, 2, 940
 - Clerical mistake, 2, 942
 - Different rules united in one specification, 2, 938
 - Disregard of rules of court, 2, 941
 - Errors of law and fact, 2, 939
 - In general, 2, 938
 - Instruction and specification, 2, 938, 939
 - Reference to record, 2, 941
 - Specifications, 2, 938
 - Stating reasons for error, 2, 940
- Time of filing, 2, 934
- Titles (see *infra*, Entitling the assignment), 2, 958
- Verdict, 2, 954
 - Amount of verdict, 2, 964
- Waiver of errors assigned, 2, 927

ASSIGNMENT OF PERJURY, see PERJURY.

- ASSISTANCE, WRIT OF**, 2, 975
 - Against whom it will issue, 2, 979
 - Appeals, 2, 985
 - Application for writ, 2, 881
 - By whose favor it will issue, 2, 978
 - Concurrent remedy, 2, 976
 - Costs, 2, 985
 - Definition, 2, 975
 - Discretion of court, 2, 980

ASSISTANCE, WRIT OF, *cont'd.*

- Foreclosure of mortgages, 2, 979; 9, 448
- Issuance of writ discretionary, 2, 980
- Judicial sales, 2, 978
- Notice of application, 2, 984
- Obtaining the writ, 2, 981
- Petition, proceedings on, 2, 984
- Purchaser at a sale of real estate, 2, 978
- Use of writ, 2, 975
- Vacating writ or service, 2, 985
- Who made for, 2, 978

ASSIZE, WRIT OF, 17, 670**ASSOCIATIONS, see UNINCORPORATED SOCIETIES.****ASSUMPSIT**, 2, 987**See CONTRACTS; COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS.**

- Accord and satisfaction, 1, 74; 2, 1028

Accounts and accounting:

- Account stated, 2, 1024
 - Admission, 2, 1024
 - Failure to object, 2, 1025
 - Grounds for impeaching, 2, 1025
 - Partners, 2, 1025
 - What necessary to make, 2, 1024

- Plea of non-assumpsit, 1, 89

Affidavits of merits or defense, 1, 347

- Admission of part of claim, 1, 351
- Admissions binding, 1, 350
- How sufficiency tested, 1, 351
- Judgment by default, 1, 350
- Pennsylvania, 1, 347
- Plaintiff's statement, 1, 349
- To what actions applicable, 1, 349
- Waiver of defects, 1, 350
- Where plaintiff files or serves a statement of his claim or demand, 1, 347

Against servants:

- Dismissal of, 2, 1011

Attorneys:

- Common counts, 3, 105

Awards, 3, 129

- Non-assumpsit, 3, 142

Bills of particulars, 2, 1002**Carriers:**

- Illegal charges, 3, 864

Certainty, 2, 1002**Chattel mortgages**, 4, 514**Classification**, 2, 988**Commission merchant**, 2, 1017**Common counts (see *infra*, Accounts and accounting; Use and occupation)**, 2, 1002

- Allegation of request, 2, 1004

ASSUMPSIT, *cont'd.*Common counts, *cont'd.*

- Attorney's fees, 3, 105
- Bill of particulars, 2, 1002
- Consideration, 2, 1004
- Frauds, statute of, 9, 711
- Goods sold, see *infra*. Sales.
- In general, 2, 1002
- Money counts, see MONEY COUNTS.
- Work, labor, and materials, see WORK AND LABOR.

Conditions precedent, 2, 999

Consideration, 2, 993, 1004

Certainty of statement, 2, 994

Common counts, 2, 1004

Consideration entire, 2, 996

Consideration partially bad, 2, 994

Divisible contracts, 2, 994

Executed and executory considerations, 2, 996

Insufficient averment of consideration, 2, 993

Money had and received, 2, 1016

Mutual promise, 2, 995

Nature of consideration to be shown, 2, 1016

Necessity for averment, 2, 993

Objection for insufficient statement, 2, 997

Plaintiff's agreement, 2, 995

Pleas, 2, 1029

Previous request, 2, 996

Prior indebtedness, 2, 994

Restatement of the rule, 2, 996

Whether consideration must be proved as laid, 2, 993

Contract, see *infra*. Promise.

Contribution, 2, 1014

Covenant, 2, 989

Death, 2, 1011

Debt, 2, 989

Declaration and complaint (see *infra*,

Consideration), 2, 992

Averment of excuse, 2, 1000

Breach, 2, 1001

Certainty necessary, 2, 1002

Common counts, see *infra*. Common counts.

Demand, 2, 1001

Formal defects, 2, 993

In general, 2, 992

Necessary averments, 2, 999

Notice, 2, 1000

Performance by plaintiff, 2, 999

Promise, 2, 997

Request, 2, 1001

Special contract, 2, 998

Defense, see *infra*. Pleas.

Definition, 2, 988

Demand, 2, 1001, 1004

Demand implied, 2, 1013

Money paid, 2, 1012

ASSUMPSIT, *cont'd.*

Directing verdict, 6, 705

Duress, 2, 1013

Election of remedies:

Waiver of tort, 2, 1022

Embezzlement, 2, 1023

Excuse, averment of, 2, 1000

Excuse for nonperformance, 2, 1009

Factors, 2, 1017

False representations and deceit, 8, 887

Effect of allegation of fraud, 8, 888

Effect of existence of other remedies, 8, 888

In general, 8, 887

Forgery, 2, 1023

Formal defects, 2, 993

Former adjudication, 9, 616

Fraud, 2, 1023

Frauds, statute of, 9, 699

Common counts where noncompliance with statute does not appear upon face of pleading, 9, 711

General assumpsit, 2, 991

In general, 2, 991

Variance, 2, 992

General issue, 2, 1027

Special pleas amounting to the general issue, 2, 1033

Guaranty:

Action to enforce contract of guarantyship, 16, 939

Illegal contracts, 2, 1019

Loans for illegal purpose, 2, 1016

Implied assumpsit, 2, 1030

Insolvency and bankruptcy, 2, 1032

Joinder of counts and causes, 1, 169

Joint tenants and tenants in common, 11, 760

Joinder in assumpsit on waiver of tort, 11, 772

Judgments, 2, 990, 1034; 11, 1114

Larceny, 2, 1023

Limitations, 2, 988, 1032; 13, 187

Common-law doctrine, 2, 988

Judgments, 2, 990

Statutes, 2, 990

Statutory modifications, 2, 989

Loans, see MONEY COUNTS.

Mistake:

Money paid by mistake, 2, 1018

Money counts, see MONEY COUNTS.

Money stolen, 2, 1023

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Nil debet, 3, 142

Non-assumpsit, 16, 544

Notice, 2, 1000

Ordinance, 2, 1030; 15, 417

Partnership:

Account stated, 2, 1025

Payment, 2, 1018, 1028

ASSUMPSIT, *cont'd.*

- Pleas, 2, 1027
 - Accord and satisfaction, 2, 1028
 - Demand not due, 2, 1028
 - Failure of consideration, 2, 1029
 - Forms, 2, 1031
 - General issue, 2, 1027
 - Implied assumpsit, 2, 1030
 - Limitations of action, 2, 1032
 - Notice of special defense, 2, 1030
 - Ordinance, 2, 1030
 - Payment, 2, 1028
 - Special pleas, 2, 1032
 - Special pleas amounting to the general issue, 2, 1033
 - Technically, 2, 1031
 - Tender, 2, 1032
 - Work or materials not in accordance with contract, 2, 1029
- Pledges, 16, 641, 649
- Privity necessary, 2, 1021
- Promise:
 - Binding contract, 2, 998
 - In totidem verbis*, 2, 998
 - Mutual promise, 2, 995
 - Sufficiency of allegation in general, 2, 997
 - Where special contract is relied upon, 2, 998
- Prosecuting attorneys:
 - Fees, 17, 24
- Public officers, 17, 175
- Quantum meruit*, see **QUANTUM MERUIT**.
- Restitution, 18, 893
 - Actually received, 18, 895
 - Demand for restitution, 18, 895
 - In general, 18, 893
 - Money equitably due the plaintiff, 18, 894
- Reward:
 - Assumpsit or debt, 18, 1151
- Sales (see **SALES**), 2, 1005
 - Bargained and sold, 2, 1007
 - Delivery of goods, 2, 1006
 - Delivery to satisfy statute of frauds, 2, 1007
 - Goods sold, 2, 1005
 - Goods sold on trial, 2, 1007
 - Possession of purchaser, 2, 1006
 - Sale or return, 2, 1006
 - Sold and delivered, 2, 1005
 - When the count of goods sold will not lie, 2, 1007
- Sealed instrument, 2, 988
- Sickness, 2, 1011
- Simple contract, 2, 988
- Special assumpsit, 2, 990
 - Examples, 2, 990, 991
 - In general, 2, 990
 - Promise and request, 2, 991
 - Special contract executed, 2, 991
 - Special contract executory, 2, 991

ASSUMPSIT, *cont'd.*

- Statutes, 2, 990
 - Stock and stockholders:
 - Dividends and new or bonus stock, 20, 810
 - Enforcement of stockholders' liability, 20, 699
 - Enforcement of subscriptions or calls, 20, 679
 - Proceedings respecting transfer of stock and certificates, 20, 812
 - Stockbrokers, 2, 1023
 - Suretyship, 2, 1014
 - Action for contribution, 16, 960
 - Tenants in common, 2, 1023
 - Tender, 2, 1032
 - Title, ownership, and possession:
 - Defective title, 2, 1019
 - Torts:
 - Waiver of tort, 2, 1022
 - Trespass:
 - Joinder, 21, 800
 - Waiver of trespass, 21, 790
 - Trespass on the case:
 - Distinction between declaration in case and in assumpsit in actions against carriers, 3, 821
 - Joinder, 21, 906
 - Trover and conversion:
 - Joinder of counts and causes, 21, 1031
 - Trusts and trustees:
 - Remedy against trustee, 22, 138
 - Use and occupation, 2, 1026
 - Origin of the action, 2, 1026
 - What plaintiff must show, 2, 1026
 - Usury, 2, 1020
 - Variance, 2, 992
 - Vendor and purchaser:
 - Recovering back purchase money, 22, 669
 - Verdict, 2, 1034
 - Work and labor*, see **WORK AND LABOR**.
- ASSUMPTION:**
Instructions, see **INSTRUCTIONS**.
- ATHEIST:**
Affirmation, see **AFFIRMATION**.
- ATTACHMENT.** 3, 1
 See **GARNISHMENT**; **NE EXEAT**; **SEQUESTRATION**.
 "Absconding," 3, 26
 Additional allowances of costs, 1, 213
 Admiralty:
 Foreign attachment, 1, 258
 Affidavit, 3, 3
 "Absconding," 3, 26
 Accuracy of statement of plaintiff's claim, 3, 15
 Actually due, 3, 19
 Agent, 3, 23
 Agent or other person as affiant, 3, 8
 Allegation of contract, 3, 18

ATTACHMENT, *cont'd.***Affidavit, *cont'd.***

- Allegation of knowledge and belief, 3, 21
- Allegation of nonresidence, 3, 26
- Allegation of promissory note, 3, 18
- Amendments, 3, 14
- Amount, 3, 15
- "And," 3, 24
- Attorney, 3, 8, 23
- Before whom to be made, 3, 6
- "Credible person," 3, 8
- Description of affiant, 3, 9
- Disjunctive statements, 3, 22
- Effect of failure to give required affidavit, 3, 4
- Effect of formal defects, 3, 12
- Equivalent averment, 3, 11
- Formal defects, 3, 12
- Form of the affidavit, 3, 10
- Foundation of demand, 3, 17
- Harass, 3, 27
- Inconsistency, 3, 21
- Intent, 3, 27
- Joint debtors, 3, 18
- Jurat, 3, 13
- "Justly," 3, 20
- Justness of claim, 3, 19
- Laches in issuing writ, 3, 6
- Language of the statute, 3, 10
- Lost affidavit, 3, 5
- Name of plaintiff, 3, 14
- Nature of debt, 3, 16
- Negating existence of counter-claims, 3, 20
- Omitted words, 3, 15
- "Over and above all counter-claims," 3, 23
- Partnership, 3, 12
- Part of the record, 3, 5
- Petition as affidavit, 3, 5
- Presumption of knowledge, 3, 23
- Qualifying words, 3, 19
- Recitals in writ, 3, 45
- "Removing," 3, 26
- Signature of plaintiff, 3, 13
- Sources of information, 3, 23
- Statement of grounds of attachment, 3, 21
- Statement of plaintiff's claim, 3, 15
- Statement should be clear, 3, 19
- Statutory phrases and clauses, 3, 26
- Statutory provisions as to affiant, 3, 7
- Statutory requirement, 3, 3
- Substantial averments, 3, 15
- Substantial compliance with statute, 3, 11
- Surplusage, 3, 11
- The affiant, 3, 7

ATTACHMENT, *cont'd.***Affidavit, *cont'd.***

- Title, 1, 312
- Traverse of the affidavit, 3, 78
 - Burden of proof, 3, 79
 - Must deny all the grounds of attachment, 3, 78
 - Must not put the merits of the cause in issue, 3, 79
 - Nature and effect of the traverse, 3, 78
- Unliquidated damages, 3, 16
- Validity of judgment, 3, 4
- Variance, 3, 27
- Vex, 3, 27
- When to be made, 3, 5
- Who may object, 3, 5
- Agency, 3, 23
 - Affidavit, 3, 8
 - Bond, 3, 35
- Amendments, 1, 675
 - Ad damnum*, 1, 679, 687
 - Affidavit, 1, 680; 3, 14
 - Bonds, 1, 683
 - Caption, 1, 686
 - Change of parties, 1, 678
 - Date, 1, 687
 - Declaration and complaint, 1, 676
 - Defective verification, 1, 680
 - Demurrable complaint, 1, 677
 - Direction, 1, 686
 - Effect of improper amendment, 1, 678
 - In general, 1, 675
 - Misnomer, 1, 686
 - Misnomer of the parties, 1, 679
 - New cause of action, 1, 677
 - Seals, 1, 687
 - Signature, 1, 687
 - Teste, 1, 687
 - Title acquired pending suit, 1, 678
 - Tort to contract and *vice versa*, 1, 678
 - Writ, 1, 685
- Amount:
 - Affidavit, 3, 15
 - Bond, 3, 33
 - Writ, 3, 44
- "And," 3, 24
- Another suit pending:
 - Attachment in other states, 1, 766
 - Attachment suits and personal actions, 1, 763
- Answers in equity pleading:
 - To compel answer, 1, 894
- Appeal bond, 3, 84
- Appeals, 2, 28, 48, 118
 - Affecting a substantial right, 2, 119
 - Pleas in abatement, 2, 119
 - Whether appeal lies from judgments, 2, 118

ATTACHMENT, *cont'd.*

- Appearance, 2, 608, 653
 - A general appearance in the action, 2, 608
 - Appearance and pleading a waiver of irregularities, 3, 83
 - Contesting the truth of the grounds, 2, 609
 - Garnishment, 2, 612
 - Moving to dissolve, 2, 609
 - Quashing the writ, 2, 610
 - Special appearance, 3, 66
 - Validating void attachment, 2, 611
 - Waiving compliance with statute, 2, 611
 - Waiving process, 2, 610
- Assignment:
 - Motion for dissolution, 3, 67
- Assignment for benefit of creditors:
 - Action by assignee for discharge of attachment, 2, 872
 - Dissolution, 3, 67
 - Right to attach creditors to bring suit to set aside assignment, 2, 900
- Attaching property, see *infra*, Execution of writ.
- Attorneys, 3, 8, 23
 - Bond, 3, 35
 - Release of attorney, 3, 83
- Bailment, 3, 60
- Bankruptcy, 3, 87
- Bills and notes:
 - Affidavit, 3, 18
- Bond or undertaking, 3, 28, 643
 - Action on bond, 3, 38
 - Agent, 3, 35
 - Allegation of residence, 3, 37
 - Amount of indemnity, 3, 33
 - Approval of the bond, 3, 32
 - Attorneys, 3, 35
 - Corporations, 3, 35
 - Damages, 3, 652
 - Date, 3, 32
 - Declaration or complaint, 3, 651
 - Defendants, 3, 644
 - Discharge of attachment, 3, 651
 - Dissolution by giving bond, 3, 84
 - Bail bond, 3, 84
 - Delivery bond, 3, 86
 - Discharging part of property, 3, 85
 - Distinguished from delivery bond, 3, 86
 - Effect of bond, 3, 84
 - Plaintiff's privilege, 3, 84
 - Time for giving bond, 3, 85
 - When bond void, 3, 85
 - Whether the execution of the bond will be a bar to a subsequent motion to dissolve, 3, 86

ATTACHMENT, *cont'd.*

- Bond or undertaking, *cont'd.*
 - Failure to give the bond required, 3, 29
 - Form of bond, 3, 30
 - Forthcoming or bail bonds, 3, 644
 - In general, 3, 28
 - Joinder of plaintiffs, 3, 644
 - Misrecital of amount, 3, 34
 - Name of the court, 3, 32
 - Necessity, 3, 28
 - Obligee, 3, 37
 - Omissions, 3, 31
 - Parties to the bond, 3, 34
 - Partnership, 3, 34
 - Seals, 3, 31
 - Security, 3, 36
 - Statutory amount of indemnity, 3, 33
 - Statutory form, 3, 30
 - Substantial compliance with statute, 3, 31
 - Substituted bond, 3, 34
 - Sureties, 3, 36
 - Surplusage, 3, 31
 - Time for giving bond, 3, 29
 - Who may sue on attachment bond, 3, 643
- Bonds, see *infra*, Bond or undertaking; and see FORTHCOMING AND DELIVERY BONDS.
- Breach of promise of marriage, 3, 684
- Cause of action, 3, 42
- Certiorari, 4, 89
- Chambers and vacation:
 - Dissolution, 3, 76
 - Issue and dissolution of attachment, 4, 353
- Chattel mortgages:
 - Election of remedies, 4, 517
 - Interests of attaching creditors, 4, 528
- Consolidation of actions, 4, 677
- Contempt, see CONTEMPT.
- Continuances, 4, 860
- Contracts:
 - Affidavit, 3, 16
- Corporations:
 - Bond, 3, 35
- Costs:
 - Collection of costs, 5, 259
 - "Credible person," 3, 8
- Creditors' bills:
 - Equitable attachment, 5, 394
 - Exhaustion of ordinary legal remedies, 5, 525
 - Ouster of equitable jurisdiction, 5, 430
- Custody of attached property, 3, 60
 - Attaching officer, 3, 60
 - Bailee, 3, 60

ATTACHMENT, *cont'd.*Custody of attached property, *cont'd.*

Continuity of possession, 3, 62

Defendant, 3, 61

In general, 3, 60

Notoriety, 3, 62

Damages, see UNLIQUIDATED DAMAGES.

Date, 3, 38

Death:

Death of defendant, 3, 90; 5, 832

Debt, nature of, 3, 16

Defaults, 6, 36

Collateral attack, 6, 38

Judgment *in rem*, 6, 37

Notice necessary, 6, 36

Service by publication, 6, 36

Strict compliance required, 6, 37

*Defects, see infra, Dissolution.**Delivery bond, see FORTHCOMING AND DELIVERY BONDS.*

Deputy, 3, 56

Description of property, 3, 45

Discretion of court, 3, 75

Dismissal, discontinuance, and non-suit:

Retention for partial relief, 6, 968

Dissolution, 3, 65

After entry of judgment, 3, 73

After pleading to the merits, 3, 72

Appeal from justice, 3, 75

Appearance and pleading a waiver of irregularities, 3, 83

Assignor for benefit of creditors, 3, 67

Bankruptcy, 3, 87

Before entry of judgment, 3, 73

Burden of proof, 3, 79

Causes of dissolution arising subsequent to attachment, 3, 87

Chambers, 3, 76

Claimants and other interested parties, 3, 70

Death of defendant, 3, 90

Defects, 3, 80

Defendant, 3, 65

Defendant disclaiming interest, 3, 66

Defendant's assignee, 3, 67

Denying all the grounds of attachment, 3, 78

Discharge of one defendant, 3, 93

Discretion of court, 3, 75

Final judgment, 3, 91

Forthcoming or delivery bonds, see FORTHCOMING OR DELIVERY BONDS.

Insolvency, 3, 87

Irregularities, 3, 80

ATTACHMENT, *cont'd.*Dissolution, *cont'd.*

Judge granting amendment, 3, 76

Judgment creditor, 3, 69

Merits of the cause, 3, 79

Miscellaneous causes for dissolution, 3, 92, 94

Mode of dissolving, 3, 77

More than one motion, 3, 75

Motion by party other than defendant, 3, 80

Motion should specify grounds for dissolution, 3, 81

Motion the most usual method, 3, 80

Parties, 3, 67

Partnership, 3, 66

Personal judgment for plaintiff, 3, 92

Property surrendered to defendant, 3, 92

Receiver of defendant, 3, 67

Release of attorney, 3, 83

Return of the property, 3, 94

Right not barred by subsequent levies, 3, 66

Special appearance, 3, 66

Submission to jury, 3, 76

Subsequent lien creditors, 3, 69

To whom application should be addressed, 3, 75

Traverse of the affidavit, 3, 78

Vendee of defendant, 3, 67

What must be shown by creditor, 3, 70

Who may dissolve, 3, 65

Equitable attachment, see EQUITABLE ATTACHMENT.

Exceptions and objections, 8, 300

Execution of writ, 3, 54

Actual handling of property attached, 3, 59

Attaching property attached, 3, 59

Attachment of personality, 3, 59

Attachment of real estate, 3, 57

By whom executed, 3, 56

Diligence necessary, 3, 55

Duration of authority to levy, 3, 56

Fraudulent attachment, 3, 55

Illegal attachment, 3, 55

In general, 3, 54

Justification of officer, 3, 57

Necessary to enter upon the land, 3, 58

Officer legally authorized, 3, 57

Order of levy, 3, 55

Personalty, 3, 59

Priority of writs, 3, 55

Ratification by plaintiff, 3, 57

ATTACHMENT, *cont'd.*Execution of writ, *cont'a.*Removal of property attached,
3, 59

Right to levy on real estate, 3, 58

Special deputy, 3, 56

Executions:

Special executions, 8, 393

Formal defects:

Affidavit, 3, 12

Formalities, 3, 38

Forthcoming and delivery bonds, see
FORTHCOMING AND DELIVERY
BONDS.

Fraud, 3, 55

Garnishment, see GARNISHMENT.

Grounds of attachment:

Recitals, 3, 42

Guardians:

By third persons against ward,
9, 935*Handling property*, see *infra*, Execu-
tion of writ.

Holidays, 3, 52

Illegal attachment, 3, 55

Injunctions:

Disobedience of injunction, 10,
1110

Insolvency and bankruptcy, 3, 87

Intent, 3, 27

Interested officer, 3, 49

Inventory, 3, 64

Irregularities, see *infra*, Dissolution.*Issuance*, see *infra*, Writ.

Issues to the jury, 11, 633

Judgment:

Actions upon judgments in at-
tachment, 11, 1103

Effect of final judgment, 3, 91

Validity of judgment, 3, 4

Judgment creditor:

Motion for dissolution, 3, 69

Judicial sales:

Sale in attachment proceedings,
12, 8

Jurat, 3, 13

Jurisdiction, 3, 53

"Justly," 3, 20

Laches:

Issuing writ, 3, 6

Landlord and tenant, see LANDLORD
AND TENANT.*Liens*, see LIENS.*Logs and lumber*, see LOGS AND LUM-
BER.

Mandamus, 13, 597

Delivery of attached property,
13, 599

To appear and answer, 13, 598

To grant new trial, 13, 597

To pay over proceeds, 13, 598

To quash proceedings, 13, 597

To reinstate proceedings, 13, 598

ATTACHMENT, *cont'd.*Mandamus, *cont'd.*To release attached property, 13,
598

To set aside continuance, 13, 598

Mechanics' liens, see MECHANICS'
LIENS.

Misnomer, 3, 41

Motion, see *infra*, Dissolution.

Municipal corporations:

Bond, 3, 35

Name, 3, 41

Affidavit, 3, 14

Nonresidence, 3, 26

Bond, 3, 29

Number of writs, 3, 53

Obstructing justice, see OBSTRUCTING
JUSTICE.Officer (see *infra*, Custody of attached
property), 3, 57Parties to action (see *infra*, Dissolu-
tion), 3, 41*Partnership*, see PARTNERSHIP.

Place of issuance, 3, 46

Pledges:

Waiver of lien, 16, 636

Præcipe, 16, 770

Priority of writ, 3, 55

Process, see *infra*, Writ.Property (see *infra*, Custody of
attached property):

Inventory, 3, 64

Return of, 3, 94

Publication, 17, 43

Judgment of affidavit, 17, 55

Stating notice of attachment, 17,
93

Real estate, 3, 56

Reasonable certainty, 3, 15

Receivers, 17, 694

Analogy, 17, 683

Leave of court, 17, 778

Motion for dissolution, 3, 67

Recitals (see *infra*, Writ):

Return of writ, 3, 63

Records:

Affidavit as part of record, 3, 5

Release of attorney, 3, 83

Removal of causes, 18, 168

Removal of property, see *infra*, Exe-
cution of writ.

"Removing," 3, 26

Residence (see *infra*, Nonresidence):Allegation of residence in bond,
3, 37

Restitution:

Return of property, 3, 94

Return, 3, 62

By whom levy made, 3, 63

Conclusiveness, 3, 64

How levy made, 3, 63

In general, 3, 62

Inventory, 3, 64

ATTACHMENT, *cont'd.***Return, *cont'd.***

- Mistake of clerk, 3, 64
- Recitals, 3, 63
- Schedule, 3, 64
- Statement of facts, 3, 63
- Variance, 3, 63
- When levy made, 3, 63
- Within reasonable time, 3, 62

Return of property, 3, 94**Schedule, 3, 64****Seals:**

- Bond, 3, 31
- Officer, 3, 39

Security for costs, 19, 359**Set-off, recoupment, and counter-claims:**

- Negating existence of counter-claims, 3, 20
- "Over and above all counter-claims," 3, 23

Settlement of decedents' estates:

- Failure to account, 19, 1030

Shipping, see SHIPPING.**Signature, 3, 13**

- Officer, 3, 39

Statutes:

- Amount of bond, 3, 33
- Bond, 3, 30, 33
- Construction of statutory phrases and clauses, 3, 26
- Language of statute, 3, 10
- Statutory requirement, 3, 3
- Substantial compliance, 3, 11

Statutory origin, 3, 3***Stock and stockholders, see STOCK AND STOCKHOLDERS.*****Summons and process, 3, 40****Sundays, 3, 52****Sundays and holidays, 20, 1196****Suretyship:**

- Bond, 3, 36

Surplusage:

- Affidavit, 3, 11
- Bond, 3, 31

Time:

- Return of writ, 3, 62
- Time for moving to dissolve, 3, 71
- Time of issuance, 3, 50
- Time of issue, 3, 46

Trial of the right of property, see RIGHT OF PROPERTY, TRIAL OF.**Trusts and trustees:**

- Actions with third persons, 22, 199
- Parties, 22, 184

Undertaking, see infra, Bond or undertaking.**United States courts, 22, 297****Variance:**

- Affidavit, 3, 27
- Return of writ, 3, 63

ATTACHMENT, *cont'd.***Vendor and purchaser:**

- Motion by vendee, 3, 67

Winding up corporations:

- Priorities, 22, 1290

Witnesses, see WITNESSES.**Writ, 3, 38**

- Affidavit, 3, 45

- Amount, 3, 44

Attachment of real estate, 3, 44**Cause of action, 3, 42****Date, 3, 38****Description of property, 3, 45****Formal entry of order, 3, 49****Formalities, 3, 38****Grounds of attachment, 3, 42****Holidays, 3, 52****Interested officer, 3, 49****Interval between filing papers and issuing writ, 3, 51****Issuance, 3, 47****Issuance before papers presented to officer, 3, 51****Jurisdiction, 3, 53****Misnomer, 3, 41****Name, 3, 41****Name of state, 3, 38****Number of writs, 3, 53****Officer issuing it, 3, 38****Order of issue, 3, 52****Parties, 3, 41****Partnership, 3, 42****Place, 3, 46****Recitals, 3, 42****Seal, 3, 39****Signature, 3, 39****Statutory requisites, 3, 40****Successive writs, 3, 54****Summons, 3, 40****Sundays, 3, 52****Time, 3, 46****Time of issuance, 3, 50****To whom directed, 3, 52****When returnable, 3, 46****Where returnable, 3, 46****Who may issue, 3, 47****ATTEMPTS, 3, 97****Abortion, 3, 101****Bribery, 3, 696, 700****Burglary, 3, 798, 799****Conviction of an attempt, 3, 102****Definition, 3, 97****Indictment, 3, 97****Charging the offense, 10, 477****In general, 3, 97****Intent, 3, 98****Larceny, 3, 99, 100****Overt act, 3, 98****Particularity required, 3, 100****Two offenses, 3, 98****Larceny, 3, 99, 100*****Rape, see RAPE.***

ATTEMPTS, *cont'd.*

- Riot, 18, 1201
- Solicitation of attempt, 3, 100
- Soliciting to crime, 3, 101

ATTESTATION:

- Cognovit, 4, 563
- Execution against the body and arrest in civil cases, 8, 634

ATTORNEY-GENERAL (see PROSECUTING ATTORNEYS):

- Informations in equity, 10, 860
 - Conduct of cause, 10, 866
- Injunctions, 10, 902
 - In suits to enjoin public mischief, 10, 902
 - Matters concerning private interests only, 10, 803
 - Parties plaintiff, 10, 902
- Mandamus, 13, 626
- Nolle prosequi*, see *NOLLE PROSEQUI*.

Trusts and trustees:

- Charitable trusts, 22, 204
- Winding up corporations, 22, 1255
 - Actions by attorney-general or in name of people, 22, 1236

ATTORNEYS, 3, 104

- See ATTORNEY'S FEES; POWER OF ATTORNEY; PROSECUTING ATTORNEYS; SUBSTITUTION OF ATTORNEYS.

Action as bar to summary proceeding, 3, 111

- Action by attorney for fees, 3, 104
 - Action at law, 3, 105
 - Allegation of admission to the bar, 3, 106
 - Code practice, 3, 105
 - Common counts, 3, 105
 - Form of action, 3, 104
 - Fund in court, 3, 105
 - Issue, 3, 107
 - Parties, 3, 106

Actions against attorneys, 3, 107

- Action as bar to summary proceeding, 2, 112
- Money collected, 3, 108
- Negligence, 3, 107

Affidavits:

- Authority of attorney to take, 1, 330
- Affidavits of merits or defense, 1, 359, 364, 371

Amicus curiæ*, see FRIEND OF THE COURT.*Appeal bonds and undertakings, 1, 976**

- Attorney as surety, 1, 1004

Appeals:

- Attorney not of record, 2, 215
- Attorney of record, 2, 214
- Service of notice of appeal where there is more than one attorney, 2, 223

ATTORNEYS, *cont'd.***Appeals, *cont'd.***

- Service on attorney of record, 2, 222
- Signature of notice of appeal, 2, 214
- Substitution of attorneys, 2, 215

Appearances*, see APPEARANCE.**Arguments of counsel*, see ARGUMENTS OF COUNSEL.****Assumpsit:**

- Common counts, 3, 105

Attachment, 3, 8, 23

- Bond, 3, 35
- Release of attorney, 3, 83

Attorney's fees*, see ATTORNEY'S FEES.**Attorney's liens*, see LIENS.****Bills in equity:**

- Authority to file the bill, 3, 371
- Bills of exceptions*, see *BILLS OF EXCEPTIONS*.

Briefs*, see BRIEFS.**Champerty and maintenance*, see CHAMPERTY AND MAINTENANCE.****Change of venue:**

- Attorney's residence, 4, 393
- Disbarment of attorney, 4, 385
- Judge formerly employed as counsel, 4, 406
- Undue influence of attorney, 4, 410

Collections:

- Action for money collected, 3, 108
- Summary proceedings against attorneys, 3, 108

Continuances*, see CONTINUANCES.*Coroners' inquests:**

- Representation by counsel, 5, 44

Corporations:

- Plea by, 5, 54

Costs, 5, 153

- Attorney for party, 5, 155
- Attorney's fees, 5, 226
 - Appeals, 5, 227
 - Appearance or docket fee, 5, 226
 - Final hearing, 5, 227
 - Reasonable fees for service, 5, 228
 - Statutes, 5, 228
 - Various proceedings, 5, 229
 - What is taxable, 5, 226

Costs as between attorney and client, 5, 108, 225**Liability for, 5, 153****Liability of sheriff for nonresident plaintiff, 5, 155****Liens, 5, 122****Scandalous pleadings, 5, 153****Several defendants appearing by the same or different attorney, 5, 139****Sheriff's and clerk's fees, 5, 154**

ATTORNEY'S FEES, *cont'd.*

- Judgments:
 - Striking out excessive attorney's fee on appeal, 11, 1070
- Landlord and tenant:
 - Attachment, 12, 913
- Probate and contest of wills, 16, 1051
- Railroads:
 - Injuries to animals, 17, 614
- Replevin, 18, 611
- Sales:
 - Vendor's action to recover goods, 19, 70
 - Vendor's liens, 22, 748
 - Wills, 22, 1212

AUCTIONEERS:

- Parties to actions*, see **PARTIES TO ACTIONS**.

AUDITA QUERELA, 3, 113

- Amendments, 3, 123
- Appeals, 3, 117
- Bankruptcy, 3, 116
- Common law, 3, 114
- Common right, 3, 114
- Concurrent remedies, 3, 124
- Concurrent suits, 3, 116
- Definition, 3, 113
- Discontinuance:
 - Judgment for, 3, 116
- Effect, 3, 120
- Equitable defenses, 3, 120
- Error, writ of, 3, 119
- Executions, 3, 117
 - Relief against the writ, 8, 458
- Facts since judgment, 3, 114
- Frauds, 3, 115
- Guardian, 3, 116
- Insolvency and bankruptcy, 3, 116
- Judgment, 3, 124
- Justices of the peace, 3, 117
- Motions:
 - Motion as a substitute for audita querela, 14, 77
- Nature of proceedings, 3, 113
- Negligence, 3, 119
- Notice, want of, 3, 115
- Opening, amending, and vacating judgments, 15, 254
- Parties to action, 3, 120
- Plea, 2, 123
- Pleadings, 3, 123
- Quia timet*, 3, 118
- Satisfaction and discharge of judgments, 19, 128
- Service of process, 3, 122
- Statutes, 3, 114
- Summons and process, 3, 119
- Supersedeas and stay of proceedings, 20, 1211
- Whence the writ issues, 3, 114
- When it will lie, 3, 114
- When it will not lie, 3, 119

AUDITORS, see **REFERENCES**.**AUTHENTICATION (see AFFIDAVITS):**

- Appeals:
 - Transcript on appeal, 2, 283
- Bills of exceptions*, see **BILLS OF EXCEPTIONS**.
- Case made on appeal*, see **CASE MADE ON APPEAL**.
- Change of venue, 4, 477
- Depositions:
 - Certificate, 6, 542
- Extradition, 8, 809
 - Conclusiveness of certificate, 8, 810
 - In general, 8, 809
 - Sufficiency of authentication, 8, 809
 - Sufficiency of, to justify commitment, 8, 811

AUTREFOIS ACQUIT OR CONVICT, see FORMER CONVICTION OR ACQUITTAL.**AVOIDANCE, see CONFESSION AND AVOIDANCE.****AWARDS (see ARBITRATION AND AWARD):**

- Mistake:
 - Setting aside award, 3, 154

BAGGAGE, 15, 1139**BAIL AND RECOGNIZANCE, 3, 158**
See **APPEAL BONDS AND UNDERTAKINGS**.

- Abiding the event, 1, 57
 - Civil actions, 1, 58
 - Criminal proceedings, 1, 57
- Accused, obligations of the, 3, 246
- Acknowledgment, 3, 227
- Affidavit, 3, 164
 - Debt, 3, 165
 - Discharge on common bail, 3, 165
 - Information and belief, 3, 165
 - In general, 3, 164
 - Necessary statements, 3, 164
 - Title, 1, 312
- Amendment, 3, 231
- Amount, 3, 166
 - Bonds, 3, 176
 - Criminal cases, 3, 213
 - Recognizance, 3, 225

- Appeal bonds (see *infra*, **Bonds**; and see **APPEAL BONDS AND UNDERTAKINGS**), 3, 164
- Appeals:
 - Bail on appeal, 3, 164
 - Criminal cases, 3, 206
 - Forfeiture, 3, 238
 - Recognizance, 3, 232
 - Remission, 3, 244
- Appearance, 3, 219, 246
 - Excuse for nonappearance, 3, 248
- Bankruptcy, 3, 185
- Bonds, 3, 173
 - Amount, 3, 176

BAIL AND RECOGNIZANCE, *con.*

Bonds, *cont'd.*

Assignment of bail bonds, 3, 176
 Bail-piece, 3, 176
 Cancellation, 3, 177
 Conditions, 3, 175
 Execution, 3, 173
 General requisite, 3, 174
 Illegal arrest, 3, 173
 Number of sureties, 3, 174
 Recitals, 3, 174
 Substitution for lost bond, 3, 177
 To whom given, 3, 173
 Breach of the peace, 3, 231
 Burden of proof, 3, 210
 Chambers and vacation, 4, 341
 Civil cases, 3, 159
 Abatement, 3, 184
 Actions in which bail has been required, 3, 161
 Acts of plaintiff discharge bail, 3, 187
 Adding bail, 3, 173
 Affidavit, 3, 164
 Amount of bail, 3, 166
 Bail bonds, 3, 173
 Bail on appeal, 3, 164
 Bail-piece, 3, 160
 Bankruptcy, 3, 185
 Common bail, 3, 159, 163
 Death of defendant, 3, 186
 Debt, action of, 3, 181
 Defendant exempt from execution, 3, 162
 Defenses to proceed against bail, 3, 181
 Definition of bail, 3, 159
 Definition of recognizance, 3, 160
 Delay, 3, 184
 Depriving bail of right to arrest, 3, 188
 Discharge of bail, 3, 183
 Enlistment of principal, 3, 186
 Exemption from execution, 3, 162
 Exoneration of bail, 3, 183
 Extent of bail's liability, 3, 177
 Fixing the liability of bail, 3, 179
 Freeholder, 3, 168
 Holding to bail twice, 3, 161
 Householder and ownership, 3, 169
 Imprisonment of principal, 3, 185
 Increase of risk, 3, 187
 Insanity, 3, 186
 Insolvent discharged, 3, 162
 Judgment for defendant, 3, 186
 Liability of principal, 3, 193
 Money as bail, 3, 166
 Notice, 3, 170
 Proceedings against bail, 3, 180
 Proceedings to obtain bail, 3, 164
 Putting in bail, 3, 186
 Putting in suit, 3, 169
 Index Pl. & Pr. — 8

BAIL AND RECOGNIZANCE, *con.*

Civil cases, *cont'd.*

Qualifications of bail, 3, 168
 Recognizance, 3, 173
 Reduction of bail, 3, 166
 Relief discretionary, 3, 188
 Right to give bail, 3, 160
 Scire facias, 3, 180
 Sheriff as bail, 3, 169, 178
 Special bail, 3, 159, 163
 Stay of proceedings, 3, 182
Surrender by bail, see **SURRENDER BY BAIL**.
 Waiver of right to hold to bail, 3, 164
 When bail may be required, 3, 161
 Who cannot be bailed, 3, 169
 Clerk of court, 3, 198
 Commissioners, 3, 197
 Commitments:
 Indorsement on bail, 4, 575
 Common bail, 3, 159, 163
 Constitutional law:
 Commissioners, 3, 198
 Excessive bail, 3, 213
 Right to give bail, 3, 200
 Speedy trial, 3, 204
 Contempt, 4, 769
 Amount of bail, 4, 770
 Continuances, 4, 860
 Courts, 3, 196
 Criminal cases, 3, 193
 Abuse of power, 3, 200
 After indictment, 3, 202, 209
 Amount of bail, 3, 213
 Appeal from conviction, 3, 206
 Before indictment, 3, 208
 Bond and recognizance compared, 3, 194
 Burden of proof, 3, 210
 Capital cases, 3, 201
 Clerk of court, 3, 198
 Commissioners, 3, 197
 Constitution, 3, 201
 Constitutionality, 3, 198
 Controlling consideration, 3, 208
 Courts of record, 3, 196
 Definitions, 3, 193
 Delay of trial, 3, 204
 Delegation of power to take bail, 3, 195
 Examining the evidence, 3, 208
 Excessive bail, 3, 213
 Extradition proceedings, 3, 205
 Felony, 3, 203
 Fixing bail, 3, 213
 Forfeiture, 3, 234
 Forfeiture of money as bail, 3, 215
 Identity, 3, 211
 Justices of the peace, 3, 197
 Manslaughter, 3, 203
 Misdemeanor, 3, 203

BAIL AND RECOGNIZANCE, *con.*

- Criminal cases, *cont'd.*
 - Money as bail, 3, 215
 - Obligations of accused, 3, 246
 - Power to take bail, 3, 195
 - Proof evident, 3, 210
 - Qualifications of bail, 3, 215
 - Recognizance, 3, 216
 - Recognizance defined, 3, 194
 - Reduction of bail, 3, 214
 - Review on appeal, 3, 212
 - Right to give bail, 3, 200
 - Sheriff, 3, 198
 - Sickness, 3, 205, 212
 - State commissioner, 3, 198
 - Surrender by bail*, see SURRENDER BY BAIL.
 - Treason, 3, 203
 - Unavoidable delay, 3, 204
 - Venue, 3, 198
 - When bail refused, 3, 211
 - Where granted, 3, 199
- Custody of the accused, 3, 250
- Death, 3, 186
- Debt, 3, 240
- Debt, action of, 3, 181
- Defendant, obligations of, 3, 246
- Delay, 3, 204
- Discharge, 3, 183, 244
 - Excuse for nonappearance, 3, 249
 - Remission, 3, 241
- Error, writ of, 7, 858
- Escape, 7, 928
- Evidence:
 - Examining the evidence, 3, 208
 - Proof of evidence, 3, 210
- Exceptions and objections, 8, 300
- Excessive bail, 3, 213
- Excuse for nonappearance, 3, 248
- Executions against the body and arrest in civil cases:
 - Amount of bail, 8, 609
 - The undertaking, 8, 610
- Exemption, 3, 162
- Exoneration of bail, 3, 183
- Extradition, 3, 205; 8, 821
- Filing, 3, 203, 229
- Forfeiture, 3, 234
 - Appeal, 3, 238
 - Calling accused and entering default, 3, 237
 - Conclusiveness of record, 3, 240
 - Conditions of remission, 3, 243
 - Debt, 3, 240
 - Discharge, 3, 241, 244
 - Effect of the remission, 3, 243
 - Enforcement, 3, 238
 - Grounds, 3, 235, 242
 - Judgment of forfeiture, 3, 238
 - Money as bail, 3, 215
 - Motion, 3, 242
 - Power, 3, 234
 - Proceedings, 3, 237

BAIL AND RECOGNIZANCE, *con.*

- Forfeiture, *cont'd.*
 - Recognizance, 3, 234
 - Remission, 3, 241
 - Requisites of complaint, 3, 241
 - Review on appeal, 3, 244
 - Scire facias, 3, 239
 - Setting aside, 3, 244
- Freeholder, 3, 168
- Householder, 3, 168
- Identity, 3, 211
- Indemnification, 3, 250
- Infants, 3, 246
- Insanity, 3, 186
- Insolvency and bankruptcy, 3, 185
- Jurisdiction, 3, 196
- Justices of the peace (see JUSTICES OF THE PEACE), 3, 197
- Lost instruments and records, 13, 376
- Mandamus:
 - Certifying recognizance, 13, 597
 - Discretion of court to admit to bail, 13, 597
 - Setting aside proceedings on bail bond, 13, 597
 - To admit to bail, 13, 596
- Married women, 3, 246
- Misdemeanor, 3, 203
- Money as bail, 3, 167, 215
- Murder, 3, 201
- Ne exeat*, see NE EXEAT.
- Notice:
 - Notice to plaintiff, 3, 170
- Poor debtor acts*, see POOR DEBTOR ACTS.
- Preliminary examination, 16, 858
- Witnesses, 16, 868
- Privilege:
 - Discharge of common bail, 16, 975
 - Giving bail as waiver of privilege from arrest, 16, 987
- Prosecuting attorneys, 17, 9
- Prosecutor, 3, 231
- Putting in bail, 3, 169
 - Discharged, 3, 186
- Recognizance, 3, 216
 - Acknowledgment, 3, 227
 - Additions, 3, 221
 - Amendment, 3, 231
 - Amount, 3, 225
 - Appeal, 3, 232
 - Appearance, 3, 219
 - Approval, 3, 228
 - Condition, 3, 218
 - Construction, 3, 230
 - Dates, 3, 228
 - Definitions, 3, 196
 - Description of offense, 3, 222
 - Execution, 3, 226
 - Filing, 3, 229
 - Forfeiture, 3, 234
 - Form, 3, 216

BAIL AND RECOGNIZANCE, *con.*

- Recognizance, *cont'd.*
 - In general, 3, 216
 - Irregularities, 3, 217
 - Name of offense, 3, 222
 - Name of the accused, 3, 226
 - No crime, 3, 224
 - Offenses charged, 3, 221
 - Omissions, 3, 221
 - Penalty, 3, 218
 - Prosecutor, 3, 231
 - Reading specific charge, 3, 223
 - Recording, 3, 229
 - Sealing, 3, 227
 - Several charges, 3, 224
 - Signing, 3, 227
 - Sunday, 3, 229
 - Time and place of appearance, 3, 219
 - To keep the peace, 3, 231
 - Validity, 3, 216
 - Witnesses, 3, 231
 - Recognizance in civil cases, 3, 173
 - Amount, 3, 176
 - Assignment of bail bonds, 3, 176
 - Bail-piece, 3, 176
 - Cancellation, 3, 177
 - Conditions, 3, 175
 - Executions, 3, 173
 - General requisites, 3, 174
 - Illegal arrest, 3, 173
 - Number of sureties, 3, 174
 - Recitals, 3, 174
 - Substitution for lost bond, 3, 177
 - To whom given, 3, 173
 - Recording, 3, 229
 - Reduction of bail, 3, 166
 - Scire facias*, see *SCIRE FACIAS*.
 - Sealing, 3, 227
 - Security for costs, 19, 381
 - Sheriff, 3, 169, 178
 - Power of sheriff to take bail, 3, 198
 - Sickness, 3, 205, 212
 - Signing, 3, 227
 - Special bail, 3, 159, 163
 - Stay of proceedings, 3, 182
 - Sundays and holidays, 3, 229; 20, 1197
 - Surrender by bail*, see *SURRENDER BY BAIL*.
 - Terms, 3, 247
 - Treason, 3, 203
 - Waiver of right to hold bail, 3, 164
 - Witnesses (see *WITNESSES*), 3, 231
- BAILMENT:**
- Attachment, 3, 60
 - Carriers:
 - Action by bailee, 3, 834
 - Detinue:
 - Parties to the action, 6, 647
 - Embezzlement*, see *EMBEZZLEMENT*.
 - Executions, 8, 548

BAILMENT, *cont'd.*

- Insurance:
 - Bailee's right to bring action, 11, 391, 392
- Interpleader:
 - Bailor and bailee, 11, 452
- Larceny, 12, 964
- Parties to actions:
 - Parties plaintiff, 15, 521
- Railroads:
 - Injuries to animals, 17, 554
- Robbery, 18, 1224, 1228
- Trover and conversion:
 - Parties to actions, 21, 1044
- BANKNOTES**, see *COUNTERFEITING*.
- BANKRUPTCY**, 22, 340
 - See *INSOLVENCY*.
 - Adjudication, 22, 358
 - Allowances*, see *infra*. Fees, allowances, costs, and damages.
 - Amendments:
 - Order, 22, 359
 - Petition, 22, 347
 - Schedules, 22, 351
 - Answers, 22, 355
 - Petition for discharge, 22, 383
 - Appeals, 22, 394
 - Review by circuit court of appeals on appeal or error, 22, 394
 - Appealable judgments, 22, 394
 - Assignment of errors, 22, 397
 - Filing transcript, 22, 397
 - Findings of fact, 22, 397
 - Scope and extent of review, 22, 397
 - Time for appeal, 22, 397
 - Who may appeal, 22, 396
 - Writ of error, 22, 398
 - Review by supreme court, 22, 398
 - Revision by circuit court of appeals on petition, 22, 398
 - Costs, 22, 402
 - Dismissal of petition, 22, 402
 - Effect of petition as stay, 22, 402
 - Jurisdiction to revise, 22, 398
 - Notice of petition, 22, 402
 - Parties to petition, 22, 400
 - Presentation of petition, 22, 401
 - Requisites of petition, 22, 401
 - Time of filing petition, 22, 400
- Arrest:
 - Protection of bankrupt from arrest, 22, 368
- Attachment, 3, 87
- Certificate of discharge, 22, 387

BANKRUPTCY, *cont'd.*

- Change of venue, 4, 386
- Closing estate, 22, 394
- Compositions with creditors, 22, 374
- Conduct of proceedings, 22, 353
- Contempt, 22, 372
 - Disabilities of bankrupt in contempt, 22, 372
 - In general, 22, 372
- Contest of claims, 22, 377
- Costs (see *infra*, Fees, allowances, costs, and damages):
 - Discharge, 22, 389
 - Petition for review, 22, 402
- Creditors
 - Application by creditors, 22, 341
 - Creditors' meetings, 22, 363
 - Qualifications of voters, 22, 363
- Damages, see *infra*, Fees, allowances, costs, and damages.
- Death:
 - Effect of death of bankrupt, 22, 360
 - Demurrer, 22, 355
 - Petition for discharge, 22, 383
- Discharge, 22, 778
 - Certificate, 22, 387
 - Contents of petition, 22, 379
 - Costs, 22, 389
 - Demurrer or answer to objections, 22, 383
 - Determination, 22, 384
 - Grounds for objection to discharge, 22, 381
 - Hearing, 22, 384
 - Necessity for petition for discharge, 22, 378
 - Notice of petition, 22, 380
 - Objection to petition, 22, 380
 - Order, 22, 387
 - Petition for discharge, 22, 378
 - Reference, 22, 384
 - Revocation of discharge, 22, 388
 - Time of filing objection to discharge, 22, 381
 - Time of filing petition for discharge, 22, 378
 - Verification of objections to discharge, 22, 382
 - Verification of petition, 22, 379
 - Withdrawal and removal of petition, 22, 384
- Dismissal:
 - Dismissal of petition, 22, 360
 - Withdrawal or voluntary dismissal of petition, 22, 354
- Distribution, 22, 376
- Equity:
 - Equitable character of proceedings, 22, 343
- Error, writ of, 7, 869

BANKRUPTCY, *cont'd.*

- Examination of bankrupt or other person, 22, 370
- Examples, 22, 370, 371
- In general, 22, 370
- Executions against the body and arrest in civil cases:
 - Protection of bankrupt from arrest, 22, 368
- Exemptions:
 - Claiming and setting apart, 22, 373
 - Enforcement of waiver notes, 22, 374
 - Proceedings on claim for exemptions, 22, 372
 - Right to exemptions, 22, 372
- Fees, allowances, costs, and damages, 22, 389
- Affidavit of inability, 22, 389
- Allowance to officers of court and others, 22, 391
- As preferred debts, 22, 389
- Attorneys' fees, 22, 390
- Costs of proceedings, 22, 393
- Damages, 22, 393
- Filing fees, 22, 389
- Filing:
 - Filing petition, 22, 349
 - Schedules, 22, 350
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Guardian *ad litem*, 22, 353
- Hearing, 22, 357
 - Petition for discharge, 22, 384
- Infants, 22, 353
- Injunctions:
 - Enjoining pending and other suits, 22, 366
- Insane persons, 22, 353
- Intervention by claimant against trustee, 22, 366
- Jurisdiction, 22, 340
- Jury:
 - Jury trial, 22, 357
- Liens:
 - Dissolution of liens, 22, 567
- Marshals, 22, 361
- Notice of petition for discharge, 22, 380
- Opposition to petition, 22, 354
 - Demurrer, 22, 355
 - Involuntary proceedings, 22, 354
 - Plea or answer, 22, 355
 - Time to plead, 22, 355
 - Verification, 22, 357
 - Who may oppose petition, 22, 354
- Order:
 - Adjudication, 22, 358,
 - Amendment or vacation, 22, 358
 - Discharge, 22, 387

BANKRUPTCY, *cont'd.*

- Parties, 22, 340
 - Application by creditors, 22, 341
 - Joinder of third persons, 22, 343
 - Partnership cases, 22, 341
 - Who may apply for adjudication, 22, 340
- Partnership, 15, 898
 - Application in partnership cases, 22, 341
 - Parties, 15, 889
 - Petition for adjudication of partnership or its members, 22, 346
- Penalties and penal actions:
 - Jurisdiction, 16, 251
- Petition (see *infra*, Appeals), 22, 44
 - Adjudication, 22, 358
 - Amendment of defective verification, 22, 349
 - Amendments, 22, 349
 - Contents, 22, 344
 - Discharge, 22, 378
 - Filing, 22, 349
 - For adjudication of partnership or its members, 22, 346
 - Form, 22, 344
 - Necessity for petition, 22, 343
 - Objections for defective verification, 22, 348
 - Opposition to petition*, see *infra*, Opposition to petition.
 - Presentation, 22, 349
 - Time for filing petition, 22, 343
 - Withdrawal or voluntary dismissal of petition, 22, 354
- Plea, 22, 355
- Process, 22, 351
- Proof of claim, 22, 376
- Receivers, 22, 361
- References, 22, 357, 369
 - Appointment, jurisdiction, and duties of referees, 22, 369
 - Petition for discharge, 22, 385
 - Reference of cases after adjudication, 22, 360
 - Review of referee's ruling, 22, 369
- Reopening estate, 22, 394
- Revocation of discharge, 22, 388
- Sale of property of estate, 22, 368
- Schedules, 22, 350
 - Amendments, 22, 351
 - Duty to file, 22, 350
 - Inadvertent omissions, 22, 350
 - Individual debts of partnership, 22, 350
 - Verification, 22, 351
- Service of process, 22, 351
- Substitution of parties, 20, 1036
- Suits by bankrupt, 22, 364
- Summons and process, 22, 351
- Time to plead, 22, 355

BANKRUPTCY, *cont'd.*

- Trustees:
 - Adjournments and new elections, 22, 364
 - Appointment of referee, 22, 364
 - Appointment of trustee, 22, 362
 - Competency, 22, 363
 - Consent, 22, 363
 - Intervention by claimant against trustee, 22, 366
 - Order to surrender property to trustee, 22, 365
 - Qualifications of voters, 22, 363
 - Suits against trustee, 22, 366
 - Suits by trustees against adverse claimants, 22, 364
- United States courts, 22, 340
- Vacation of order, 22, 359
- Verification:
 - Objections to petition for discharge, 22, 382
 - Opposition to petition, 22, 357
 - Petition, 22, 347
 - Petition for discharge, 22, 379
 - Schedules, 22, 351

BANKS AND BANKING:

- Actions by or against banks, 3, 251
 - Action in name of president on behalf of bank, 3, 253
- Branch banks, 3, 252
- By whom maintained, 3, 252
- Duplicity, 3, 256
- Equity, 3, 252
- In general, 3, 251
- Jurisdiction, 3, 252
- Proof, 3, 256
- Proper parties, 3, 253
- Requisites of complaint, declaration, or bill, 3, 254
- Criminal procedure, 3, 256
 - Embezzlement, 3, 257
 - False entry, 3, 256
 - Illegal banking, 3, 259
 - Illegal certification of checks, 3, 259
 - Receiving deposits during insolvency, 3, 259
- Embezzlement, 3, 257
 - Jurisdiction, 3, 261
- Evidence against bank, 3, 256
- Executions against the body and arrest in civil cases, 8, 595
- False entry, 3, 256
 - Jurisdiction, 3, 261
- Indictment, 3, 256
- Insolvency and bankruptcy:
 - Receiving deposit during insolvency, 3, 259
- Jurisdiction, 3, 260, 352
 - Attachments, 3, 261
 - Embezzlement, 3, 261
 - False entry, 3, 261
 - Injunctions, 3, 261

BANKS AND BANKING, *cont'd.*

- Jurisdiction, *cont'd.*
 - National bank case, 3, 260
 - Removal of cause, 3, 263
 - State courts, 3, 260
 - United States court, 3, 262
- National bank officers:
 - Forgery, 9, 547
- National banks:
 - Removal of causes, 18, 237, 238
- Parties to actions, 22, 174
- Removal of cause, 3, 263
- United States courts:
 - National banks, 3, 262

BAR ASSOCIATION:

- Disbarment and suspension of attorneys, 6, 712

BARRATRY IN CRIMINAL LAW:

- Definition, 3, 264
- Indictment, 3, 264

BASTARDY, 3, 266

- Abatement of actions, 3, 287
- Amendments, 3, 286
 - Judgment, 3, 309
- Justice's return to trial court, 3, 290

Appeals, 3, 315

- Appellate jurisdiction, 3, 316
- Hearing and determination, 3, 319
- Parties to proceedings for review, 3, 315
- Perfection of appeal, 3, 318
- Proceedings on appeal, 3, 318
- What is appealable, 3, 316

Appearance (see *infra*, Security for appearance), 3, 294**Bail and recognizance:**

- Security for appearance, 3, 282
 - Forfeiture, 3, 285
 - Form and sufficiency, 3, 283
 - New security, 3, 283
 - Remedies for breach of conditions, 3, 285
 - Satisfaction and discharge, 3, 284
 - When required, 3, 283

Bonds, see *infra*, Security for appearance; Security for maintenance.**Certiorari, 3, 315; 4, 89****Change of venue, 3, 295****Civil proceedings, 3, 267, 295****Complaint, 3, 274**

- Accusation of defendant, 3, 277
- Examples, 3, 275, 276
- In proceedings by town, 3, 277
- Oaths, 3, 244
- Requisite, 3, 274
- Residence of mother, 3, 276
- Signature, 3, 274
- Sufficiency, 3, 275
- Supplemental complaint, 3, 296
- Time and place of begetting child, 3, 276

BASTARDY, *cont'd.*

- Compromise, 3, 298
- Continuances, 3, 297
- Costs, 3, 311
- Courts, see *infra*, Jurisdiction.
- Criminal procedure, 3, 320
 - Requisites of indictment, 3, 320
 - Whether bastardy proceedings are civil or criminal, 3, 267
 - Whether criminal or civil proceedings, 3, 295

Declaration, see *infra*, Complaint.**Default, 3, 306****Defenses, 3, 298****Compromise and settlement, 3, 298****Former adjudication, 3, 300****Error, writ of, 3, 315; 7, 859****Examination of complainant by magistrate, 3, 278****Execution, 3, 310****Hearing, 3, 302****Dilatory objections, 3, 303****Examination of complainant by magistrate, 3, 278****In general, 3, 302****Instructions, 3, 303****Jury, 3, 302****Preliminary hearing, 3, 280****Waiver of preliminary hearing, 3, 281****Impeachment of witnesses, 10, 311****Indictment, 3, 320****Infants, 3, 271****Institution of proceedings, 3, 268****Instructions, 3, 303****Issue, 3, 297****Judgment, 3, 281, 305****Amendments, 3, 309****Default, 3, 306****Enforcement, 3, 309****Execution, 3, 310****Form and sufficiency, 3, 307****Jurisdiction to render, 3, 305****Scire facias, 3, 309****Special courts, 3, 306****Sufficiency of adjudication, 3, 281****Jurisdiction, 3, 273, 291, 305****Appearance, 3, 294****Civil and criminal proceedings, 3, 296****Extent of jurisdiction, 3, 294****Requisites to confer jurisdiction, 3, 292****Special courts, 3, 306****What courts have jurisdiction, 3, 291****When cause may be heard, 3, 295****Jury, 3, 302****Justices of the peace (see *infra*, Jurisdiction, 3, 273)****Justice's return to trial court, 3, 289**

BASTARDY, *cont'd.*

- Married women:
 - Institution of proceedings by married woman, 3, 269
- Nature of proceedings, 3, 267
- New trial, 3, 314
- Next friend, 3, 271; 14, 1016
- Order of affiliation*, see *infra*, Judgment.
- Parties to proceedings to review, 3, 315
- Parties to the prosecution, 3, 277
 - The mother, 3, 268
 - Town authorities, 3, 271
 - Who may prosecute, 3, 268
- Place of begetting child, 3, 276
- Place of institution of proceedings, 3, 272
- Pleadings, 3, 297
- Preliminary hearing, 3, 280
- Proceedings in trial court, 3, 296
- Rape:
 - Joinder, 17, 662
- Release, 3, 298
- Res adjudicata*, 3, 300
- Residence:
 - Mother nonresident, 3, 270
 - The mother, 3, 276
- Returns:
 - Justice's return to trial court, 3, 289
 - Amendment, 3, 290
 - Requisites, 3, 289
 - Substitution, 3, 290
 - Sufficiency, 3, 289
 - Time of filing, 3, 289
- Review, 3, 315
- Scire facias, 3, 309
- Security for appearance, 3, 282
 - Condition, 3, 283
 - Discharge, 3, 284
 - Forfeiture, 3, 285
 - Form, 3, 283
 - New security, 3, 283
 - Remedies for breach of conditions, 3, 285
 - Satisfaction, 3, 284
 - Sufficiency, 3, 283
 - To whom security should be taken, 3, 283
 - When required, 3, 282
- Security for costs, 19, 359
- Security for maintenance, 3, 312
 - Discharge, 3, 312
 - Remedies against the security, 3, 312
 - To whom taken, 3, 312
 - When required, 3, 312
- Settlement, 3, 298
- Supplemental complaint, 3, 296
- Suretyship (see *infra*, Security for maintenance):
 - Security for appearance, 3, 282

BASTARDY, *cont'd.*

- Survival of actions, 21, 360
- Time of begetting child, 3, 276
- Time of institution of proceedings, 3, 272
- Towns:
 - Complaint, 3, 277
 - Institution of proceedings by town authorities, 3, 271
- Verdict, 3, 304
- Warrants:
 - Warrants for arrest, 3, 278
- Who may prosecute, 3, 268
 - Infant's mother, 3, 271
 - Married woman, 3, 269
 - Residence of mother, 3, 270
 - The mother, 3, 268
 - Town authorities, 3, 27
- BATTERY**, see ASSAULT AND BATTERY.
- BAWDY HOUSE**, see DISORDERLY HOUSES.
- BELIEF**, see INFORMATION AND BELIEF.
- BENCH WARRANTS**, 22, 1076, 1083
 - See WARRANTS.
- BENEFIT SOCIETIES**, see INSURANCE.
- BESTIALITY**, see SODOMY.
- BETTING**, see GAMING.
- BIDDING**:
 - Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- BIGAMY**, 3, 322
 - Conflict of law, 3, 323
 - Indictment, 3, 324
 - In general, 3, 324
 - Marriages, 3, 325, 326
 - Instructions, 3, 328
 - Jurisdiction, 3, 322
 - Marriages, 3, 325
 - Pleas, 3, 327
 - Polygamy, 16, 655
 - Second marriage in another state, 3, 324
 - Subsequent cohabitation, 3, 323
- BILLIARDS**:
 - Gaming:
 - Permitting minors to play billiards, 9, 799
- BILL OF CERTIORARI**, 4, 335
- BILL OF COSTS**, see COSTS.
- BILL OF LADING**:
 - Carriers:
 - Indorsee or assignee of bill of lading, 3, 836
 - Presumption arising from bill of lading, 3, 830
 - Conditions precedent, 4, 640
- BILLS AND NOTES**, see NEGOTIABLE INSTRUMENTS.
- BILLS DE BENE ESSE**, 3, 329
 - See BILLS TO PERPETUATE TESTIMONY; DEPOSITIONS.

BILLS DE BENE ESSE, *cont'd.*

- Affidavit, 3, 332
- Aged witness, 3, 331
- Bills to perpetuate testimony, 3, 330
- Costs, 3, 334
- Criminal procedure, 3, 330
- Defenses to bill, 3, 333
- Definition, 3, 329
- Depositions*, see **DEPOSITIONS**.
- Equity, 3, 333
- Infirm witness, 3, 331
- Nature, 3, 330
- Nonresident, 3, 332
- Object, 3, 329
- Only one witness, 3, 331
- Pending suit, 3, 330
- Perpetuation of testimony*, see **PERPETUATION OF TESTIMONY**.
- What bill should contain, 3, 332
- When maintainable, 3, 330
- Who may issue commission, 3, 333
- Who may maintain, 3, 332
- Witness about to leave jurisdiction, 3, 331

BILLS FOR INSTRUCTIONS:

- Executors and administrators, 8, 688

BILLS IN EQUITY, 3, 335

- See **BILLS OF REVIEW; DECLARATION OR COMPLAINT; MULTIFARIOUSNESS**.
- Accounts and accounting, 1, 97, 99
 - Impeaching account, 1, 107
- Address, 1, 234; 3, 340
 - Address of complainant, 1, 235
 - Form of address of bill, 1, 234
 - In general, 1, 234
 - Remedy for failure, 1, 235

Admissions:

- Admission in answer, 3, 358

Alimony*, see **ALIMONY**.**Amendments*, see **AMENDMENTS**.****Assignment for benefit of creditors:**

- Actions to enforce assignment, 2, 885, 886
 - Assignee, 2, 888, 889
 - Assignor, 2, 889, 890
 - Creditors, 2, 886, 890
 - Creditors in another class, 2, 891
 - Parties defendant, 2, 889
 - Parties plaintiff, 2, 886

- Action to set aside assignment, 2, 903

Attorneys:

- Authority to file the bill, 3, 371
- Authority to file the bill, 3, 371
 - In general, 3, 371
 - Parol, 3, 372
 - Presumption, 3, 372
 - Remedy where suit unauthorized, 3, 372
- Banks and banking, 3, 254
- Belief, information and, 3, 363
- Bills of peace*, see **BILLS OF PEACE**.

BILLS IN EQUITY, *cont'd.****Bills of review*, see **BILLS OF REVIEW**.*****Bills quia timet*, 3, 599*****Bills to enforce decrees*, see **BILLS TO ENFORCE DECREES**.*****Bills to impeach decrees and judgments*, see **BILLS TO IMPEACH DECREES AND JUDGMENTS**.****Certainty, 3, 363****Charging part, 3, 343****Chattel mortgages:**

- Bill for foreclosure, 4, 524

Classification, 3, 338

- Bills not original, 3, 339

- Denomination, when immaterial, 3, 340

- Different kinds enumerated, 3, 338

- Original bills, 3, 338

- Original bills praying relief, 3, 338

Commencement, 16, 593**Conclusion, 16, 593****Confederating part, 3, 342****Copyright:**

- Necessary allegations, 5, 18

Counsel*, see *infra*, **Signature of counsel**.**Creditors' bills*, see **CREDITORS' BILLS**.*****Cross-bills*, see **CROSS-BILLS**.*****De bene esse*, see **BILLS DE BENE ESSE**.****Defendant's title and interest, 3, 361****Definition, 3, 336****Demurrers in chancery (see **DEMURRERS IN CHANCERY**):**

- Founded on matters apparent on face of bill, 6, 393

Direction to specific part of bill, 16, 593***Disclaimers*, see **DISCLAIMERS**.*****Discovery*, see **DISCOVERY**.*****Dismissal, discontinuance, and nonsuit*, see **DISMISSAL, DISCONTINUANCE, AND NONSUIT**.*****Distringas, writ of*, see **DISTRINGAS, WRIT OF**.*****Divorce*, see **DIVORCE**.****Double aspect, 3, 364**

- Inconsistent relief, 3, 365

- In general, 3, 364

- Prayer for relief in the alternative, 3, 364

Dower, 7, 180

- Demand, 7, 181

- Facts essential to right, 7, 180

- Remedy at law, 7, 180

- Seizin, 7, 181

- Title, 7, 181

- Widowhood, 7, 181

Eminent domain:

- Injunction, 7, 713

***Equitable attachment*, see **EQUITABLE ATTACHMENT**.**

BILLS IN EQUITY, *cont'd.*

- Estoppels, 3, 355
- Evidence, matters of, 3, 355
- Executors and administrators:
 - Averments in bill as to representative character of suit, 15, 631
- Exhibits, 3, 362
- Filing bill, 3, 373
 - Authority to file the bill, 3, 373
- Foreclosure of mortgages, *see* FORECLOSURE OF MORTGAGES.
- General principles of pleading, 3, 353
- Heirs and devisees, *see* HEIRS AND DEVISEES.
- Homesteads and exemptions, 10, 84
- Husband and wife, *see* HUSBAND AND WIFE.
- Impeachment, *see* BILLS TO IMPEACH DECREES AND JUDGMENTS; JUDGMENTS.
- Inconsistency, 3, 366
- Information, 3, 337
- Information and belief, 3, 363
- Information and bill, 3, 337
- Informations in equity, 10, 857
 - Resemblance to bills in equity, 10, 858
- Injunctions, *see* INJUNCTIONS.
- Interest:
 - Defendant's title and interest, 3, 361
 - Plaintiff's title and interest, 3, 359
- Interpleader, *see* INTERPLEADER.
- Interrogatories, 3, 344
 - General interrogatories, 3, 344
 - Interrogating part, 3, 344
 - Special interrogatories, 3, 345
- Introduction, 3, 340
- Judgments.
 - As to equitable relief against judgments, see* JUDGMENTS; BILLS TO IMPEACH JUDGMENTS AND DECREES.
- Judicial notice, 3, 356
- Jurisdictional averments, 3, 369
- Jurisdiction clause, 3, 343
- Land patents:
 - Cancellation of patent, 12, 942
- Legal conclusions, 3, 357
- Legatees and distributees, 13, 7, 15
- Limitations, *see* LIMITATIONS.
- Mandamus:
 - Mandamus compared with, 13, 499
- Mechanics' liens, *see* MECHANICS' LIENS.
- Mistake, *see* MISTAKE.
- Multifariousness, 14, 202
- Multiplicity of suits, 14, 219

BILLS IN EQUITY, *cont'd.*

- Municipal securities:
 - Bill in equity to cancel orders or warrants, 14, 269
- Nuisances, *see* NUISANCES.
- Offers in the bill, 3, 367
 - In general, 3, 367
 - Relief against usury, 3, 369
 - Rescission for fraud, 3, 369
- Officers of private corporations, *see* OFFICERS OF PRIVATE CORPORATIONS.
- Original bills, 3, 338
- Parties to action:
 - Designation of parties, 3, 361
- Partition, *see* PARTITION.
- Partnership, *see* PARTNERSHIP.
- Patents, *see* PATENTS.
- Peace, *see* BILLS OF PEACE.
- Perpetuation of testimony, *see* PERPETUATION OF TESTIMONY.
- Petitions:
 - As substitute for bill, 16, 511
 - Decrees and orders affecting strangers, 16, 513
 - Defendant raising no objection, 16, 512
 - Discharge of trustees, 16, 514
 - Discretion of court, 16, 511
 - Infants, 16, 511
 - Matters arising after plea filed, 16, 514
 - Miscellaneous cases, 16, 514
 - Trust proceedings, 16, 513
 - Where bill is necessary, 16, 513
 - Where term used, 16, 511
- Plaintiff's title and interest, 3, 359
- Pleas in equity, *see* PLEAS IN EQUITY.
- Pledges, 16, 645
 - Assignments, 16, 646
 - Bills for accounting, 16, 646
 - Essential averments, 16, 647
 - Pledgee refusing to sue, 16, 646
 - Possession of pledge, 16, 647
 - Remedy at law, 16, 645
 - Specific performance, 16, 647
 - Subrogation, 16, 647
 - Tender of debt, 16, 647
 - When bill lies, 16, 645
- Positiveness, 3, 363
- Prayer for process, 3, 351
- Prayer for relief, *see* PRAYER FOR RELIEF.
- Process, prayer for, 3, 351
- Quia timet, 3, 599
- Quieting title, *see* QUIETING TITLE.
- Receivers, 17, 825
- Receivers, *see* RECEIVERS.
- Records, *see* RECORDS.
- Redemption, *see* REDEMPTION.
- Remedy at law, *see* REMEDY AT LAW.

BILLS IN EQUITY, *cont'd.*

Removal of cloud, see QUIETING TITLE.
Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.

Satisfaction and discharge of judgments, 19, 129
Set-off of judgment against judgment, 19, 166
Vacating satisfaction, 19, 140

Scandal and impertinence, see SCANDAL AND IMPERTINENCE.

Settlement:

Partial settlement, 15, 1066
Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Several parts of a bill, 3, 340

Address, 3, 340
Charging part, 3, 343
Confederating part, 3, 342
Essential and nonessential parts, 3, 340
Interrogating part, 3, 344
Introduction, 3, 340
Jurisdiction clause, 3, 343
Prayer for process, 3, 351
Prayer for relief, see PRAYER FOR RELIEF.

Stating part, 3, 341

Sham and frivolous pleadings, 20, 44

Sheriffs' sales, see SHERIFFS' SALES.

Signature of counsel, 3, 370; 16, 595
As general requisite, 3, 370
Effect of omission, 3, 371
How made, 3, 370

Specific performance, see SPECIFIC PERFORMANCE.

Splitting causes of action:

Notes, 1, 156

Statement of essential facts, 3, 353

Admissions in answer, 3, 358
Conclusions of law, 3, 357
Decree must be *secundum allegata*, 3, 357
Estoppels, 3, 355
In general, 3, 353
Material circumstances, 3, 53
Matters judicially known, 3, 356
Matters of evidence, 3, 355

States, 20, 591

Stating part, 3, 341

Stating written instruments, 3, 362

Stock and stockholders, see STOCK AND STOCKHOLDERS.

Street railways, see STREET RAILWAYS

Streets and highways, see STREETS AND HIGHWAYS.

Supplemental pleadings, see SUPPLEMENTAL PLEADINGS.

Taxation, see TAXATION.

BILLS IN EQUITY, *cont'd.*

Title, 16, 593

Defendant's title and interest, 3, 361

Trade-marks and trade names, see TRADE-MARKS AND TRADE NAMES.

Trusts and trustees, see TRUSTS AND TRUSTEES.

Averments in bill as to representative character of suit, 15, 631

Usury, see USURY.

Relief against usury, 3, 369

Variance, 22, 527

Vendor's liens, see VENDOR'S LIENS.

Verification (*see* VERIFICATION), 16, 594

Waste, see WASTE.

Wills, see WILLS.

Winding up corporations, see WINDING UP CORPORATIONS.

BILLS OF DISCOVERY (*see* DISCOVERY):

Usury, see USURY.

BILLS OF EXCEPTIONS, 3, 374

See EXCEPTIONS AND OBJECTIONS.

Abstract, 3, 384

Actions at law, see infra. Scope of bill in actions at law.

Admissions:

Admitted facts, 3, 420

Affidavits, 3, 396

Examples, 3, 396, 398

Incorporated in the record, 3, 396

Where part of record proper, 3, 397

Alteration of instrument, 3, 501

Amendments, 3, 512

Acceptance of amendments, 3, 447

Amendment by the record, 3, 503

Continuance, 3, 503

Memoranda, 3, 505

Motion to amend, 3, 502

Notice, 3, 506

Term, 3, 503

Trial court, 3, 503

Where made, 3, 502

Appeals:

Dismissal of appeal, 2, 338

Findings of court, 2, 399

Omissions, 3, 511, 512

Order extending time for signature, 3, 473

Presumptions, 2, 439

Where bill is not required, 3, 404

Appeals from orders, 3, 383

Arguments of counsel, 2, 755; 3, 403

Attorneys, see infra. Settlement of the bill.

Authentication, 3, 436, 451

By whom signed, 3, 452

BILLS OF EXCEPTIONS, *cont'd.*

- Authentication, *cont'd.*
 - Certification, 3, 458
 - In general, 3, 451
 - Judges hearing facts, 3, 454
 - Sealing, 3, 457
 - Several judges, 3, 453
 - Signature, 3, 451
 - Signature after death or resignation of trial judge, 3, 455
 - Signature by ex-judge, 3, 456
 - Signature by special judge, 3, 454
 - Signature by trial judge, 3, 452
 - Signature, how shown, 3, 457
 - Signature of referee, 3, 453
 - Waiver by stipulation, 3, 452
 - Where signed, 3, 456
- Awards:
 - Necessity of bill, 3, 409
- Caption, 3, 507
- Case made, 3, 384
- Certificate (see *infra*, Authentication):
 - Bystanders, 3, 408
 - Certificate of clerk, 3, 388, 459
 - Certificate of judge, 3, 389, 458
 - Certificate of stenographer, 3, 437
 - Certification as to all the evidence, 3, 423
 - Conclusiveness, 3, 427
 - Form of certificate, 3, 424
 - In general, 3, 423
 - Recitals, 3, 425
 - Testimony, 3, 424
- Certiorari, 4, 232
- Charge, see *infra*, Instructions.
- Clerk of court, 3, 431
 - Certificate of clerk, 3, 388
 - Signature, 3, 459
- Construction, 3, 509
 - Against appellant, 3, 509
 - Bill omitted entirely, 3, 511
 - Omissions in bill, 3, 512
 - Stay of proceedings, 3, 516
 - Verity of the bill, 3, 513
 - Waiver of bill by motion for new trial, 3, 516
- Continuance, 3, 394
 - Amendments, 3, 393
- Costs, 3, 394
 - Review of costs, 5, 252
- Courts, see *infra*, In what cases allowed.
- Criminal procedure, 3, 379
 - Common law, 3, 379
 - When allowable in criminal cases, 3, 379
- Cross bill, 3, 386
- Definition, 3, 378
- Directing verdict, 6, 701
- Dismissal:
 - Motion to dismiss, 3, 400

BILLS OF EXCEPTIONS, *cont'd.*

- Documentary evidence:
 - Incorporation of documentary evidence by reference, 3, 430
 - At common law, 3, 430
 - Certification, 3, 437
 - Direction of clerk to insert, 3, 431
 - Identification required, 3, 432
 - Incorporation of reporter's notes, 3, 436
 - Longhand manuscript, 3, 438
 - Narration of the evidence, 3, 439
 - Record, 3, 435
 - Skeleton bill, 3, 431
 - Stenographic bill, 3, 436
 - Under modern practice, 3, 430
- Effect, 3, 509
- Equity, 3, 381
- Error, writ of, 7, 872
- Evidence (see *infra*, Certification as to all the evidence), 3, 418
 - Admission of evidence over objection, 3, 429
 - Admitted facts, 3, 420
 - All the evidence, 3, 420
 - Facts, 3, 415
 - Findings, 3, 423
 - How made a part of the record, 3, 390
 - Incorporation in bill, 3, 418
 - Incorporation of documentary evidence by reference, 3, 430
 - In general, 3, 418
 - Necessity of bills of exceptions, 3, 390
 - Substance, 3, 423
 - Taking case from jury, 3, 423
- Exceptions and objections, 8, 299
 - Admission of evidence over objection, 3, 429
 - Bill must show timely objection, 3, 411
 - Bill showing proper exceptions, 3, 412
 - By whom taken, 3, 414
 - Evidence rejected over objection, 3, 427
 - Admission of evidence over objection, 3, 429
 - In general, 3, 427
 - Proper offer, 3, 428
 - Questions, 3, 429
 - Judgment, 3, 414
 - Timely and specific exceptions, 3, 413
- Exclusiveness of remedy, 3, 387
- Affidavit, 3, 396
- Argument of counsel, 3, 403

BILLS OF EXCEPTIONS, *cont'd.*

- Exclusiveness of remedy, *cont'd.*
 - Certificate of clerk, 3, 388
 - Certificate of judge, 3, 388
 - Evidence, 3, 390
 - Generally, 3, 387
 - Instructions, 3, 402
 - Motion, 3, 392
 - Motion affecting pleading, 3, 400
 - Motion for new trial, 3, 400
 - Motion to dismiss, 3, 400
 - Rulings, 3, 399
 - Stipulations, 3, 389
- Facts (see *infra*, Evidence), 3, 415, 440
- Feigned issues, 3, 381
- Filing the bill, 3, 476
 - By whom filed, 3, 479
 - Consent shown, 3, 487
 - Effect of failure to file in time, 3, 478
 - Extension of time, 3, 481
 - Extension of time by consent, 3, 483
 - How filing shown, 3, 485
 - In general, 3, 476
 - Notice of filing, 3, 484
 - Notice of motion to extend time, 3, 484
 - Official default, 3, 484
 - Recital in bill, 3, 486
 - Time fixed in the order of extending time, 3, 483
 - Vacation, 3, 485
 - When to be filed, 3, 479
 - Where filed, 3, 479
 - Where no time is fixed, 3, 477
- Final judgments and decrees, 3, 383
- Findings, 3, 403
 - Evidence, 3, 423
 - Necessity of bill, 3, 409
- Forcible entry and detainer, 9, 76
- Form, 3, 506
 - Caption, 3, 507
 - Signed entry, 3, 508
 - Statutes remedial, 3, 508
 - Substantial compliance with statute, 3, 506
- Forthcoming and delivery bonds:
 - Judgment on forthcoming bond, 9, 671
- Identification of papers, 3, 432
- Instructions, 3, 402, 440
 - Facts, 3, 440
 - Instructions given, 3, 440
 - Instructions refused, 3, 441
 - Showing instruction, 3, 440
- Interlocutory decisions, 3, 383
- Interpretation*, see *infra*, Construction.
- In what cases allowed, 3, 378
 - Courts of inferior jurisdiction, 3, 380

BILLS OF EXCEPTIONS, *cont'd.*

- In what cases allowed, *cont'd.*
 - Criminal statute, 3, 379
 - Extent of statute, 3, 378
 - Feigned issues, 3, 381
 - In chancery, 3, 381
 - In general, 3, 378
 - On appeals from orders, 3, 383
 - Quasi-judicial tribunals, 3, 380
 - Scope of bill in actions at law, see *infra*, Scope of bill in actions at law.
 - Special statutory proceedings, 3, 380
 - Where made applicable, 3, 382
- Issues to the jury:
 - Appellate review, 11, 741
- Judges (see *infra*, Authentication; Remedy for refusal to settle and sign; Settlement of the bill):
 - Certificate of the judge, 3, 389
- Judgments
 - Where bill not required, 3, 407
- Jurisdiction:
 - No jurisdiction of subject matter, 3, 509
- Justices of the peace, 12, 693
 - Dockets, 12, 753
- Mandamus, 3, 489; 13, 576
 - Alternative writ, 3, 493
 - Amendment of bill, 13, 585
 - Another remedy, 13, 578
 - Appeal, 13, 829
 - Arbitrary refusal to sign, 13, 580
 - Bill must be true, 13, 580
 - Cases not subject to review, 13, 578
 - Correction of bill, 13, 585
 - Decision of judge conclusive, 13, 582
 - Delay by other persons, 13, 584
 - Delay waived, 13, 584
 - Extension of time, 13, 584
 - Form of the writ, 3, 490
 - Incorrect bill, 3, 491
 - Incorrect or informal bill, 13, 580
 - Insertion of testimony, 13, 577
 - Laches, 13, 583
 - Lost bill of exceptions, 13, 585
 - Refusal of judge, 3, 489
 - Requisites of petition, 3, 492
 - Return or answer, 13, 736
 - Right defeated by laches, 13, 583
 - Right to appeal, 13, 578
 - Scope of the writ, 3, 490
 - Statement must be fair, 13, 582
 - To restore altered bill, 13, 585
 - To settle and sign, 13, 576
 - To sign certificate, 13, 579
 - To sign particular bill, 13, 579
 - To sign second bill, 13, 585
 - Trial of facts involved, 13, 586

BILLS OF EXCEPTIONS, *cont'd.*

- Mandamus, *cont'd.*
 - Waiver of right, 13, 582
 - When judge will be compelled to act, 3, 491
 - When return insufficient, 13, 579
 - When there is no error, 13, 578
- Matters:
 - Where bill is not required, 3, 408
- Minutes of the court, 3, 404
- Motions (see *infra*, Filing the bill; Time for settlement and signature), 3, 392
- Amendments, 3, 502
- Continuances, 3, 394
- Costs, 3, 394
- Incorporation, 3, 392
- Motion for new trial, 3, 400
- Motions affecting pleadings, 3, 400
- Motion to dismiss, 3, 400
- Motion to strike out, 3, 498
 - Irregular bill, 3, 498
 - Requisites of motion, 3, 499
 - Where motion made, 3, 499
- Necessity of bills of exceptions, 3, 392
- Waiver of bill by motion for new trial, 3, 516
- Mutilations, 3, 501
- New trial:
 - Evidence in support of new trial, 14, 916
 - Record on appeal, 17, 971
 - Waiver of bill by motion for new trial, 3, 516
- Notice (see *infra*, Filing the bill; Settlement of the bill):
 - Amendments, 3, 506
 - Petition to establish exceptions, 3, 496
- Number of bills required, 3, 385
 - Cross bill, 3, 386
 - Different terms, 3, 386
 - Generally, 3, 385
 - Several, 3, 386
- Nunc pro tunc*, 3, 464
- Objections:
 - As to the evidence rejected over objections*, see *infra*, Exceptions and objections.
- Officer, signature by, 3, 497
- Omissions, 3, 512
- Orders (see *infra*, Filing the bill; Time for settlement and signature):
 - Appeals from orders, 3, 383
- Petitions:
 - Mandamus, 3, 492
 - Petition to establish exceptions, 3, 493
- Presumptions:
 - Verity of bill, 3, 513

BILLS OF EXCEPTIONS, *cont'd.*

- Quasi-judicial tribunals, 3, 380
- Questions of law and fact, 3, 383
- Recitals:
 - Certificate, 3, 425
- Records (see *infra*, Filing the bill):
 - Conflict in record, 3, 514
 - Constituting part of the record, 3, 487
 - Facts shown by the record, 3, 416
 - Omissions, 3, 511
 - Reference to documents, 3, 435
 - Time when bill was settled, 3, 474
 - Date of presentation, 3, 476
 - Order extending time, 3, 475
 - Presumption as to signature, 3, 475
 - Showing time, 3, 474
 - Waiver of time, 3, 476
 - Where bill is not required, 3, 404
- Referee, 3, 382
- Signature, 3, 453
- Remedy for refusal to settle and sign, 3, 488
 - Alternative mandamus, 3, 493
 - Appeal, 3, 489
 - Appropriate remedy for refusal, 3, 489
 - Arbitrary action of judge, 3, 491
 - Compelling judge to act, 3, 491
 - Compliance with rules, 3, 491
 - Duty of trial judge, 3, 488
 - Incorrect bill, 3, 491
 - Irregular bill, 3, 498
 - Mandamus, 3, 489
 - Motion to remit, 3, 500
 - Motion to strike out, 3, 498
 - Notice, 3, 496
 - Petition to establish exceptions, 3, 493
 - Refusal to act on particular bill, 3, 490
 - Refusal to take any action, 3, 490
 - Remedy where bill is irregular, 3, 498
 - Requisites of petition, 3, 492
 - Requisites of petition to establish exceptions, 3, 495
 - Scope of the writ of mandamus, 3, 490
 - Signature by bystanders, 3, 497
 - What should be set out, 3, 492
- Remittance:
 - Motion to remit, 3, 500
- Resettlement, 3, 450
- Returns:
 - Where bill is not required, 3, 408
- Rule of court:
 - Time for settlement and signature, 3, 462

BILLS OF EXCEPTIONS, *cont'd.*

- Rulings, 3, 399
 - Bills showing, 3, 412
- Scope of bill in actions at law, 3, 382
 - Before referee, 3, 382
 - Generally, 3, 382
 - In cases tried without jury, 3, 382
 - Interlocutory decisions, 3, 383
 - Questions of law only, 3, 383

Sealing:

- Necessity of seal, 3, 457

Service of process, see *infra*, Settlement of the bill.

Settlement of the bill (see *infra*, Remedy for refusal to settle and sign; Time for settlement and signature), 3, 441

- Acceptance of amendments, 3, 447

By whom prepared, 3, 441

By whom settled, 3, 442

Disagreement of parties, 3, 448

Examination by trial judge, 3, 447

Failure to serve, 3, 443

Notice of settlement, 3, 444

Practice on settlement, 3, 449

Proof of service, 3, 446

Proposals of corrections, 3, 448

Refusal of settlement for lack of service, 3, 445

Request for allowance, 3, 442

Resettlement, 3, 450

Several appellees, 3, 445

Submission to adverse party, 3, 442

Time, 3, 447

Upon whom service must be made, 3, 444

Waiver, 3, 443

Where order refusing settlement appealable, 3, 449

Who must determine contents, 3, 446

Sham and frivolous pleadings, 20, 92

Signature (see *infra*, Authentication; Remedy for refusal to settle and sign; Time for settlement and signature):

Bystanders, 3, 497 •

Signed entry, 3, 508

Skeleton bill, 3, 431

Special interrogatories to juries, 20, 379.

Statement of facts, 3, 384

Statutes, see *infra*, Construction.

Statutes remedial, 3, 508

Statutes, substantial compliance with, 3, 506

Statutory origin (see *infra*, In what cases allowed), 3, 378

Extent of the statute, 3, 378

In general, 3, 378

BILLS OF EXCEPTIONS, *cont'd.*

Stenographers, 3, 436

Certificate of stenographer, 3, 437

Stipulations (see *infra*, Settlement of the bill), 20, 638

Agreed statement of facts, 3, 389

Waiver of signature, 3, 452

Striking out, 3, 498

Substituted remedies, 3, 384

Sufficiency, 3, 409

Admitted facts, 3, 420

All the evidence, 3, 420

Certification as to all the evidence, 3, 423

Error, 3, 409

Evidence, 3, 418

Evidence admitted over objection, 3, 429

Evidence rejected over objection, 3, 427

Exceptions, 3, 412

Facts, 3, 415

Facts shown by the record, 3, 416

Incorporation of documentary evidence by reference, 3, 430

In general, 3, 409

Instruction, 3, 440

Objections, 3, 411

Rulings, 3, 412

Unnecessary matters, 3, 416

Where bill is not required, 3, 408

Sundays, 3, 482

Supersedeas and stay of proceedings, 3, 516

Term (see *infra*, Time for settlement and signature):

Amendments, 3, 503

Time, computation of, 3, 482

Time for settlement and signature, 3, 459

After appeal taken, 3, 462

After the trial, 3, 463

Application for order to extend time, 3, 469

At the trial, 3, 462

Consent of parties to extension of time, 3, 470

Consequence of failure, 3, 459

Construction of statute, 3, 461

Definition of time in the order to extend time, 3, 472

During term, 3, 465

Effect of the order to extend time, 3, 471

Extension by motion, 3, 467

Extraordinary circumstances, 3, 473

Further order to extend time, 3, 471

In general, 3, 459

Neglect of judge, 3, 474

Nunc pro tunc, 3, 464

BILLS OF EXCEPTIONS, *cont'd.*

Time for settlement and signature, *cont'd.*

Order extending time, 3, 468

Order extending time unappealable, 3, 473

Reasonable time, 3, 464

Refusal to suspend trial, 3, 464

Rule of court, 3, 462

Signature after term, 3, 468

Signature by consent after term, 3, 469

Time required by law, 3, 459

What the record must show, 3, 474

Time of filing, see *infra*, Filing the bill.

United States courts, 22, 309

Unnecessary matters, 3, 416

Vacation and chambers, 3, 485

Verdict:

Verdict against the weight of evidence, 3, 403

Verity of bill, 3, 513

View, 3, 417

Waiver:

Service, 3, 443

Waiver of bill by motion for a new trial, 3, 516

Waiver of time, 3, 476

What the bill must show, see *infra*, Sufficiency.

Where bill is not required, 3, 404

Award, 3, 409

Findings, 3, 409

In general, 3, 404

Judgments on pleadings, 3, 407

Motions, 3, 408

Not a substitute for record, 3, 405

Pleadings, 3, 406

Summons and return, 3, 408

Where bill required, 3, 387

BILLS OF EXCHANGE AND PROMISSORY NOTES, see NEGOTIABLE INSTRUMENTS.**BILLS OF INTERPLEADER, see INTERPLEADER.****BILLS OF PARTICULARS, 3, 517**

Accounts and accounting, 1, 89; 3, 543

Accounts stated, 3, 544

Attorneys, 3, 547

In general, 3, 543

Proper matters of account, 3, 545

Successive acts of service, 3, 546

Adultery, 3, 548

Agency, 16, 917, 918

Amendments, 3, 537

Answers:

Particulars of defense, 3, 525

Appeals, 2, 113

Assumpsit, 2, 1002

At law, 3, 518

BILLS OF PARTICULARS, *cont'd.*

Conspiracy, 3, 551

Construction, 3, 538

Courts:

Discretion of court, 3, 524

Criminal conversation, 3, 554

Death by wrongful act, 5, 883

Defects, objections for, 3, 535

Defense, 3, 525

Definiteness, 3, 532

Assigned claim, 3, 533

In general, 3, 532

Test, 3, 534

Time, 3, 534

Definition, 3, 518

Demand, 3, 520

Discretion of court, 3, 524

Dismissal:

Failure to furnish, 3, 539

Divorce, 3, 548

Dower, 3, 548

Ejectment, 3, 549; 7, 334

Equity, 3, 518

Escape, 3, 552

Evidence (see *infra*, Relation of bill to evidence):

Disclosure of evidence, 3, 520

To restrict proof, 3, 519

Examination of witnesses, 8, 145

Failure to furnish, 3, 538

Effect in general, 3, 538

Remedy, 3, 539

Striking out, 3, 539

Time to plead, 3, 538

Forms, 3, 531

Fraudulent conveyance, 3, 547

How obtained, 3, 520

Impossibility, 3, 530

Interpretation, 3, 538

Judgment roll, 18, 479

Knowledge, 3, 529

Libel and slander, 3, 552; 19, 92

Answer not sufficiently specific, 13, 94

Office of bill of particulars, 13, 92

When ordered, 13, 93

Malicious prosecution, 3, 553

Motions, 3, 520

After pleading, 3, 522

Definiteness, 3, 520

Necessity, 3, 521

Objection to motion papers, 3, 523

Requisites of motion, 3, 520

Specific bill, 3, 536

When to be made, 3, 522

Negligence, 3, 550

Negotiable instrument, 3, 532; 14, 570

Notice:

Statutory, 3, 520

Origin, 3, 518

BILLS OF PARTICULARS, *cont'd.*

- Penalties and *qui tam* actions, 3, 554
- Personal injuries, 16, 408
- Pleading:
 - To amplify the pleading, 3, 519
- Public officers, 17, 198
 - Title to office, 3, 550
- Real actions, 3, 549
- Relation of bill to evidence, 3, 539
 - Bill as evidence *per se*, 3, 542
 - Bill not demanded, 3, 542
 - Generality of pleading waived, 3, 542
 - Insufficient bills, 3, 541
 - Order of court, 3, 542
 - Restriction of evidence, 3, 539
 - Sufficient bills, 3, 540
- Replevin, 3, 548; 18, 533
- Requisites, 3, 531
- Seduction, 3, 554
- Set-off, recoupment, and counterclaim*, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.
- Special contracts, 3, 543
- Specific actions, 3, 543
- Specific bill, 3, 535
- Specific performance, 3, 549
- Statutes:
 - Independent of statute, 3, 523
- Statutory demand or notice, 3, 520
- Surprise:
 - To prevent surprise, 3, 519
- Torts, 3, 550
- Trespass *quare clausum*, 3, 544
- Trover and conversion, 3, 551
- Uncertainty, 3, 530
- Unnecessary bill, 3, 527
- Variance, 3, 543
- Verification, 3, 534
- Waiver of objection, 3, 534
- When granted, 3, 523
 - Answer insufficient, 3, 525
 - Discretion of court, 3, 524
 - Facts already known, 3, 529
 - Impossibility, 3, 530
 - Independent of statute, 3, 523
 - In general, 3, 523
 - Particulars of defense, 3, 525
 - Uncertainty, 3, 530
 - Unnecessary bill, 3, 527
 - When appropriate, 3, 523
- Work and labor, 22, 1369

BILLS OF PEACE, 3, 556

- Action at law, 3, 558
- Adequate remedy at law, 3, 562
- Boundary, 3, 567
- Corporation, 3, 565
- Definition, 3, 556
- Division into two classes, 3, 557
- Ejectment, 3, 562
- First class, 3, 558
- Grounds of jurisdiction, 3, 557

BILLS OF PEACE, *cont'd.*

- Jurisdiction, 3, 557
 - Grounds of, 3, 557
 - Requisite, 3, 558
 - Multifariousness, 3, 558
 - Multiplicity of suits, 3, 557, 558
 - Number of parties, 3, 558
 - Public right, 3, 562
 - Railroads, 3, 565
 - Remedy at law, 3, 562
 - Res adjudicata*, 3, 562
 - Second class, 3, 562
 - Taxes, 3, 567
 - Trespass, 3, 567
 - When not allowed, 3, 561
- BILLS OF REVIEW, 3, 569**
- See REVIVOR OF SUITS AND ACTIONS.
- Affidavit, 3, 587
- Appeals:
 - Leave to file, 3, 589
 - Review by appellate court, 3, 575
- Appellate courts, 3, 575
- Bills in nature of bills of review, 3, 597
 - Frame of the bill, 3, 598
 - Nature, 3, 597
 - Parties, 3, 598
 - Supplemental bill, 3, 598
 - Use, 3, 597
- Bonds, 3, 591
- Citizenship, 3, 574
- Consent decrees, 3, 572
- Costs, 3, 597
- Courts, see *infra*, Jurisdiction of the bill; Leave to file.
- Defective bills of review, 3, 573
- Defenses to and proceedings on the bill, 3, 594
 - For error apparent, 3, 594
 - For new matter, 3, 596
- Definition, 3, 570
- Discretion of court, 3, 577, 588
- Effect of filing the bill, 3, 594
- Error apparent, 3, 575
 - Defenses to and proceedings on the bill, 3, 594
- Examples, 3, 577
- Face of the decree, 3, 578
- Formal irregularities, 3, 577
- Matters in discretion, 3, 577
- Matters of fact, 3, 579
- Prejudicial, 3, 578
- Presumption of regularity, 3, 578
- What constitutes, 3, 575
- Facts, matters of, 3, 579
- Filing:
 - Leave to file, 3, 586
 - Time of filing, 3, 583
- Final judgments and decrees, 3, 570
- Formal irregularities, 3, 577
- Frame of the bill, 3, 591
- Infants, 3, 591
- Interlocutory decrees, 3, 570

BILLS OF REVIEW, *cont'd.*

- Judicial sales:
 - Effect of reversal on purchaser, 3, 597
- Jurisdiction of the bill, 3, 373
 - After decision on appeal, 3, 574
 - Diverse citizenship in federal courts, 3, 574
 - In the same court, 3, 573
 - Review by appellate courts, 3, 575
- Leave to file, 3, 586
 - Affidavit, 3, 587
 - Appeals, 3, 589
 - Demurrer, 3, 590
 - Discretion of court, 3, 588
 - Effect of filing without leave, 3, 589
 - How obtained, 3, 587
 - Motion, 3, 590
 - When necessary, 3, 586
- Newly-discovered matter, 3, 580
 - Change of result, 3, 580
 - Cumulative, 3, 583
 - Defenses to and proceedings on the bill, 3, 596
 - Requisites of the new matter, 3, 580
 - Statements, 3, 592
 - Time of filing, 3, 585
- Performance of decree, 3, 585
- Prayer for relief, 3, 593
- Presumption of regularity, 3, 578
- Probate and contest of wills, 16, 1059
- Omission of interested parties, 16, 1018
- Proceedings on the bill, 3, 594
- Process, 3, 593
- Restitution, 3, 596; 18, 893
- Revivor (see **BILLS OF REVIVOR**), 3, 593
- Second bill of review, 3, 571
- Security on filing the bill, 3, 591
- Signature, 3, 593
- Stating part, 3, 591
- Summons and process, 3, 593
- Supersedeas and stay of proceedings, 3, 594
- Supplement, 3, 593
- Supplemental bill, 3, 598
- Time, computation of, 3, 584
- Time of filing, 3, 583
- United States courts, 3, 574
 - Lack of jurisdictional averments, 22, 276

BILLS OF REVIVOR, see REVIVOR OF SUITS AND ACTIONS.**BILLS QUIA TIMET, 3, 599**See **BILLS OF PEACE.**

Amount in controversy, 1, 727

Definition, 3, 599

When maintainable, 3, 599

Index Pl. & Pr. — 9

BILLS TO ENFORCE DECREES,

- 3, 601
- Consent decrees, 3, 605
- Decrees of inferior courts, 3, 603
- Definition, 3, 601
- Demurrer, 3, 606
- Enforcement, 3, 604
- Final judgments and decrees, 3, 604
- Inequitable decrees, 3, 604
- Jurisdiction, 3, 601
- Nature of bill, 3, 601
- Person not a party, 3, 603
- Pleas, 3, 606
- United States courts, 3, 604
- When maintainable, 3, 602

BILLS TO IMPEACH DECREES**AND JUDGMENTS, 3, 607**See **OPENING, AMENDING, AND VACATING JUDGMENTS.***Accidents, see infra, Surprise.*

Allegations, 3, 626

Appearance

Unauthorized appearance, 3, 617

Averments in general, 3, 626

Conflict of laws, 3, 622, 623

Decrees, 3, 608

Accident, 3, 608

Consent decrees, 3, 608

Defenses, 3, 614

Fraud, 3, 608

Indirect fraud, 3, 612

Infants, 3, 612

Multifarious remedies, 3, 614

Persons *non compotes mentis*, 3, 612

Proof of fraud, 3, 611

Relief where fraud is shown, 3, 611

Requisites of bill to impeach for fraud, 3, 613

Surprise, 3, 608

Technical character of bill, 3, 610

Time, 3, 615

Without leave of court, 3, 610

Definitions, 3, 608

Forgery, 3, 631

Fraud (see *infra*, Decrees), 3, 617

Averments of fraud, 3, 627

Forged instrument, 3, 630

Fraud between coparties, 3, 631

Intent, 3, 631

Perjury, 3, 630

Proof of fraud, 3, 628

What constitutes, 3, 629

Infants, 3, 612

Injunctions, 3, 619

Insanity, 3, 612

Judgments, 3, 615

Acting upon the party, 3, 619

Character of relief granted, 3, 618

Enjoining part, 3, 620

BILLS TO IMPEACH DECREES AND JUDGMENTS, *cont'd.*

- Judgments, *cont'd.*
 - Equitable jurisdiction in general, 3, 615
 - Grounds for relief, 3, 617
 - Injunctions, 3, 619
 - Method of invoking relief, 3, 617
 - Temporary injunction, 3, 620
 - Vacating judgment, 3, 619
 - Various kinds of relief, 3, 620
- Jurisdiction, 3, 617, 622
 - Beyond the state, 3, 623
 - State and federal courts, 3, 624
 - Within the state, 3, 622
- Laches, 3, 631
- Leave of court, 3, 610
- Multifariousness, 3, 614
- Necessary allegations, 3, 626
- Parties to action, 3, 620
 - In general, 3, 620
 - Joint judgment debtors, 3, 622
 - Parties defendant, 3, 622
 - Parties plaintiff, 3, 621
 - Receiver, 3, 622
 - Stranger, 3, 621
- Perjury, 3, 630
- Proof of fraud, 3, 628
- Scope of article, 3, 608
- Surprise, 3, 617
 - Decrees, 3, 608
- United States courts, 3, 624

BILLS TO PERPETUATE TESTIMONY (see BILLS DE BENE ESSE; PERPETUATION OF TESTIMONY):

- Bills *de bene esse*, 3, 330

BILLS TO QUIET TITLE AND REMOVE CLOUD, see QUIETING TITLE.

BILLS TO REMOVE CLOUD, see QUIETING TITLE; REMOVAL OF CLOUD.

BINDING OUT, see APPRENTICESHIP.

BIRTH:
Concealment of birth or death, 4, 624

BLACKMAIL, see THREATS AND THREATENING LETTERS.

BLANKS:
Forthcoming and delivery bonds, 9, 659

BLASPHEMY, 3, 633

- See OBSCENITY.
- Definition, 3, 633
- Indictment, 3, 634
- Profane swearing, 16, 1079

BONA FIDE PURCHASER:

- Answers in equity pleading, 1, 880
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.

BONDS, 3, 635

- See OFFICIAL BONDS.
- Abiding the event, 1, 54, 57
 - Civil actions, 1, 57
 - Criminal proceedings, 1, 57

BONDS, *cont'd.*

Administration bonds, see EXECUTORS AND ADMINISTRATORS.

Admiralty:

- Stipulation for release, 1, 265

Alimony, 1, 445

Amendments, 1, 683

Amount in controversy:

- Suit on bonds, 1, 706

Appeal bonds and undertakings, see APPEAL BONDS AND UNDERTAKINGS; BAIL AND RECOGNIZANCE.

Assignment, 3, 640

- Action by assignee, 3, 668

Nonpayment, 3, 647

Assignment for benefit of creditors:

- Action on assignee's bond, 2, 910

Assignment of breaches, 3, 652

- Alternative conditions, 3, 660

Certainty, 3, 661

Definiteness, 3, 661

Designation of breach, 3, 658

Immaterial allegations, 3, 659

In general, 3, 652

Introductory, 3, 652

Manner of assignment, 3, 656

Negating the condition, 3, 656

Several breaches, 3, 659

Time, 3, 660

Where no breach need be assigned, 3, 654

Where to assign, 3, 654

Attachment (see ATTACHMENT), 7, 795

Awards:

- Declaration or complaint in action on arbitration bond, 3, 136

Bail and recognizance, see BAIL AND RECOGNIZANCE.

Bastardy, see BASTARDY.

Breaches, see *infra*, Assignment of breaches.

Breach of the peace, see BREACH OF THE PEACE.

Certiorari, see CERTIORARI.

Conditions, 3, 649

- Alternative conditions, 3, 660

Negating conditions, 3, 656

Consideration, want or failure of, 3, 665

Covenant (see COVENANT), 3, 637

Dates, 3, 645

Debt, 3, 637; 5, 904

Declaration or complaint, 3, 645

- Allegation of nonpayment, 3, 647

Assignee, 3, 647

Attachment bonds, 3, 651

Conditions, 3, 649

Consideration, 3, 646

Date, 3, 645

Delivery, 3, 645

Demand, 3, 647

Execution, 3, 645

Forthcoming bonds, 3, 652

BONDS, *cont'd.*

- Declaration or complaint, *cont'd.*
- Indemnity bonds, 3, 648
- In hac verba*, 3, 645
- Legal effect, 3, 645
- Lost bonds, 3, 649
- Mutilated or defective bonds, 3, 648
- Name of obligee, 3, 646
- Defective bonds, 3, 648
- Defenses*, see *infra*, Plea or answer.
- Definiteness and certainty in pleadings, 3, 667
- Definition, 3, 637
- Delivery, 3, 645
- Delivery bonds*, see FORTHCOMING AND DELIVERY BONDS.
- Demand, 3, 647
- Departure, 3, 669
- Detinue:
 - Action on detinue bond, 6, 663
- Dismissal, discontinuance, and non-suit:
 - Effect of termination of the suit, 6, 981
- Embezzlement:
 - Description of property, 7, 429
- Eminent domain:
 - Actions on awards and judgments, 7, 627
 - Appeal, 7, 643
- Equitable attachment, 7, 795
- Equity, remedy in, 3, 637
- Error, writ of, 7, 826
- Exceptions and objections, 8, 300
- Execution, 3, 645
- Executors and administrators*, see EXECUTORS AND ADMINISTRATORS.
- Forgery:
 - Description of instrument, 9, 569
- Form of action, 3, 637
- Forthcoming and delivery bonds*, see FORTHCOMING AND DELIVERY BONDS.
- Fraud, 3, 666
- Garnishment*, see GARNISHMENT.
- Guardian *ad litem*, 10, 663
- Indemnity bonds:
 - Showing actual damages, 3, 648
- Infants*, see INFANTS.
- Injunctions*, see INJUNCTIONS.
- Insolvency*, see INSOLVENCY.
- Joinder of actions, 3, 638
- Joinder of parties:
 - Defendants, 3, 642
 - Plaintiffs, 3, 641
- Judgments, 3, 670
 - Form of judgment, 3, 670
 - In general, 3, 670
 - Scire facias, 3, 671
 - Under the code, 3, 670
- Larceny, 12, 995
- Lost papers, 3, 649

BONDS, *cont'd.*

- Mandamus, 13, 601
- Municipal securities*, see MUNICIPAL SECURITIES.
- Mutilated bonds, 3, 648
- Name of obligee, 3, 646
- Ne exeat*, see NE EXEAT.
- Nil debet*, 3, 664
- Non damnificatus*, 3, 663
- Non est factum*, 3, 663
- Nul tiel* record, 3, 665
- Official bonds*, see OFFICIAL BONDS.
- Parties to action, 3, 639
 - Assignment, 3, 640
 - Attachment proceedings, 3, 643
 - Defendants, 3, 642
 - Joinder of defendants, 3, 642
 - Joinder of plaintiffs, 3, 641
 - Plaintiff, 3, 639
 - Trustees, 3, 640
- Partnership*, see PARTNERSHIP.
- Payment*, see PAYMENT.
- Performance:
 - Payment, 3, 665
 - Pleadings, 3, 662
- Plea or answer, 3, 662
 - Action by assignee, 3, 668
 - Certainty, 3, 667
 - Fraud, 3, 666
 - Joint pleas, 3, 669
 - New matter, 3, 666
 - Nil debet*, 3, 664
 - Non damnificatus*, 3, 663
 - Non est factum*, 3, 663
 - Nul tiel* record, 3, 665
 - Partial defenses, 3, 669
 - Payment, 3, 665
 - Performance, 3, 662
 - Several pleas, 3, 668
 - Tender, 3, 666
 - Want or failure of consideration, 3, 665
- Receivers*, see RECEIVERS.
- Railroads*, see RAILROADS.
- Recognizance*, see BAIL AND RECOGNIZANCE.
- Removal of causes*, see REMOVAL OF CAUSES.
- Replevin*, see REPLEVIN.
- Restitution bonds, 18, 897
- Right of property, trial of, 18, 1175
- Schools*, see SCHOOLS.
- Scire facias, 3, 671
- Security for costs, 19, 381, 383
 - Form and contents of bond, 19, 383
 - In general, 19, 381
 - Inoperative bond, 19, 393
 - Must be in writing, 19, 381
 - Penalty of bond, 19, 385
 - Signature, 19, 384
 - Signature by firm, 19, 385
 - Title to bond, 19, 383

BONDS, *cont'd.*

- Sequestration*, see **SEQUESTRATION**.
- Stay of proceedings*, see **SUPERSEDEAS AND STAY OF PROCEEDINGS**.
- Substitution of parties:
 - Effect on bonds, 20, 1065
- Summary proceedings, 3, 637
- Tender, 3, 366
- Trover and conversion, 21, 1021
- Trusts and trustees, 3, 640

BOOK DEBT, 5, 900

- See **DEBT**.
- Actual delivery, 5, 902
- Auditing in book debt, 5, 930
- Character of articles, 5, 901
- Charging articles when delivered, 5, 901
- Concurrent with assumpsit, 5, 903
- Declaration, 5, 929
- Defective pleas, 5, 930
- In general, 5, 900
- Limitation of the action, 5, 903
- Money paid, 5, 901
- Money received, 5, 901
- Nil debet*, 5, 929
- Offset, 5, 930
- Origin, 5, 901
- Pleadings in book debt, 5, 929
- Pleas, 5, 929
- Privy of contract, 5, 901
- Right to charge the gist of the action, 5, 902
- Satisfaction, release, or discharge, 5, 930
- Special agreements, 5, 901
- Tender, 5, 930
- When the action does not lie, 5, 912

- BOOKS AND PAPERS**, see **DISCOVERY; DOCUMENTARY EVIDENCE; PRODUCTION OF DOCUMENTS**.
- Obscenity*, see **OBSCENITY**.
- Reading from books*, see **ARGUMENTS OF COUNSEL**.

BOUNDARIES AND FENCES, 3, 672

- See **RAILROADS**.
- Answer, 3, 675
- Appeals, 3, 677
- Bills of peace, 3, 567
- Costs, 3, 677
- Criminal procedure, 3, 677
- Declaration or complaint, 3, 674
- Indictment, 3, 677
- Introductory, 3, 677
- Issues to the jury, 11, 652
- Judgment, 3, 677
- Jurisdiction, 3, 677
- Kinds of actions, 3, 674
- Notice, 3, 675
- Parties to action, 3, 675
- Questions of law and fact, 3, 676

BOUNDARIES AND FENCES, *con.*

- Railroads:
 - Recovery of compensation for fencing where railroad neglects duty, 17, 517
 - Report of commissioners, 3, 675
 - Special proceedings, 3, 674
 - Statutory remedies, 3, 673
 - Trespassing, vicious, and diseased animals, 21, 895
 - Trespass on the case, 3, 674
- BOYCOTTS**, see **STRIKES AND BOYCOTTS**.
- BRANDS**, see **LOGS AND LUMBER**.
- BREACH OF PROMISE OF MARRIAGE, 3, 683**

- See **SEDUCTION**.
- Allegations of complaint or declaration*, see *infra*, Declaration or complaint.
- Answer or plea, 3, 690
 - Bad character of plaintiff, 3, 691
 - Fraud, 3, 691
 - General denial, 3, 690
 - Plaintiff's refusal, 3, 692
 - Statute of limitations, 3, 693
 - Striking out, 3, 691, 693
 - Unreasonable conditions, 3, 692
 - Want of affection, 3, 692
- Arrest, 3, 684
 - Motion, 8, 603
- Attachment, 3, 684
- Character of evidence, 3, 691
- Complaint*, see *infra*, Declaration or complaint.
- Contract, 3, 683
- Damages (see **DAMAGES**), 5, 744
 - Damages considered under general issue, 3, 688
 - Exemplary damages, 3, 689; 5, 745
 - General damages, 5, 744
 - In general, 5, 744
 - Seduction, 3, 688
 - Seduction under promise of marriage, 5, 745
 - Special damages, 3, 689; 5, 744
- Death:
 - Death of defendant, 5, 828
 - Death of plaintiff, 5, 809
- Declaration or complaint, 3, 686
 - Breach, 3, 687
 - Conditions, 3, 687
 - Damages considered under general issue, 3, 688
 - Marriageable age, 3, 686
 - Mutual promise, 3, 686
 - Readiness to perform, 3, 688
 - Request for performance, 3, 687
 - Seduction, 3, 688
 - Special damages, 3, 689
 - Time and place, 3, 686
 - Variance, 3, 690

BREACH OF PROMISE OF MARRIAGE, *cont'd.*

- Default, 3, 693
- Defenses, see *infra*, Answer or plea.
- Demand, 3, 687
- Ex contractu* and *ex delicto*, 3, 683
- Executors and administrators, 3, 685
- Exemplary damages, 3, 689
- Form of action, 3, 683
- Infants, 3, 684
- Instructions, 3, 694
- Joinder of counts and causes, 3, 684
- Kind of action, 3, 683
- Limitations of action, 3, 693
- Misjoinder of actions, 3, 684
- Parties to action, 3, 684
- Pleas, see *infra*, Answer or plea.
- Seduction, 3, 688
- Survival of actions, 21, 324
- Variance, 3, 690
- Verdict, 3, 694

BREACH OF THE PEACE, 3, 678

See ASSAULT AND BATTERY; DISORDERLY CONDUCT.

Abusive language tending to breach of the peace, 3, 679

Affidavit, 3, 681

Bail and recognizance, 3, 231

Bonds, see *infra*, Proceedings to prevent breaches of the peace.

Complaint, 3, 678, 681

Definition, 3, 678

Indictment, 3, 678

Information, 3, 678

Proceedings to prevent breaches of the peace, 3, 680

Appeal, 3, 682

By whom conducted, 3, 680

Complaint, 3, 681

Contents of affidavit, 3, 681

False and malicious proceedings, 3, 682

How conducted, 3, 681

Name of the state, 3, 681

Nature of the proceedings, 3, 680

Trial, 3, 682

Verdict, 3, 682

BREAKING, see BURGLARY.**BRIBERY (see EMBRACERY), 3, 695**

Attempts, 3, 696, 700

Definition, 3, 695

Duplicity, 3, 697

Elections, 7, 402

Indictment, 3, 696

Allegation of time, 3, 698

Allegation of value, 3, 697

At common law, 3, 696

Attempt to bribe, 3, 696

Attempt to bribe a witness, 3, 700

Bribery of official, 3, 698

Bribery of voters, 3, 700

Classes of officers, 3, 699

Duplicity, 3, 697

BRIBERY, *cont'd.*

Indictment, *cont'd.*

Under statute, 3, 696

Jurisdiction, 3, 695

Witnesses, 22, 1351

BRIDGES, 3, 701

Actions for negligence and defective bridges, 3, 701

Complaint, 3, 703

Damages, 3, 706

Defective bridge, 3, 706

Parties defendant, 3, 701

Preliminary notice, 3, 702

Special liability, 3, 705

Statutory restrictions, 3, 702

Variance, 3, 706

Counties:

Actions against county, 5, 298

Criminal law, 3, 707

Form and requisites of indictments, 3, 708

Who may be indicted, 3, 707

Damages, 3, 706

Declaration or complaint, 3, 703

Indictments, 3, 707

Form, 3, 708

Parties committing statutory offenses, 3, 708

Parties failing to repair, 3, 707

Parties obstructing navigation, 3, 708

Requisites, 3, 708

Who may be indicted, 3, 707

Joinder of parties, 3, 701

Negligence, see *infra*, Actions for negligence and defective bridges.

Notice, 3, 702

Parties to action, 3, 701

Variance, 3, 706

BRIEFS, 3, 710

Additional brief, 3, 733

Admiralty, 1, 282

Affirmance:

Failure to file, 3, 727

Amendments, 3, 735

Assignment of errors, 2, 927, 961

Defective assignment aided by brief, 2, 961

Full discussion of brief, 2, 961

Necessity of presenting in brief and necessity on argument, 2, 927

Requirement that assignments be copied in brief, 2, 961

Contents, 3, 713

Disrespectful language, 3, 723

Errors relied upon, 3, 715

Examples, 3, 713, 717

Grouping assignments, 3, 716

How improper brief taken advantage of, 3, 717

In general, 3, 713

Names of parties, 3, 715, 719

BRIEFS, *cont'd.*Contents, *cont'd.*

- Signature of counsel, 3, 719
- Striking off file, 3, 724
- Sufficiency of discussion, 3, 720
- Waiver, 3, 717

Criminal procedure:

- Effect of failure to file briefs, 3, 728

Definition, 3, 710

Discussion of evidence, 3, 722

Dismissal:

- Failure to file, 3, 727

Disrespectful language, 3, 723

Error, writ of:

- Dismissal or quashal, 7, 904

Filing and serving, 3, 724

- Additional time, 3, 733

- Court's examination of record of its own motion, 3, 728

Criminal cases, 3, 728

Dismissal of affirmance, 3, 727

Effect of failure to file, 3, 726

Effect of filing, 3, 726

Failure of appellee to file, 3, 729

Failure of both parties to file, 3, 730

Failure to file within time, 3, 730

Hesitation to strike out brief, 3, 732

In general, 3, 724

In lower court, 3, 724

On appeal, 3, 724

Petition for rehearing, 3, 731

Service on opposing counsel, 3, 725

Time allowed appellant and appellee, 3, 725

Form, 3, 711

Merely referring to record, 3, 722

Names of parties, 3, 714, 719

Object, 3, 710

Paper book, 3, 711

Printing expenses, 3, 735

Rehearing, 18, 58

- Failure to file brief in time, 3, 731

Reply brief, 3, 733

Rules of court:

- Validity of rules of court, 18, 1245

Scandal and impertinence, 19, 186

Service, see *infra*, Filing and serving.

Signature of counsel, 3, 719

Spacing and emphasis, 3, 712

Stipulations, 20, 643

Striking off file, 3, 724

- Hesitation to strike out brief, 3, 732

Sufficiency of discussion, 3, 720

Time, see *infra*, Filing and serving.

Type, 3, 712

Typewriting, 3, 712

BRIEFS, *cont'd.*

Waiver, 3, 717

Writing, 3, 712

BROKERS, see FACTORS AND BROKERS.**BUGGERY, see SODOMY.****BUILDINGS:***Burglary*, see **BURGLARY.**

Ejectment, 7, 26

BURDEN OF PROOF, see OPEN AND CLOSE.

Adverse possession, 21, 739

Certiorari, 4, 297

Defaults:

- Application for relief, 6, 163

Depositions:

- Showing reasons for taking depositions, 6, 567

Eminent domain:

- Title, 7, 577

Equitable defenses, 7, 811

Former conviction or acquittal, 9, 637

Habeas corpus, 9, 1054

Homesteads and exemptions, 10, 105

Infants:

- Infancy, 10, 694

- Necessaries, 10, 695

Injunctions:

- Dissolution of preliminary injunctions, 10, 1082

Inquests and inquiries, 10, 1156

Insane persons:

- Insanity as a defense, 10, 1217

- Traverse, 10, 1204

Issues to the jury, 11, 682

Motions, 14, 167

Negotiable instruments, see **NEGOTIABLE INSTRUMENTS.***Open and close*, see **OPEN AND CLOSE.**

Opening, amending, and vacating judgments, 15, 286

Order of proof, see **ORDER OF PROOF.**

Quo warranto, 17, 481

Rescission, cancellation, and reformation of contracts, 18, 849

Set-off, recoupment, and counterclaim, 19, 800

Tender, 21, 569

Title, ownership, and possession, 21, 739

Vendor's liens, 22, 734

Work and labor, 22, 1379

BURGLARY, 3, 736

Accessory, 3, 799

- Joinder, 3, 783

Adjoining, 3, 750

Agency, 3, 768, 779

Aiding and abetting:

- Joinder, 3, 783

Apartment house, 3, 765

Arson:

- Averment of intent, 3, 775

BURGLARY, *cont'd.*

- Assault and battery, 3, 798
- Joinder, 3, 783
- Attempts, 3, 798, 799
- Averment of breaking and entering, 3, 753
 - Allegation of force, 3, 754
 - Breaking and entering generally, 3, 754
 - Breaking out, 3, 754
 - Burglariously and feloniously, 3, 753
 - Examples, 3, 757
 - Force, 3, 756
 - Fraud, 3, 756
 - Meaningless words, 3, 755
 - Statutory description, 3, 755
 - Threats, 3, 756
 - Want of consent, 3, 755
- Averment of intent, 3, 770
 - At common law, 3, 771
 - Averment of felony, 3, 771
 - Description, 3, 772
 - "Felony," 3, 772
 - Felony must be averred as intent, 3, 772
 - In general, 3, 770
 - Ingredients, 3, 774
 - Intent must be proved as laid, 3, 771
 - Intent to commit arson, 3, 775
 - Intent to commit larceny, 3, 775
 - Intent to commit murder, 3, 781
 - Intent to commit rape, 3, 781
 - Larceny, 3, 773, 775
 - Legal presumption, 3, 775
 - Limit to particularity, 3, 774
 - Name of particular felony, 3, 772
 - Necessity of averment, 3, 770
 - Rape, 3, 773, 774
 - Same offense in different counts, 3, 775
 - Several intents, 3, 782
 - Specified felony, 3, 774
 - Statutes, 3, 771
- Averment of ownership of building, 3, 757
 - Agents, 3, 768
 - Church, 3, 758
 - City, 3, 758
 - Contractors, 3, 768
 - Corporation, 3, 759
 - County, 3, 759
 - Doubtful ownership, 3, 761
 - General and special owner, 3, 763
 - Husband and wife, 3, 769
 - In general, 3, 757
 - In whom alleged, 3, 762
 - Joint owners, 3, 769
 - Landlord and tenant, 3, 764
 - Master and servant, 3, 767
 - Mere possession, 3, 763

BURGLARY, *cont'd.*

- Averment of ownership of building, *cont'd.*
 - Miscellaneous defects, 3, 762
 - Misspelling, 3, 760
 - Occupancy, possession, and control, 3, 762
 - Partners, 3, 761
 - Persons, 3, 759
 - Proof, 3, 758
 - Rooms in public house, 3, 766
 - Several counts, 3, 761
 - Several owners, 3, 760
 - Statutes, 3, 757
 - Workhouse, 3, 761
- Averment of ownership of property, 3, 778
 - Agency, 3, 779
 - Husband and wife, 3, 779
 - In general, 3, 778
 - Joint owners, 3, 779
 - Ownership in severalty, 3, 780
 - Partners, 3, 780
 - Proof, 3, 778
- Averment of place, 3, 745
 - Averment in general, 3, 745
 - Building*, see *infra*, Building.
 - Caption, 3, 746
 - Construction of phrases, 3, 746
 - Minor locality, 3, 745
 - Proof, 3, 746
- Averment of time, 3, 741
 - "Burglariously," 3, 742
 - Conviction for higher grade, 3, 744
 - Daytime, 3, 743
 - Essential, 3, 741
 - Hour, 3, 744
 - In general, 3, 741
 - Night-time at common law, 3, 741
 - Night-time under statute, 3, 742
 - Proof, 3, 741
- Breaking*, see *infra*, Averment of breaking and entering.
- Building, 3, 747, 749
 - Adjoining to or occupied with a dwelling house, 3, 750
 - Church, 3, 747
 - Defects after verdict, 3, 753
 - Dwelling house, 3, 747
 - Goods in the house, 3, 751
 - House, 3, 747
 - Other than dwelling house, 3, 747
 - Persons in the house, 3, 750
 - Railroad car, 3, 752
 - Shop, 3, 748
 - Statutes, 3, 748
 - Statutory description, 3, 749
 - Statutory word, 3, 748
 - Store, 3, 748, 749
 - Burglariously, 3, 753

BURGLARY, *cont'd.*

- Car, 3, 752
- Church, 3, 747, 758
- Consent, want of, 3, 755
- Conspiracy, 3, 800; 4, 731
- Contractors, 3, 768
- Conviction for higher grade, 3, 744
- Conviction for part of the offense, 3, 797
 - Assault, 3, 798
 - Attempt, 3, 798
 - Conviction for lower degree, 3, 798
 - Entry without breaking, 3, 798
 - Housebreaking, 3, 798
 - In general, 3, 797
- Corporations:
 - Averment of ownership, 3, 759
- Counties:
 - Averment of ownership, 3, 759
- Degrees:
 - Conviction for higher grade, 3, 744
 - Conviction for lower degree, 3, 798
- Duplicity, 3, 786
- Dwelling house, 3, 747
- Entering, see *infra*, Averment of breaking and entering.
- Entry without breaking, 3, 798
- Feloniously, 3, 753
- Felony, 3, 772
- Force, 3, 754, 756
- Fraud, 3, 756
- House, 3, 747
 - Averment that the property was within the house, 3, 780
- Housebreaking, 3, 798
- Husband and wife:
 - Averment of ownership, 3, 769
 - Ownership of property, 3, 779
- Indictment generally, 3, 739
 - How laid in general, 3, 739
 - How laid under statute, 3, 739
 - Proof, 3, 740
 - Statutory ingredients should be alleged, 3, 740
- Indictments (see *infra*, Averment of breaking and entering; Averment of intent; Averment of place; Averment of time):
 - Several counts, 3, 761
- Inns and innkeepers, 3, 766
- Intent, see *infra*, Averment of intent.
- Intent to commit murder, 3, 781
- Jeopardy:
 - Joinder of burglary and larceny, 3, 786, 792
- Joinder of evidence, 3, 782
 - Burglary and accessory, 3, 783
 - Burglary and aiding and abetting, 3, 783
 - Burglary and assault, 3, 783

BURGLARY, *cont'd.*

- Joinder of evidence, *cont'd.*
 - Burglary and larceny, 3, 784
 - Burglary and receiving stolen goods, 3, 796
 - Burglary and robbery, 3, 796
 - In general, 3, 782
 - Several burglaries, 3, 784
- Joint tenants and tenants in common, 3, 769, 779
- Jurisdiction, 3, 739
- Landlord and tenant, 3, 764
 - Averment of ownership, 3, 764
 - Common entrance, 3, 766
 - Distinct entrance, 3, 766
 - Several apartments, 3, 765
 - Where owner does not reside under roof, 3, 765
- Larceny, 12, 1004, 1009
 - Averment of intent, 3, 773, 775
 - Averment of amount of property, 3, 777
 - Averment of ownership of property, 3, 778
 - Averment of value of property, 3, 777
 - Averment that the property was in the house, 3, 780
 - Description of property, 3, 777
 - Form in general, 3, 775
 - Proof of larceny, 3, 781
 - Specified property, 3, 776
 - Statutory requirements, 3, 781
- Joinder, 3, 784
 - Burglary and larceny in different counts, 3, 793
 - Burglary and larceny in the same count, 3, 787
 - Conviction for both offenses, 3, 785, 791, 795
 - Conviction for either offense, 3, 785, 789, 795
 - Defective counts, 3, 796
 - Duplicity, 3, 788
 - Election between counts, 3, 794
 - General verdict, 3, 785, 791, 795
 - Grand larceny, 3, 794
 - In general, 3, 784
 - Petit larceny, 3, 787, 794
 - Several counts, 3, 787, 793
 - Several defendants, 3, 786
 - When former judgment a bar, 3, 785, 792
- Mansion house, 3, 747
- Master and servant, 3, 764, 767
 - Averment of ownership in master, 3, 767
 - Averment of ownership in servant, 3, 768

BURGLARY, *cont'd.*Master and servant, *cont'd.*

Servant in possession of part only of the building, 3, 767

Misnomer, 3, 760

Misspelling, 3, 760

Municipal corporations, 3, 768

Names, 3, 760

Night-time, see *infra*, Averment of breaking and entering; Averment of time.*Occupancy*, see *infra*, Averment of ownership of building.*Ownership*, see *infra*, Averment of breaking and entering; Averment of ownership of property.

Partnership:

Averment of ownership, 3, 761

Place, see *infra*, Averment of place.*Possession*, see *infra*, Averment of ownership of building.*Property*, see *infra*, Larceny.

Amount of property, 3, 777

Averment that the property was within the house, 3, 780

Description of property, 3, 777

Ownership of property, 3, 778

Specified property, 3, 776

Value of property, 3, 777

Railroad car, 3, 752

Rape:

Averment of intent, 3, 774

Intent to commit rape, 3, 781

Receiving stolen goods:

Joinder, 3, 796

Robbery:

Joinder, 3, 796

Shop, 3, 748

Statutes, 3, 739, 740

Averment of ownership of building, 3, 757

Breaking and entering, 3, 755

Building, 3, 748

Goods stolen, 3, 781

Night-time, 3, 742

Store, 3, 748, 849

Threats, 3, 756

Time, see *infra*, Averment of time.*Title*, see *infra*, Averment of ownership of building.

Workhouse, 3, 761

BURIAL, see CEMETERIES.**CALENDARS AND TRIAL DOCK-**

ETS, 3, 801

See RECORD.

Abandonment of cause, 3, 809

Amendments:

Effect of amendment, 3, 803

Appeals, 2, 361

Advancement of cause, 2, 361

Docketing of appeal, 2, 321

Arrangement, 3, 803

**CALENDARS AND TRIAL DOCK-
ETS, *cont'd.***

Bringing forward and transferring on same calendar, 3, 806

Generally, 3, 806

Presumption that case will be tried in regular order, 3, 808

Remedy for trial out of order, 3, 808

Short cause calendar, 3, 807

Call, 3, 805

Correcting errors, 3, 806

Court has power over, 3, 802

Definition, 3, 801

Distress, 7, 26

Filing pleadings and papers, see FILING PLEADINGS AND PAPERS.

Justices of the peace, 12, 749

Mandate:

Redocketing cause, 13, 852

Motions, 3, 805

Notes of issue, see NOTES OF ISSUE.

Order, 3, 803

Power of court over, 3, 802

Preferences, 3, 804

Omitted parties, 3, 804

Rules, 3, 804

Statutes, 3, 804, 805

Waiver of preference, 3, 805

Preparation of calendar, 3, 803

Amendment, 3, 803

Arrangement, 3, 803

In general, 3, 803

Motion, 3, 805

Order, 3, 803

Preference, 3, 804

Short cause calendar, 3, 805

Presumption that case will be tried in regular order, 3, 808

Records, see RECORDS.

Reinstatement, 3, 810

Remedy for trial out of order, 3, 808

Restoration, 3, 810

Rules of court, 3, 802

Preferences, 3, 804

Short cause calendar, 3, 805, 807

Striking from the calendar, 3, 809

In general, 3, 809

Motion, 3, 810

Reinstatement, 3, 810

Remedy for refusal, 3, 810

Restoration, 3, 810

Waiver, 3, 810

Transfer to another calendar, 3, 808

Waiver:

Placing action upon the wrong calendar, 3, 809

Waiver of preference, 3, 805

CAMPBELL'S ACT, see DEATH BY WRONGFUL ACT.**CANALS**, see WATERS AND WATER-COURSES.

CANCELLATION OF INSTRUMENTS, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.

CAPIAS AD RESPONDENDUM, see EXECUTIONS.

CAPIAS AD SATISFACIENDUM, see EXECUTIONS; EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES.

CAPITAL CASES:

Continuances, 4, 823

CAPTION:

Amendments:

Indictments, 1, 690

Answers in equity pleading, 1, 866

Depositions, see DEPOSITIONS.

Indictments, see INDICTMENTS.

Warrants, see WARRANTS.

CARRIERS, 3, 812

See SHIPPING.

Acceptance, 3, 844

Actions based on illegal charges, 3, 864

Actions to recover excess, 3, 864

Actions to recover penalties, 3, 865

Allegations, 3, 865

Answer, 3, 869

Assumpsit, 3, 864

Declaration, petition, or complaint, 3, 867

Excess over legal rates, 3, 867

Injunctions, 3, 869

Mandamus, 3, 869

Nature and form of action, 3, 864, 866

Statutory allegations, 3, 865

Unlawful discrimination, 3, 868

Actions by carrier for nonpayment of freight, 3, 870

Actions to enforce liens for charges, 3, 873

Actions to recover freight, 3, 970

Consignee, 3, 871

Consignor, 3, 871

Declaration or complaint, 3, 871

Form of action, 3, 870

Parties, 3, 870

Water carriers, 3, 870

Actions for delay, 3, 860

Duty to carry within reasonable time, 3, 860

Failure to carry within reasonable time, 3, 861

Form of action and parties, 3, 860

Special damages, 3, 861

Actions for loss or injury, 3, 817

Actions *ex contractu*, 3, 820

Advantage peculiar to each form of action, 3, 819

Declaration or complaint, petition or libel, see *infra*, Declaration or complaint.

CARRIERS, *cont'd.*

Actions for loss or injury, *cont'd.*

Distinction between declarations in case and in assumpsit, 3, 821

Effect of special contract, 3, 823

Exactness in pleading, 3, 820

Ex contractu or *ex delicto* at common law, 3, 818

Ex contractu or *ex delicto* in admiralty, 3, 819

Form of action, 3, 817

Misjoinder or nonjoinder of parties in actions *ex delicto*, 3, 819

Nature of action, 3, 817

Parties, see *infra*, Parties to action.

Plea or answer, see PLEA OR ANSWER.

Replication or reply, 3, 859

Actions for negligence or misfeasance in delivery, 3, 862

Allegations, 3, 863

Form of action, 3, 862

Parties, 3, 863

Reasonable time for delivery, 3, 863

Replevin, 3, 862

Special damages, 3, 863

What it includes, 3, 862

Actions for refusal to carry, 3, 814

Declaration or complaint, 3, 816

Ex contractu and *ex delicto*, 3, 814

Form of action, 3, 814

Mandamus, 3, 814

Nature of action, 3, 814

Parties, 3, 815

Plea, 3, 817

Admissions, 3, 857

Agency:

Action against agent, 3, 839

Action by agent, 3, 835

Undisclosed principal, 3, 835

Amendments:

Charging common carrier as warehouseman, 1, 570

Answers, 3, 855

Actions *ex contractu*, 3, 855

Actions *ex delicto*, 3, 855

Illegal charges, 3, 869

Assumpsit, 3, 821

Illegal charges, 3, 864

Bailment:

Action by bailee, 3, 834

Bill of lading:

Indorsee or assignee of bill of lading, 3, 836

Presumption arising from bill of lading, 3, 830

Charges, see *infra*, Actions based on illegal charges.

CARRIERS, cont'd.

Classification of actions against carriers, 3, 814

Complaint, see *infra*, Declaration or complaint.

Conditions limiting liability, 3, 852

Connecting carriers, 3, 953

Contracts, see *infra*, *Ex contractu* or *ex delicto*.

Damages:

Actions against carriers, 5, 761

General damages, 5, 761

Matters of aggravation, 5, 763

Special damages, 3, 861; 5, 761

Written claim for damages, 5, 762

Declaration or complaint, 3, 841

Acceptance by carrier, 3, 844

Actions for refusal to carry, 3, 816

Avoiding stipulations limiting liability, 3, 853

Capacity to sue, 3, 841

Collateral stipulations, 3, 853

Conditions limiting liability, 3, 852

Connecting carriers, 3, 853

Consideration for carriage, 3, 845

Corporate existence, 3, 843

Delivery to carrier, 3, 844

Description of injury, 3, 847

Description of property, 3, 846

Description of relation *inter se*, 3, 853

Description of termini, 3, 847

Distinction between declaration in case and in *assumpsit*, 3, 821

Illegal charges, 3, 867

Joinder of counts, 3, 854

Necessary allegations, 3, 841

Negligence of carrier, 3, 848

Special proceedings, 3, 854

Statement of contract or duty, 3, 849

Statutory form of complaint, 3, 854

That defendant is common carrier, 3, 842

Time of delivery and acceptance, 3, 844

Delay, see *infra*, Actions for delay.

Delivery (see *infra*, Actions for negligence or misfeasance in delivery), 3, 844

Discriminations, 3, 868, 869

Embezzlement, 7, 422

Ex contractu or *ex delicto*, 3, 818

Actions either *ex delicto* or *ex contractu*, 3, 818

Actions *ex contractu*, 3, 820

Actions *ex delicto*, 3, 819

CARRIERS, cont'd.

Ex contractu or *ex delicto*, *cont'd.*

Actions for refusal to carry, 3, 814

Actions in admiralty, 3, 819

Advantages peculiar to each form of action, 3, 819

Consideration for carriage, 3, 845

Effect of special contract, 3, 823

Effect of statutes, 3, 824

For loss or injury, 3, 818

Misjoinder or nonjoinder of parties in actions *ex delicto*, 3, 819

Statement of contract, 3, 850

Statement of contract or duty, 3, 849

Factors, 3, 834

Freight, see *infra*, Actions by carrier for nonpayment of freight.

General denial, 3, 858

General issue, 3, 858

Illegal charges, see *infra*, Actions based on illegal charges.

Injunctions:

Illegal charges, 3, 869

Injury, see *infra*, Actions for loss or injury.

Insurance companies, 3, 837

Interstate commerce, see INTERSTATE COMMERCE.

Intoxicating liquors:

Unlawful transportation of liquors, 11, 572

Joinder of counts and causes, 3, 854

Joinder of parties:

Action against carriers, 3, 837

Joinder as affected by form of action, 3, 841

Master and owner, 3, 840

Libel, see *infra*, Declaration or complaint.

Liens for charges, 3, 873

Loss, see *infra*, Actions for loss or injury.

Mandamus:

Illegal charges, 3, 869

Refusal to carry, 3, 815

Married women:

Action by married woman, 3, 828

Master and servant:

Action against servant, 3, 839

Master of vessel:

Action against master of vessel, 3, 839

Negligence (see *infra*, Actions for loss or injury; Actions for negligence or misfeasance in delivery):

Declaration or complaint, 3, 848

CARRIERS, *cont'd.*

Parties to action:

Actions for refusal to carry, 3, 815

Parties defendant in action for loss or injury, 3, 839

Joinder as affected by form of action, 3, 841

Joinder of master and owner, 3, 840

Master of vessel, 3, 839

Servant, 3, 839

Suit *in rem*, 3, 840

Parties plaintiff in action for loss or injury, 3, 824

Actions by consignor enuring to the benefit of the owner or consignee, 3, 828

Agent, 3, 835, 839

Assignee of bill of lading, 3, 836

Bailee, 3, 834

Consignee, 3, 829

Consignee directing mode of shipment, 3, 831

Consignee has no interest or privity of contract, 3, 831

Consignee is owner, 3, 832

Consignor, 3, 825

Consignor where title does not pass, 3, 825

Effect of recovery, 3, 835

Factor, 3, 834

General owner, 3, 835

General presumption as to ownership, 3, 829

Indorsee of bill of lading, 3, 836

Insurance companies, 3, 837

Joinder of parties, 3, 837

Parties for special property, 3, 833

Presumption arising from bill of lading, 3, 830

Rescission of contract of sale, 3, 826

Rule applicable to all classes of actions, 3, 824

Shipper both consignor and consignee, 3, 833

Special property, 3, 833

Undisclosed principal, 3, 835

Where consignee has made advances, 3, 831

Where consignor is a married woman, 3, 828

Where consignor makes contract of shipment, 3, 826

Passengers, see PASSENGERS.

Penalties:

Actions to recover penalty for illegal charges, 3, 865

Petition, see *infra*, Declaration or complaint.**CARRIERS, *cont'd.***

Pleas, 3, 855

Actions *ex contractu*, 3, 855Actions *ex delicto*, 3, 855

Actions for refusal to carry, 3, 817

Plea in abatement, 3, 857

Special pleas, 3, 856

Porters, 7, 422

Presumption as to ownership, 3, 829

Refusal to carry, see *infra*, Actions for refusal to carry.

Replevin, 3, 862

Replication or reply, 3, 859

Torts, see *infra*, *Ex contractu* or *ex delicto*.

Trespass on the case, 3, 821

CARRYING WEAPONS, 3, 874

Indictment, 3, 874

Examples, 3, 875, 876

Negating exceptions, 3, 876

Requisites, 3, 874

Sufficiency, 3, 874

Instructions, 3, 877

Jurisdiction, 3, 874

Punishment, 3, 877

Sentence, 3, 877

CASE (see CERTIFIED CASE; TRESPASS ON THE CASE):*Theory of the case*, see THEORY OF THE CASE.**CASE AGREED, see AGREED CASE.****CASE CERTIFIED OR REPORTED, see CERTIFIED CASE.****CASE MADE, see REPORT AND CASE MADE.****CASE MADE ON APPEAL, 3, 879**

See DISMISSAL OF APPEAL; REPORT AND CASE MADE; STATEMENT OF CASE ON APPEAL.

Amendments, 3, 905

By appellate court, 3, 906

By the trial judge, 3, 905

In what cases granted, 3, 907

Motion to remand, 3, 908

Proceedings to bring up a more perfect case, 3, 906

Proposal of amendments by appellee, 3, 894

Remitting for resettlement, 3, 907

Authentication, 3, 900

Attestation of clerk, 3, 902

Certificate, 3, 902

Signature by referee, 3, 902

Signature by successor, 3, 901

Signature of trial judge, 3, 900

Bills of exceptions, 3, 384

By whom prepared, 3, 891

Certificate, 3, 902

Certiorari:

Proceedings to bring up a more perfect case, 3, 906

CASE MADE ON APPEAL, *cont'd.*

- Construction, 3, 909
 - Conflict with record, 3, 909
 - Verity, 3, 909
- Contents, 3, 885
- Definition, 3, 880
- Election of remedy, 3, 881
- Error, necessity to show, 3, 885
- Error, writ of:
 - Substitute for writ of error, 3, 881
- Evidence, 3, 888
 - All the evidence, 3, 888
 - How stated, 3, 890
 - Incorporation by reference, 3, 890
 - In general, 3, 888
 - Question of law and fact, 3, 889
 - Skeleton case, 3, 890
- Exceptions, 3, 887
 - Turning case into bill of exceptions, 3, 881
- Exclusive remedy, 3, 883
- Extension of time, 3, 893
 - Motions, 3, 900
 - Time to serve, 3, 893
 - Time to settle, 3, 897
 - Waiver, 3, 900
- Filing, 3, 904
- Instruction, 3, 891
- Necessity, 3, 880
- New trial*, see **NEW TRIAL**.
- Omission, effect of, 3, 885
- Orders, 3, 888
- Pleadings, 3, 888
- Presumption in favor of, 2, 440
- Printing case, 3, 903
- Purpose, 3, 880
- Questions of law and fact, 3, 882, 883, 889
- Records:
 - Becoming part of record, 3, 905
 - Conflict with record, 3, 909
 - Incomplete record, 3, 887
- Refusal to act, 3, 902
- Remedy for refusal to act, 3, 902
- Report and case made*, see **REPORT AND CASE MADE**.
- Resettlement, 3, 903
- Service*, see *infra*, **Settlement and service**.
- Settlement and service, 3, 891
 - Computation of time, 3, 892
 - In general, 3, 891
 - Motion to extend time, 3, 900
 - Order extending time of settlement, 3, 899
 - Service, 3, 892
 - Settlement generally, 3, 895
 - Time to serve, 3, 893
 - Time to settle, 3, 897
 - Waiver, 3, 892, 900
 - When extension authorized, 3, 893

CASE MADE ON APPEAL, *cont'd.*

- Stipulations, 3, 884; 20, 639
- Sufficiency, 3, 885
- Time, computation of, 3, 892
- Time of service, 3, 894
- Time to serve, 3, 893
- Time to settle, 3, 897
- Unnecessary matter, 3, 887
- CASE MADE OR SETTLED ON APPEAL**, see **STATEMENT OF CASE ON APPEAL**.
- CASE RESCINDED**:
 - Agreed case, 1, 303
- CASE STATED**, see **AGREED CASE**.
- CATTLE**:
 - Estrays, 8, 16
- CAUSE OF ACTION** (see **ACTIONS**; **JOINDER OF COUNTS AND CAUSES**):
 - Amendments:
 - Introducing new cause of action or defense*, see **AMENDMENTS**.
 - Another suit pending:
 - Interest of suit being for the same cause of action, 1, 761
 - Appeals, 2, 406
 - Arrest of judgment:
 - Defective statement of cause of action, 2, 798
 - Facts essential to cause of action omitted, 2, 799
 - No substantial cause of action, 2, 799
 - Attachment, 3, 42
 - Judgments*, see **JUDGMENTS**.
 - Orders to show cause*, see **ORDERS**.
- CAVEATS**, see **LAND PATENTS**.
- CEMETERIES**, 3, 910
 - Actions concerning cemeteries, 3, 911
 - Actions concerning dead body, 3, 911
 - At law, 3, 911
 - Proceedings in equity, 3, 912
 - Criminal law*, see *infra*, **Indictments**.
 - Damage to graves and monuments, 3, 911
 - Ejectment, 3, 911
 - Eminent domain, 3, 910
 - Graves, 3, 911
 - Indictments, 3, 912
 - Conclusion, 3, 913
 - In general, 3, 912
 - Requisites, 3, 912
 - Violating sepulture, 3, 913
 - Laying out and enlargement of cemeteries, 3, 910
 - Monuments, 3, 911
 - Trespass, 3, 911
- CERTAINTY**, see **DEFINITENESS AND CERTAINTY IN PLEADINGS**.
- CERTIFICATE**, see **CERTIFIED CASES**.
 - Bills of exceptions*, see **BILLS OF EXCEPTIONS**.
- CERTIFICATE OF APPEAL**, see **APPEALS**.

CERTIFICATE OF DOUBT, 3, 914

- Capital cases, 3, 917
- Definition, 3, 914
- How application should be made, 3, 915
- In general, 3, 914
- Notice, 3, 916
 - Certificate of doubt on appeal, 3, 917
 - In capital cases, 3, 917
 - In other cases, 3, 917
- Probable cause for the appeal, 3, 915
- When denied, 3, 916
- When granted, 3, 915
- Who may grant, 3, 914

CERTIFICATES OF STOCK, see STOCK AND STOCKHOLDERS.**CERTIFIED CASES**, 3, 918

See REPORT AND CASE MADE.

Amount in controversy, 3, 931

Appeals, 2, 51; 3, 926

Certificate of importance, 3, 943

Abstract questions, 3, 945

Before and after judgment, 3, 946

Binding effect of decision of appellate court, 3, 950

Construction of the questions, 3, 949

Form of certificate, 3, 948

Introductory, 3, 943

Necessity of asking for certificate, 3, 947

Object of the statutes, 3, 944

Questions of fact, 3, 944

Time to procure certificate, 3, 947

Whole case, 3, 945

Certiorari:

Certiorari to the circuit court of appeals, 3, 942

Constitutional law, 3, 955

Criminal procedure:

United States courts, 3, 921

Division of opinion, see DIVISION OF OPINION.

Error, writ of, 3, 926

Exceptions ordered heard at general term, 3, 950

Discretion of trial judge, 3, 950

Exceptant's duty to prepare case, 3, 952

Introductory, 3, 950

Judgment must be suspended, 3, 951

Nature of the exceptions, 3, 952

Nonsuit, 3, 952

Only the exceptions considered, 3, 953

Questions of fact, 3, 953

Vacating order, 3, 951

Whether the judgment an ordinary one, 3, 954

Final judgments, 3, 931

CERTIFIED CASES, *cont'd.**General term*, see *infra*, Exceptions ordered heard at general term.*Importance*, see *infra*, Certificate of importance.**New trial**:

Evidence in support of new trial, 14, 917

New York practice, see *infra*, Exceptions ordered heard at general term.**Nonsuit**:

Exceptions ordered heard at general term, 3, 952

Opinions of courts, see OPINIONS OF COURTS.**Records**:

Certifying whole record, 3, 936

Sending up whole record, 3, 941

Sham and frivolous pleadings, 20, 31

Splitting up whole case, 3, 929

Uniformity of decision, 3, 954

United States courts, 3, 919

Abstract questions, 3, 937

Act of April 29, 1802, 919

Act of 1869, 3, 920

Act of 1872, 3, 921

Amount in controversy, 3, 931

Answers to questions not certified, 3, 926

Certifying whole record, 3, 936

Circuit courts of appeal act, 3, 922, 939

Certiorari to the circuit court of appeals, 3, 942

Form of certificate, 3, 941

Question of jurisdiction, 3, 939

Questions certified by circuit court of appeals, 3, 940

Sending up whole record, 3, 941

Criminal procedure, 3, 921

Distinct statements, 3, 935

Division *pro forma*, 3, 932

Final judgments, 3, 931

Form of the certificate, 3, 935

History of the statutes, 3, 919

Indefinite, 3, 936

Irrelevancy, 3, 937

Matters of discretion, 3, 933

Nature of question, 3, 938

Nature of the proceedings, 3, 923

Necessity of a suit in court, 3, 925

Opinion on the whole facts, 3, 928

Points not arising upon trial, 3, 924

Questions of fact, 3, 930

Questions recast by the supreme court, 3, 939

Splitting up whole case, 3, 929

CERTIFIED CASES, *cont'd.*

- United States courts, *cont'd.*
 - Supreme court divided on the merits of the question, 3, 935
 - Under the acts of 1802 and 1872, 3, 923
 - Whether a bar to error or appeal, 3, 926
 - Whole case cannot be certified, 3, 927
 - Who may certify, 3, 927

CERTIORARI, 4, 1.

See ERROR, WRIT OF.

Abolished, 4, 9

Actions:

Whether certiorari is an action, 4, 323

Whether certiorari will be granted where parties may have remedy for action, 4, 73

Adequate remedy, see *infra*, Where other remedy exists.

Affidavits (see *infra*, Petition; Verification):

Fraud or want of jurisdiction, 4, 282

Merits of the controversy, 4, 282

Affirmance, see *infra* Judgments.

Affirmance on appeal, 4, 333

Agency:

Appeal lost through neglect of agent, 4, 65

Alias writ, 4, 205

Allocatur, 4, 198

Amendments, 4, 157, 204

Amendment of the writ, 4, 204

Bonds, 4, 190

Instances in which amendments are allowable, 4, 190

Objections to bonds, 4, 191

Statutes authorizing amendment of appeal bonds, 4, 191

Discretion of court, 4, 157

Examples, 4, 157, 158, 204

Formal defects in the writ, 4, 204

Return or answer, 4, 227

Discretion of court, 4, 230

Grounds for amendment, 4, 228

In general, 4, 227

Motion for further return, 4, 228

Necessity of motion, 4, 230

Unnecessary matters, 4, 229

Right to amend petition, 4, 157

Answer or return, 4, 211

Adoption of statements in or exhibits attached to the petition, 4, 218

Amendment, 4, 227

Annexation to writ, and filing, 4, 216

CERTIORARI, *cont'd.*

Answer or return, *cont'd.*

Attachment for contempt in failure to make return, 4, 231

By whom return made, 4, 213

Change in personnel of office, 4, 214

Coercion of officer to make return, 4, 230, 231

Conclusiveness of inferior court's return, 4, 226

Conclusiveness of statements in the return *dehors* record, 4, 226

Conclusiveness of the return, 4, 224

Contents of the return, 4, 217

Court or board having more than one member, 4, 215

Definition and distinction between terms, 4, 211

Demurrer, 4, 212, 219

Duties devolving on the prosecutor, 4, 213

Evidence, 4, 221

Evidence improperly returned, 4, 221

Fulness and completeness, 4, 224

Grounds for admission of evidence, 4, 224

Method of returning evidence, 4, 223

Questions of jurisdiction, 4, 222

Statutes, 4, 223

Summary convictions, 4, 222

Whether evidence should be returned, 4, 221

Formalities of the return, 4, 216

Further return, 4, 227

Irrelevancy of matters returned, 4, 218

Irrelevant matter, 4, 219

Judge or clerk of court, 4, 215

Jurisdiction of inferior court or tribunal, 4, 220

Justification of failure to make return, 4, 231

Mandamus, 4, 231

Necessity of return, 4, 212

Nonessential matters, 4, 219

Officers to whom the writ is directed, 4, 213

Quashal for lack of diligence in securing return, 4, 246

Remedy for false return, 4, 232

Return by custodian of the record, 4, 214

Statement as to contents, 4, 216

Striking out irrelevant matter, 4, 219

To what court returnable, 4, 203

To what term returnable, 4, 204

CERTIORARI, *cont'd.*Answer or return, *cont'd.*

- Transcript of the record, 4, 217
- Transfer of jurisdiction, 4, 214
- Traverse of return under authority of statute, 4, 227
- When return should be made, 4, 213
- Where and when returnable, 4, 203
- Whether attorney may make return, 4, 215

- Anticipated wrong or injury, 4, 48, 95.
- Appeals (see *infra*, Petition; Where other remedy exists), 2, 33, 305

- Affirmance, 4, 333
- Appellant not in fault, 2, 306
- Application, 2, 310
- Character of writ, 2, 307
- Continuance, 2, 311
- Decisions affecting certiorari, 2, 121

- Discretion, 2, 307

- Dismissal, 4, 334

- Examination of the case on appeal, 4, 331

- Evidence, 4, 333

- In general, 4, 331

- Objections not raised below, 4, 332

- Regularity of proceedings below, 4, 332

- Grounds for reversal not assigned, 4, 335

- In general, 2, 305

- Issuance, 2, 310

- Judgment on appeal, 4, 333

- Motion, 2, 310

- Motion for rehearing, 2, 309

- Omissions, 2, 306

- Prompt application required, 2, 308

- Quashal or dismissal of writ for failure to appeal, 4, 238

- Record substantially deficient, 2, 305

- Return of certiorari, 2, 311

- Reversal, 4, 334

- Summary proceedings, 2, 34

- Supplemental transcript, 2, 312

- To what tribunal, 2, 34

- To whom granted, 2, 310

- Transcript void, 2, 307

- Trustees, 2, 34

- What brought up, 2, 35

- When appeal lies, 4, 328

- Examination of the case on appeal, 4, 331

- Judgment confirmed, 4, 329

- Orders granting or denying writ of certiorari, 4, 329

- Question of jurisdiction, 4, 331

CERTIORARI, *cont'd.*Appeals, *cont'd.*When appeal lies, *cont'd.*

- Regularity of proceedings below, 4, 332
- Reviewable in some states, 4, 330

- When issuable, 2, 34

Appearances:

- Objections not raised below, 4, 295

Applicant for writ, see *infra*, Petitioner.

Assessment of damages, 4, 122

Assessments (see *infra*, Highways), 4, 114

- Amount of valuation, 4, 119

- Assessment list, 4, 116

- Assessors without authority, 4, 117

- At whose suit writ will be issued, 4, 169

- Assessments against stockholder in corporations, 4, 170

- Correction of individual assessment only, 4, 170

- Municipal improvements and assessments, 4, 171

- Remedy by injunction, 4, 170

- Rights of individual taxpayers, 4, 169

- Back taxes, 4, 117

- Compliance with conditions precedent, 4, 120

- Direction of writ, 4, 178

- Discretionary, 4, 76

- Discretionary powers of assessors, 4, 84

- Drain assessments, 4, 117

- Failure to make a list, 4, 120

- Final adjudication, 4, 116

- Illegality in proceedings, 4, 117

- Judicial acts alone reviewed, 4, 120

- Laches, 4, 122

- Laches and limitations, 4, 138

- Assessment roll beyond control of assessors, 4, 142

- Consideration of public expense, 4, 140

- Effect of, 4, 138

- Examples, 4, 138, 141

- Ratification or confirmation, 4, 141

- Statutes, 4, 142

- Municipal assessments, 4, 115, 120

- Parties exempt from taxation, 4, 118

- Public inconvenience, 4, 116

- Quashal or affirmance in part, 4, 311

CERTIORARI, *cont'd.***Assessments, *cont'd.***

- Questions of jurisdiction, 4, 116
- Review of, 4, 76
- School taxes, 4, 115, 118
- Taxation, 4, 114
- When another remedy is available, 4, 121
- When certiorari lies, 4, 114
- Whether a writ of right, 4, 114
- Assignment of errors, 4, 293
- Certainty in assignments, 4, 294
- General and special assignments, 4, 294
- Necessity of, 4, 293
- Attachments, 4, 89
- Bastardy, 3, 315; 4, 89
- Bill of certiorari, 4, 335
- Bill of exceptions, 4, 232
- Bonds, 4, 184
 - Amendments, 4, 190
 - Amount of bond, 4, 189
 - Amount of recovery, 4, 193
 - Bond for supersedeas, 4, 184
 - Bond to secure costs, 4, 184
 - Conditions, 4, 189
 - Description of suit and judgment, 4, 189
 - Discretion of court to require bond, 4, 185
 - Execution of bond, 4, 188
 - Extent of engagement, 4, 191
 - Liability on bonds, 4, 191
 - Liability upon affirmation of judgment, 4, 192
 - Liability upon dismissal of writ, 4, 191
 - Liability where there is want of jurisdiction to issue writ, 4, 193
 - Mandatory nature of statute, 4, 187
 - Necessity for bond, 4, 184
 - Number of sureties, 4, 190
 - Objections to bonds, 4, 191
 - One bond for removal of several causes, 4, 187
 - Penalty of bond, 4, 193
 - Prosecution of writ *in forma pauperis*, 4, 188
 - Purport of statutes, 4, 186
 - Quashal or dismissal of writ for want or insufficiency of bonds, 4, 243
 - Approval of bond, 4, 243
 - Description of judgment, 4, 243
 - Examples, 4, 243
 - In general, 4, 243
 - Scire facias, 4, 194
 - Seal, 4, 189
 - Security for costs, 4, 188
 - Signature, 4, 189
 - Index Pl. & Pr. — 10

CERTIORARI, *cont'd.***Bonds, *cont'd.***

- Statutes, 4, 185
- Statutes authorizing amendment of appeal bonds, 4, 191
- Substitution, 4, 190
- Sufficiency of bond, 4, 188
- Summary judgment against sureties, 4, 192
- Burden of proof, 4, 297
- Extent of review, 4, 260
- Case made on appeal:
 - Proceedings to bring up a more perfect case, 3, 906
- Cause not shown, 4, 34
- Cause, see *infra*, Rule to show cause and notice.
- Certainty, 4, 151
- Certified cases:
 - Certiorari to the circuit court of appeals, 3, 942
- Chambers and vacation, 4, 29, 363
 - At common law, 4, 29
 - New Jersey practice, 4, 30
 - Statutory regulations, 4, 30
- Chancery court, 4, 39
- Change of venue, 4, 493
- Clerk of court, 4, 28
 - Direction of writ, 4, 177
 - Issuance by clerk of court, 4, 199
 - Return, 4, 215
- Common law:
 - Proceedings according to or different from the common law, 4, 86
 - According to the common law, 4, 86
 - Bastardy proceedings, 4, 89
 - Conviction for neglect of duty, 4, 89
 - Court-martial, 4, 89
 - Forcible entry and detainer, 4, 89
 - Landlord and tenant acts, 4, 89
 - Not according to the common law, 4, 87
 - Possession of property, 4, 89
 - Probate proceedings, 4, 88
 - Special proceedings, 4, 87
 - Summary proceedings, 4, 87
- Common pleas:
 - Jurisdictional errors, 4, 96
- Conclusions of law, 4, 155
- Conclusiveness of the return, 4, 224
 - Examples, 4, 224, 227
 - In general, 4, 224
 - Jurisdiction of inferior tribunals, 4, 226
 - Statements in return *dehors* record, 4, 226
- Concurrent remedies, 4, 55

CERTIORARI, *cont'd.*

Constitutional law:

Denial of writ by statute, 4, 37

Contempt, 4, 124, 815

Coercion of officer to make return, 4, 231

Criminal and civil contempts, 4, 125

Habeas corpus, 4, 127

In general, 4, 124

Necessary requisites, 4, 125

Order refusing to punish, 4, 126

Refusal to comply with order of court, 4, 125

Review of the case on its merits, 4, 125

To review jurisdiction only, 4, 127

Where contempt proceedings may be reviewed, 4, 124

Contents, see *infra*, Form and contents of the writ.

Contested election cases, 4, 107

Continuance, 2, 311

Corporations, 4, 169

Costs, 4, 321

Analogy of certiorari to writ of error, 4, 324

Attempt to cast costs on adversary, 4, 169

Construction of statutes, 4, 325

Correction of error after issuance of the writ, 4, 326

Costs under statutes, 4, 322

Discretion of court, 4, 326

Dismissal of the writ, 4, 327

Examples, 4, 321, 325

Improper allowance of costs, 4, 313

Municipal corporations and officers, 4, 327

New York code of civil procedure, 4, 324

Right to and liability for costs, 4, 325

Statute allowing costs on appeal, 4, 323

Successful party, 4, 326

Whether costs are allowable at common law, 4, 321

County courts, 4, 23, 95

Courts (see *infra*, Answer or return; Defendant; Discretion of court; Habeas corpus; Jurisdiction):

Proceedings of what bodies or persons, 4, 38

Chancery court, 4, 39

Courts-martial, 4, 40

Inferior court, body, or officer, 4, 38

Probate court, 4, 40

To test the legal existence of a court, 4, 104

CERTIORARI, *cont'd.*

Courts-martial, 4, 40

Criminal cases, 4, 46, 122

Abolition, 4, 122

Before or after conviction, 4, 41, 46

Contempt, 4, 125

Discretion of court, 4, 37

District attorney as relator, 4, 165

Examples, 4, 122, 124

In general, 4, 122

Quashal or affirmance in part, 4, 310

Remand, 4, 317

Removal of criminal causes, 4, 122

Supreme court of the United States, 4, 14

Crossings:

Highways crossing railroads, 4, 110

Declaration or complaint, see *infra*, Petition.

Defendant, 4, 176

Assessment and levy of taxes, 4, 178

Clerks, 4, 176, 177

Continuing office, 4, 181

Designation of officers, 4, 182

Direction of writ to court or judge, 4, 177

Direction of writ to custodian of record, 4, 176

Direction of writ to municipal and quasi-municipal bodies and officers, 4, 177

Direction of writ where the inferior tribunal has lost control over record, 4, 180

Direction to proper and improper parties, 4, 182

Expiration of term of office, 4, 181

Highway proceedings, 4, 179

Misdirection of writ, 4, 182

Parties defendant because of interest in proceedings, 4, 183

Quashal of writ for erroneous direction, 4, 241

Recording officers, 4, 176

Definiteness and certainty, 4, 151

Definition, 4, 8

Dehors record, 4, 12, 277

Admissions in return, 4, 279

Affidavit, 4, 282

Application of the rule, 4, 285

Depositions, 4, 282

Doctrine as to consideration of, 4, 277

Evidence improperly set up, 4, 285

Fraud, 4, 282

CERTIORARI, *cont'd.**Dehors record, cont'd.*

- Incorporation of facts into opinion, 4, 286
- Matters improperly returned, 4, 284
- Matters not regularly appearing of record, 4, 281
- Oral evidence, 4, 282
- Petition and affidavit for the writ, 4, 286
- Petitioner's paper book, 4, 279
- References, 4, 284
- Reviewing court confines itself to an inspection of the record, 4, 277
- Statutes, 4, 278
- To support regularity of proceedings, 4, 280
- Want of jurisdiction, 4, 282
- Demurrer, 4, 212, 219, 247
- Denial of writ by statute, 4, 37
 - When writ is a constitutional remedy, 4, 37
 - When writ is not a constitutional remedy, 4, 38

De novo:

- Trial *de novo*, 4, 297

Depositions, 4, 282

Direction of writ, see infra, Defendant.

Disbarment and suspension of attorneys, 6, 718

Discretionary acts, 4, 81

- Amendments, 4, 83
- Assessment proceedings, 4, 84
- Habeas corpus, 4, 130
- Highway proceedings, 4, 83
- Highways, 4, 108
- Illustrations of discretionary acts, 4, 82
- Setting aside verdict, granting a new trial, vacating judgment, 4, 83
- Whether discretionary acts are reviewable, 4, 81

Discretion of court, 4, 31, 143

- Amendment of return, 4, 230
- Arbitrary discretion, 4, 33
- Assessments, 4, 114
- Bonds, 4, 185
- Cause must be shown, 4, 34
- Certiorari granted as of right, 4, 33
- Costs, 4, 326
- Criminal law, 4, 37
- Discretion not used, 4, 34
- Extent of review, 4, 257
- Inconvenience, 4, 36
- In general, 4, 31
- Laches, 4, 37
- Limitations, 4, 37
- Not beneficial, 4, 34

CERTIORARI, *cont'd.**Discretion of court, cont'd.*

- Notice, 4, 194
- Public detriment, 4, 36
- Quashal, dismissal, and supersedeas of writ, 4, 234
- Rules to show cause, 4, 194
- Substantial errors, 4, 35
- Technical and formal errors not prejudicial, 4, 34
- Where other remedies exist, 4, 36
- Dismissal on appeal, 4, 334
- Dismissal, *see infra*, Quashal, dismissal, and supersedeas of writ.
- District attorney:
 - District attorney as relator 4, 165
- District court, 4, 95
- Drainage, 7, 219
 - Cases where writ was used, 7, 219
 - Discretionary writ, 7, 220
 - Estoppel, 7, 220
 - Harmless irregularity, 7, 221
 - In general, 7, 219
 - Instances of fatal irregularities, 7, 220
 - Laches, 7, 220
 - Petitioner without interest, 7, 221
 - Proceedings quashed, 7, 219
 - Separate proceedings, 7, 221
- Elections:
 - Contested election cases, 4, 107
- Eminent domain, 7, 662
- Affidavits, 7, 664
- Assessment of damages, 4, 122
- Depositions, 7, 664
- Errors committed by jury, 7, 662
- Errors of commissioners, 7, 662
- Hearing, 7, 664
- Petition by owners of land taken, 4, 173
- Return, 7, 663
- What questions may be considered, 7, 664
- When it lies, 7, 662
- Errors not apparent of record, 4, 287
 - Amendment of pleadings, 4, 292
 - Instruction, 4, 292
 - Mere silence of record, 4, 288
 - Presumptions, 4, 288
 - Presumptions as to jurisdiction, 4, 291
 - Presumptions as to regularity of procedure, 4, 288
 - Rulings on the admission of evidence, 4, 292
 - Sufficiency of evidence, 4, 292
 - Whether they are considered, 4, 287

CERTIORARI, *cont'd.*

Error, writ of:

- Error, writ of, distinguished from certiorari, 7, 821
- Substitute for writ of error, 4, 46
- Where writ of error obtained, 4, 86
- Whether certiorari will be granted where parties may have writ of error, 4, 72

Estoppel:

- Objections not raised below, 4, 295

Evidence (see *infra*, *Dehors* record; Errors not apparent of record; Extent of review; Presumptions), 4, 47

Answer or return, 4, 221

- Evidence improperly returned, 4, 221

- Fulness and completeness, 4, 224

- Grounds for admission of evidence, 4, 224

- Method of returning evidence, 4, 223

- Questions of jurisdiction, 4, 222

- Statutes, 4, 223

- Summary convictions, 4, 222

- Whether evidence should be returned, 4, 221

- Erroneous admission or rejection of evidence, 4, 106

- Objections not raised below, 4, 296

- Oral evidence, 4, 282

- Substance of evidence, 4, 153

- Sufficiency of evidence, 4, 145

Exceptions and objections, 8, 300

- Exceptions waived and objections not raised below, 4, 47

Execution:

- Improper issuance of execution, 4, 105

- Relief against the writ, 8, 458

Execution of judgment, 4, 45

Ex parte application, 4, 194Extent of review (see *infra*, *Dehors* record; Errors not apparent of record), 4, 254

- Arbitrary rejection of evidence, 4, 260

- Attachment proceedings, 4, 259

- Burden of proof, 4, 260

- Conclusions unsatisfactory to reviewing court, 4, 273

- Condemnation proceedings, 4, 259

- Contempt of court, 4, 257

- Discretion of court, 4, 257

- Erroneous conclusions from facts, 4, 266

CERTIORARI, *cont'd.*Extent of review, *cont'd.*

- Extent of review of evidence, 4, 272

- Findings based on personal knowledge and inspection, 4, 265

- Findings supported by some evidence, 4, 272

- Findings without and against evidence, 4, 274

- Inquiries germane to hearing on particular writ, 4, 275

- Jurisdictional errors, 4, 260

- Jurisdictional facts, 4, 262

- Regularity of proceedings, 4, 256

- Restriction of inquiry to jurisdiction and regularity of proceedings, 4, 254

- Rulings on the evidence, 4, 258

- Rulings on the pleadings, 4, 257

- Statutes authorizing review of evidence, 4, 267

- Statutes enlarging power to enter judgment, 4, 271

- Statutes forbidding review of evidence, 4, 266

- Whether sufficiency of evidence will be reviewed, 4, 261

Extraordinary remedy, 4, 9

Fiat, 4, 198

Final judgments, 4, 41

- After judgment, 4, 42

- As a modified writ, 4, 42

- Assessments, 4, 116

- Common law, 4, 41

- Criminal cases, 4, 41, 46

- Execution of judgment, 4, 45

- Finality apparent on face of writ, 4, 45

- Habeas corpus, 4, 130

- In civil cases, 4, 42

- Judgments made final by statute, 4, 46

- Review before judgment, 4, 41

- Substitute for writ of error, 4, 46

Forcible entry and detainer, 4, 89; 9, 32, 74

Formal errors, 4, 34

Form and contents of the writ, 4, 200

- Attestation and seal, 4, 201

- Body of the writ, 4, 201

- Mandate, 4, 201

- Names, 4, 200

- Title, 4, 200

Forma pauperis, 15, 695

- Bonds, 4, 188

Fraud.

- Affidavits, 4, 282

Further return, 4, 227

Garnishment, 9, 869, 875

CERTIORARI, *cont'd.*

Habeas corpus, 9, 1084

As ancillary to habeas corpus, 9, 1084

Certiorari in connection with habeas corpus, 4, 127

As ancillary to habeas corpus, 4, 127

Common law, 4, 127

Discretion not reviewed, 4, 130

Evidence, 4, 130

Final adjudication necessary, 4, 130

In favor of the prosecution, 4, 130

State courts, 4, 128

To review proceedings on habeas corpus, 4, 129

United States courts, 4, 128

Contempt, 4, 127

For review of decision on habeas corpus, 9, 1084

Hearing and determination, 4, 252

Assignment of errors, see infra, Assignment of errors.

At the return term, 4, 252

Burden of proof, 4, 297

*Errors not apparent of record, see infra, Errors not apparent of record.**Extent of review, see infra, Extent of review.*

Hearing of application for the writ, 4, 197

Hearing of motion to quash, 4, 250

Hearing on demurrer, 4, 254

Hearing on the pleadings, 4, 253

*Matters dehors, see infra, Dehors record.**Objections not raised below, see infra, Objections not raised below.*

Opportunity to show cause against the writ, 4, 253

Trial *de novo*, 4, 297

Highways, 4, 107

After construction of road, 4, 107

Award of damages and determination of expense, 4, 112

Direction of writ, 4, 179

Errors of illegality, 4, 108

Highways crossing railroads, 4, 110

Judicial and discretionary acts, 4, 108

Jurisdictional errors, 4, 111

Laches and limitations, 4, 143

No showing of injury, 4, 108

Notice, 4, 308

CERTIORARI, *cont'd.*Highways, *cont'd.*

Petitioner, 4, 172

Applicants affected only as members of community, 4, 172

Grievances of others, 4, 173

Highway commissioners, 4, 173

Owners of land taken, 4, 173

Review on application of private citizens, 4, 172

Proceedings of courts and commissioners, 4, 113

Proceedings of selectmen, 4, 113

Prosecution in name of state, 4, 163

Quashal or affirmance in part, 4, 311

Quashing proceedings for opening highways, 4, 308

Review of highway proceedings, 4, 79, 83

Whether granting writ discretionary, 4, 107

Illegality and irregularity (*see infra*, Extent of review; Judgments; Remand), 4, 100

Acquiescence in irregularities, 4, 169

Erroneous admission or rejection of evidence, 4, 106

Error in commitment, 4, 103

Errors subsequent to rendition of judgment, 4, 105

Generally, 4, 100

Highways, 4, 108

Illustrations, 4, 105

Immaterial or harmless error, 4, 104

Improper issuance of execution, 4, 105

Legal existence of a court, 4, 104

Liquor license, 4, 104

Municipal corporations, 4, 104

No illegality or irregularity, 4, 104

Petition, 4, 154

Presumptions as to regularity, 4, 288

Proceedings in ouster from office, 4, 106

Refusal to grant liquor license, 4, 102

Rejection of claim against state, 4, 102

Taxation and assessments, 4, 117

Tribunal not complying with statute, 4, 101

Whether the writ lies, 4, 100

Infants, 10, 731

Inferior courts, 4, 38

CERTIORARI, *cont'd.***Injunctions:**

Refusal of writ where taxpayer has remedy for injunction, 4, 170

Insane persons, 10, 1208

Insolvency, 11, 46

Objections to discharge, 11, 34

Intoxicating liquors, see *infra*, Licenses.

Irregularity, see *infra*, Illegality and irregularity in proceedings.

Issuance of the writ (see *infra*, Hearing of application for the writ; Quashal, dismissal, and supersedeas of writ; Rule to show cause and notice):

Allocatur or *fiat*, 4, 198

Hearing of the application for the writ, 4, 197

Issuance by clerk, 4, 199

Necessity for issuing the writ, 4, 201

In general, 4, 201

Nunc pro tunc, 4, 201

Waiver of issuance, 4, 202

Joinder of parties, 4, 174

Circumstances authorizing, 4, 175

In general, 4, 174

Joint defendants in civil actions, 4, 175

To save expense, 4, 174

Judges, see *infra*, Answer or return; Defendant.

Judgments (see *infra*, Final judgments; Quashal, dismissal, and supersedeas of writ; Remand; Restitution), 4, 301

Affirmance, 4, 306

Correction of judgment as to amount in excess of jurisdiction, 4, 308

Dismissal of writ where proceedings are regular, 4, 307

In general, 4, 306

Proceedings to open streets and highways, 4, 308

Quashal of writ instead of affirmance, 4, 307

Quashal or affirmance in part, 4, 309

Affirmance or quashal of proceedings, 4, 301

Errors in rendition of judgment, 4, 99

Power to render judgment anew at common law, 4, 302

Power to render judgment anew under statutes, 4, 302

Power to render judgment anew where certiorari issued as a substitute for appeal, 4, 304

CERTIORARI, *cont'd.***Judgments, *cont'd.***

Quashal or affirmance in part, 4, 309

Actions for debt, 4, 310

Assessment and levy of taxes, 4, 311

Assessments of personal property of corporation, 4, 313

Award incapable of severance, 4, 314

Criminal prosecutions, 4, 310

Erroneous allowance of costs, 4, 313

Highway proceedings, 4, 311

Judgment against tortfeasors, 4, 314

Quashal of taxes as to relator only, 4, 312

Statement of rule, 4, 309

Tortfeasors, 4, 314

Res judicata, 4, 320

Reversal or quashal, 4, 308

Examples, 4, 308, 309

Excess of jurisdiction, 4, 308

Irregularities, 4, 309

Quashal and affirmance in part, 4, 309

Scope of inquiry, 4, 301

Scope of judgment, 4, 301

Vacating judgments, 4, 83

Judicial and nonjudicial acts, 4, 74

Amendments, 4, 83

Appointment of officers, 4, 78

Assessment proceedings, 4, 84

Assessments, 4, 76

Canvassing votes, 4, 81

Discretionary acts, 4, 81

Examples of judicial acts, 4, 76

Executive acts, 4, 80

Granting licenses, 4, 78

Granting new trial, 4, 83

Highway proceedings, 4, 79, 83

Highways, 4, 108

In general, 4, 74

Judicial acts, 4, 74

Judicial and ministerial acts, 4, 78

Legislative acts, 4, 81

Ministerial acts, 4, 80

Nonjudicial acts, 4, 79

Quasi-judicial acts, 4, 75

Removal of officers, 4, 79

Resolutions and ordinances of municipal departments, 4, 84

Reviewing the proceedings of bodies and officers acting in a judicial or quasi-judicial character, 4, 74

Setting aside verdict, 4, 83

Taxation and assessments, 4, 120

CERTIORARI, *cont'd.*Judicial and nonjudicial acts, *cont'd.*

Vacating judgment, 4, 83

Wrongful sale by public officers,
4, 79

Judicial proceedings, 4, 11

Jurisdiction, 4, 12

Affidavits to show want of juris-
diction, 4, 282Appeal from judgment of infe-
rior court, 4, 331

At common law, 4, 12

Chambers and vacation, 4, 29

Clerk of court, 4, 28

Conclusiveness of return as to
jurisdiction of inferior tri-
bunal, 4, 226

Contempt proceedings, 4, 127

County courts, 4, 23

Criminal cases, 4, 14

Errors in exercise of proper juris-
diction, 4, 98Errors in exercise of judg-
ment, 4, 100Errors in orders of court, 4,
100Errors in rendition of judg-
ment, 4, 99

In general, 4, 98

Extent of review, 4, 254

Justices of the peace, 4, 28

Officers of the court, 4, 28

Petition, 4, 147

Presumption, 4, 291

Probate courts, 4, 23

Return showing jurisdiction of
inferior courts, 4, 220

State courts, 4, 14

State courts of original jurisdic-
tion, 4, 16

Supreme courts of state, 4, 15

Taxation and assessments, 4, 116

United States Supreme Court,
4, 13Want or excess of jurisdiction,
4, 90

County courts, 4, 95

Courts of common pleas,
4, 96Errors by judicial bodies, 4,
95

Errors of district courts, 4, 95

General rule as to jurisdic-
tional errors, 4, 91

Highways, 4, 111

Jurisdictional errors in par-
ticular tribunals, 4, 95Jurisdiction not appearing
upon the face of proceed-
ings, 4, 92

Justice of the peace, 4, 96

Premature application, 4, 95

Probate courts, 4, 95

CERTIORARI, *cont'd.*Jurisdiction, *cont'd.*Want or excess of jurisdiction,
*cont'd.*Proceedings without proper
notice, 4, 93

Quasi-judicial bodies, 4, 96

School trustees, 4, 97

Threatened excess, 4, 95

Where other remedies exist,
4, 94

Writ denied by statute, 4, 94

Justices of the peace, 4, 28

Jurisdictional errors, 4, 96

Laches and limitations, 4, 130

Analogy to writ of error and ap-
peal, 4, 132Appeal lost through petitioner's
laches, 4, 64Appeal lost where petitioner is
without laches, 4, 62Assessment roll beyond control
of assessors, 4, 142Consideration of public expense
in assessment cases, 4, 140

Discretion of court, 4, 37

Failure to object to illegal tax
assessment, 4, 141

Generally, 4, 130

Highway proceedings, 4, 143

Ordinary cases, 4, 135

Quashal, dismissal, and super-
seades of writ, 4, 236Quashal for prosecutor's laches
or neglect, 4, 246Ratification or confirmation of
tax assessment, 4, 141

Reasonable time, 4, 130

Statute as to assessments, 4, 142

Statutory limitations, 4, 137

Tax assessments generally, 4,
138Time within which application
should be made, 4, 135Where certiorari is substituted
for appeal, 4, 136Where public detriment or incon-
venience would result from
reversal, 4, 133Where public money has been
expended, 4, 134

Landlord and tenant, 4, 89

Landlord as petitioner, 4, 166

Summary proceedings, 12, 898

Legislative resolutions and ordi-
nances, 4, 81, 85

Licenses:

Granting license, 4, 82

Prosecution in name of state to
obtain a review of proceedings
to prohibit, regulate, or license
the sale of intoxicating liquors,
4, 163

CERTIORARI, *cont'd.***Licenses, *cont'd.***

Refusal to grant liquor licenses,
4, 102

Reviewing grant of license, 4, 78

Limitations of actions, see infra,
Laches and limitations.

Local assessments, see infra, Assess-
ments.

Mandamus, 13, 500, 834

Coercion of officer to make re-
turn, 4, 231

Joinder, 1, 174

Mandamus compared with cer-
tiorari, 13, 500

Mandamus in lieu and in aid of
certiorari, 13, 599

Effect of another remedy, 13,
500

In aid of appeal, 13, 600

No right in relator, 13, 600

Proceeding useless or trivial,
13, 600

To certify or send up rec-
ords, 13, 599

To compel obedience to cer-
tiorari, 13, 601

To quash writ of certiorari,
13, 601

Where no other remedy exists,
4, 73

Mills and milldams, 14, 15

Ministerial, 4, 11

Ministerial acts, see infra, Judicial
and nonjudicial acts.

Motions (see *infra,* Quashal, dis-
missal, and supersedeas of writ),
2, 130

Municipal corporations:

Assessments, 4, 115, 120

Illegality or irregularity, 4, 104

Resolutions and ordinances of
municipal departments, 4, 84

Municipal improvements, see infra,
Assessments.

Nature of remedy, 4, 9

Necessity for issuing the writ, 4, 201

Newspapers:

Selection of official newspaper
for county, 4, 164

New trial, 4, 73

Granting new trial, 4, 83

Nonjudicial acts, see infra, Judicial
and nonjudicial acts.

Notice (see *infra,* Rule to show cause
and notice), 4, 194

Highways, 4, 308

Proceedings without proper no-
tice, 4, 93

Nunc pro tunc, 4, 201

Objections not raised below, 4, 294

Admissibility and sufficiency of
evidence, 4, 296

CERTIORARI, *cont'd.***Objections not raised below, *cont'd.***

Applicability of rule governing
appeal, 4, 294

Effect of appearance, 4, 295

Estoppel, 4, 295

Jurisdictional errors, 4, 295

Objections to pleadings, 4, 296

Office of writ, 4, 10

In general, 4, 10

Matters *dehors* record, 4, 12

Tribunal and proceedings must
be judicial, 4, 11

Officers, see infra, Answer or return.

Oral evidence, 4, 282

Order of dismissal, 4, 251

Orders, 4, 100

Ordinances, 4, 84; 15, 445

What errors reviewable, 15, 445

When writ lies, 15, 445

Other remedies, see infra, Where
other remedy exists.

Parties, 4, 162

Applicant for the writ, see infra,
Petitioner.

Quashal, dismissal, or super-
sedeas of writ for defects of
parties, 4, 240

The defendant, see infra, De-
fendant.

Petition (see *infra,* Petitioner), 1, 143

Allegations of errors not speci-
fied, 4, 149

Amendments, 4, 157

Certainty required, 4, 151

Conclusions of law, 4, 155

Contradicting the return, 4, 286

Dismissal of petition, 4, 160

Additional affidavits, 4, 162

Proving truth of statements,
4, 161

When dismissed, 4, 160

Error not shown, 4, 147

Excess of jurisdiction, 4, 147

Excuse for failure to appeal, 4, 156

In general, 4, 143

Interest of petitioner, 4, 145

Matters *dehors* record, 4, 287

Matters of record, 4, 146

Mere irregularities or errors, 4,
154

Merits not shown, 4, 153

Petition must be single, 4, 146

Precise and general statement,
4, 144

Showing merits, 4, 153

Statement of error, 4, 145

Substance of evidence, 4, 153

Substitute for appeal, 4, 155

Excuse for failure to appeal,
4, 156

Generally, 4, 155

Merits, 4, 156

CERTIORARI, *cont'd.*

Petition, cont'd.

- Sufficiency of evidence, 4, 145
- Supplying omissions in the return, 4, 287
- Transcript attached to petition, 4, 287
- Vague and indefinite statements, 4, 151
- Verification*, see *infra*, *Verification*.
- What should be set out, 4, 145
- Wrong or injustice done the petitioner, 4, 154
- Petitioner, 4, 162**
 - Acquiescence in irregularities and estoppel, 4, 169
 - Assessment and levy of taxes, 4, 169
 - Assessments against stockholders in corporations, 4, 170
 - Attempt to cast costs on adversary, 4, 169
 - Corporations, 4, 169
 - Criminal prosecution, 4, 165
 - Discretion of court, 4, 168
 - Grievances, 4, 168
 - Grievances of others, 4, 173
 - Highway commissioners, 4, 173
 - Highway proceedings, 4, 163, 172
 - Individual taxpayers, 4, 169
 - Intoxicating liquors, 4, 163
 - Issuance of writ on application of person aggrieved, 4, 167
 - Joinder in application for the writ, 4, 174
 - Landlord, 4, 166
 - Motion to strike out parties, 4, 176
 - Motion to supersede or quash writ, 4, 175
 - Municipal improvements and assessments, 4, 171
 - Objections to parties plaintiff, 4, 175
 - Owners of land taken by highways, 4, 173
 - Prevailing party, 4, 168
 - Prevention of substantial injury, 4, 168
 - Proceedings conducted without regular parties, 4, 167
 - Prosecution in the name of the state, 4, 162
 - Quashal of writ for parties plaintiff, 4, 240
 - Relator, 4, 165
 - Selection of official newspaper for county, 4, 164
 - Test as to the right to the writ, 4, 162, 167
 - Use and occupation of street, 4, 164

CERTIORARI, *cont'd.*

Petitioner, cont'd.

- Whether the applicant must have been a party, 4, 165
- Poor and poor laws, 16, 671
- Poor debtor acts, 16, 727
- Possession, 4, 89
- Prejudice, 4, 34
- Presumptions:**
 - As to jurisdiction, 4, 291
 - As to regularity of procedure, 4, 288
 - Omission of necessary matters from record, 4, 290
 - Presumptions in support of proceedings, 4, 290
 - Rulings on evidence, 4, 288
 - Sufficiency of evidence, 4, 289
- Prevention of anticipated wrong or injury, 4, 48
- Procedendo*, 4, 252, 317
- Proceedings of what bodies or persons, 4, 38
 - Chancery court, 4, 39
 - Courts-martial, 4, 40
 - Inferior court, body, or officer, 4, 38
 - Probate court, 4, 40
- Property*, see *infra*, *Surrogates*.
- Public detriment and inconvenience, 4, 36
- Public improvements*, see *infra*, *Assessments*.
- Public inconvenience:**
 - Taxation and assessments, 4, 116
 - Where reversal of proceedings would be public inconvenience, 4, 133
- Public officers (see *infra*, Answer or return; Defendant), 4, 38**
 - Appointment of officers, 4, 78
 - Illegality and irregularity in proceedings to oust from office, 4, 106
 - Removal of officer, 4, 79
- Quashal, dismissal, and supersedeas of writ (see *infra*, Judgments; Remand; Supersedeas and stay of proceedings), 4, 233**
 - Bonds, 4, 243
 - Confirmation of proceedings by statute, 4, 243
 - Defects of parties, 4, 240
 - Designation of officers, 4, 242
 - Discretion of court, 4, 234
 - Distinction between quashal and supersedeas, 4, 233
 - Erroneous direction of writ, 4, 241
 - Failure to appeal, 4, 238
 - Failure to serve, 4, 245
 - Hearing of motion, 4, 250
 - Improperly allowing issue, 4, 244, 245

CERTIORARI, *cont'd.*

- Quashal, dismissal, and supersedeas of writ, *cont'd.*
 - Improvident issuance of writ in general, 4, 234
 - Insufficiency of petition or affidavit, 4, 239
 - Laches and limitations, 4, 236
 - Lack of diligence in securing returns, 4, 246
 - Miscellaneous grounds for quashal, 4, 244
 - Misjoinder, 4, 242
 - Misjoinder of parties, 4, 241
 - Motion, 4, 247
 - Demurrer to the return, 4, 248
 - Formalities of motion, 4, 248
 - Motion after return term, 4, 248
 - On demurrer, 4, 247
 - Quashal by court *suo motu*, 4, 247
 - Quashal *suo motu* by plaintiff, 4, 247
 - Specification of grounds for quashal, 4, 250
 - Time of making motion, 4, 248
 - Want of prosecution, 4, 249
 - Order of dismissal, 4, 251
 - Pendency of appeal, 4, 244
 - Premature issuance of writ, 4, 236
 - Procedendo*, 4, 252
 - Prosecutor's laches or neglect, 4, 246
 - Term, date, and indorsement of writ, 4, 246
 - Want or insufficiency of bonds, 4, 243
 - When the writ will be quashed or superseded, 4, 234
- Quashal or dismissal of writ for insufficiency of petition or affidavit, 4, 239
- Quasi-judicial bodies:
 - Jurisdictional errors, 4, 96
- Quasi-judicial proceedings, 4, 75
- Questions of law and fact, 4, 47
- Quo warrant:
 - Proper remedy, 17, 412
 - Reasonable time, 4, 130
 - Receivers, 17, 858
 - Records (see *infra*, *Dehors* record; Errors not apparent of record; Transcript of the record):
 - Petition, 4, 146
 - References, 4, 284
 - Rehearing, 18, 69
 - Relator (see *infra*, Petitioner), 4, 165
 - Quashal of tax as relator only, 4, 312

CERTIORARI, *cont'd.*

- Remand, 4, 314
 - Clerical errors, 4, 317
 - Common-law doctrine, 4, 314
 - Criminal case, 4, 317
 - Procedendo*, 4, 317
 - Quashal for excess of jurisdiction, 4, 315
 - Quashal for irregularities, 4, 315
 - Reversal for formal and minor irregularities, 4, 316
 - Statutes, 4, 317
- Remedies*, see *infra*, Where other remedy exists.
- Removal of causes, 18, 387
- Rendition and entry of judgment:
 - Errors in rendition of judgment, 4, 99
 - Errors subsequent to rendition of judgment, 4, 105
- Res judicata*, 4, 320
 - Affirmance of the proceedings, 4, 321
 - Dismissal of the writ, 4, 320
 - In general, 4, 320
 - Vacation of the proceedings, 4, 321
- Restitution, 4, 318
 - Of money, 4, 320
 - Of possession, 4, 318
- Returns (see *infra*, Answer or return), 4, 203; 18, 973
- Reversal on appeal (see *infra*, Judgments), 4, 334
- Review, writ of, 4, 9
- Right:
 - Whether a writ of right, 4, 114
 - When certiorari granted of right, 4, 33
- Road and highway cases*, see *infra*, Highways.
- Rule to show cause and notice, 4, 194
 - Discretion of court, 4, 194
 - Ex parte* application, 4, 194
 - In the absence of statutes, 4, 194
 - Motion to supersede or quash, 4, 195
 - Notice, 4, 194
 - Notice after issuance of writ, 4, 196
 - Statutes, 4, 196
- Rulings*, see *infra*, Extent of review.
- Schools:
 - Jurisdictional errors of school trustees, 4, 97
- Sentence, 19, 504
- Service of process, 4, 202
 - Examples, 4, 202
 - How made, 4, 202
 - In general, 4, 202
 - Proceedings without proper notice, 4, 93

CERTIORARI, *cont'd.*Service of process, *cont'd.*

- Quashal or dismissal of writ for delay in service, 4, 245
- Time of service, 4, 202
- Waiver of defects, 4, 203

Sickness:

- Loss of appeal, 4, 71

Special assessments, see *infra*, Assessments.

Special proceedings, 4, 10, 87, 323

State:

- Prosecution in name of state, 4, 162

Statutes (see *infra*, Denial of writ by statute; Laches and limitations):

- Bonds, 4, 185
- Costs, 4, 322, 325
- Judgments made final by statute, 4, 46
- Matters *dehors* record, 4, 278
- Notice, 4, 196
- Power to render judgment anew, 4, 302
- Remand, 4, 317
- Review of evidence, 4, 266
- Rules to show cause and notice, 4, 196

Substitute for appeal, 4, 58

Supersedeas, 4, 209

Tribunal not complying with statute, 4, 101

Writ denied by statute, 4, 94

Statutory writ, 4, 8

Stay of proceedings, see *infra*, Supersedeas and stay of proceedings.

Stockholders:

- Assessments against stockholders, 4, 170

Streets and highways, 20, 890, 902

Striking out irrelevant matter, 4, 219

Substantial errors, 4, 35

Successful party, 4, 326

Summary proceedings, 4, 87

Supersedeas and stay of proceedings (see *infra*, Quashal, dismissal, and supersedeas of writ), 4, 205; 20, 1212

After issuance of execution, 4, 208

Award of special supersedeas, 4, 206

Bond for supersedeas, 4, 184

Collateral proceedings, 4, 208

Correction of record, 4, 208

Criminal prosecution, 4, 206

Doctrine as to suspension of further proceedings, 4, 205

Liability for disobedience of supersedeas, 4, 211

Mere allowance of writ, 4, 207

Special clause in the writ, 4, 207

CERTIORARI, *cont'd.*Supersedeas and stay of proceedings, *cont'd.*

Statutory provisions, 4, 209

Time of taking effect, 4, 207

Upon whom the supersedeas operates, 4, 209

Vacation of supersedeas, 4, 210

Suretyship, see *infra*, Bonds.

Surrogates, 4, 23, 40, 88

Jurisdictional errors, 4, 95,

Taxation, see *infra*, Assessments; and see TAXATION.

Technical errors, 4, 34

Time of issuance, see *infra*, Final judgments.*Time*, see *infra*, Laches and limitations.

Tortfeasors, 4, 314

Transcript attached to petition, 4, 287

Transcript of the record, 4, 217

Return, 4, 217

Return of the original record, 4, 217

Trial *de novo*, 4, 297, 301

Power to render judgment anew, 4, 302

United States courts (see UNITED STATES COURTS):

Habeas corpus, 4, 128

Supreme court, 4, 13

Vacations, see *infra*, Chambers and vacation.*Verdict*, see *infra*, Final judgments.

Verification, 4, 158

Affidavits, 4, 158

Before whom made, 4, 160

By whom made, 4, 160

Form of verification, 4, 158

Generally, 4, 158

Void proceedings, 4, 49

Waiver of defects in service, 4, 203

Waiver of issuance, 4, 202

When the writ lies (see *infra*, Denial of writ by statute; Discretion of court; Final judgments; Proceedings of what bodies or persons):

Assessment of damages, 4, 122

Contempt proceedings, see *infra*, Contempt.

Contesting election cases, 4, 107

Criminal cases, 4, 122

Error in exercise of proper jurisdiction, see *infra*, Jurisdiction.

Exceptions waived and objections not raised below, 4, 47

Illegality and irregularity of proceedings, see *infra*, Jurisdiction.*In connection with habeas corpus*, see *infra*, Habeas corpus.

CERTIORARI, *cont'd.*

When the writ lies, *cont'd.*

Judicial and nonjudicial acts, see *infra*, Judicial and nonjudicial acts.

Proceedings according to or different to the common law, see *infra*, Common law.

Questions of law and fact, 4, 47
Road and highway cases, see *infra*, Highways.

Taxes and assessments, see TAXATION; and see *infra*, Assessments.

To perfect record on appeal, 4, 130

To prevent anticipated wrong or injury, 4, 48

Void proceedings, 4, 49

Want or excess of jurisdiction, see *infra*, Jurisdiction.

Where no other remedy provided, 4, 73

Where other remedy exists, see *infra*, Where other remedy exists.

Where other remedy exists, 4, 50

Appeal inadequate, 4, 55

Appeal lost, 4, 59

Appeal lost through laches of petitioner, 4, 64

Appeal lost through neglect of agent, 4, 65

Appeal lost where petitioner is without laches, 4, 62

Appeal pending, 4, 54

Concurrent remedies, 4, 55

Diligence to prevent loss of appeal, 4, 65

Discretion of court, 4, 36

Excuse for failure to appeal, 4, 70

Excuse for not appealing, 4, 70, 73

Excuse that application must contain where appeal is lost, 4, 60

Failure to give security, 4, 69

Failure to perfect appeal by act of third party, 4, 66

Generally, 4, 50

Ignorance of the time and place of trial, 4, 71

Injunctions, 4, 170

Jurisdictional errors, 4, 94

Mandamus, 4, 73

Neglect to send up part of record, 4, 69

New trial, 4, 73

Quashal or dismissal of writ where there is failure to appeal, 4, 238

Remedy by action, 4, 73

CERTIORARI, *cont'd.*

Where other remedy exists, *cont'd.*

Remedy by appeal, 4, 51

Remedy by writ of error, 4, 72

Sickness as excuse for not appealing, 4, 71

Substitute for appeal, 4, 57

Substitute for appeal by statute, 4, 58

Tax assessment cases, 4, 52

Taxation and assessments, 4, 121

Where no other remedy is provided, 4, 73

Writ of error, 4, 86

Writs, see *infra*, Amendments; Answer and return; Form and contents of the writ; Issuance of the writ; Service of process.

CHALLENGE, see DUELLING; JURIES.

CHAMBERS AND VACATION, 4, 336

Amendments, 4, 338

Amendment of judgment and orders, 4, 347

Records, 17, 921

Appeals, 2, 26; 4, 365

Correction of judgment, 2, 97

Examples, 4, 365, 367

In general, 4, 365

Proceedings to perfect appeals, 4, 349

Arrest of judgment, 4, 348

Attachment:

Dissolution, 3, 76

Issue and dissolution of attachment, 4, 353

Bail, 4, 341

Certiorari, 4, 29, 363

At common law, 4, 29

New Jersey practice, 4, 30

Statutory regulations, 4, 30

Change of venue, 4, 339

Consent of parties to rendition of judgment, 4, 345

Contempt, 4, 340

Continuance, 4, 339

Correction of minutes and records, 4, 339

Correction of process, 4, 339

Decrees:

Rendition, 5, 1033

Defaults, 6, 67

Application for relief from defaults, 6, 149

Decision on default, 6, 67

General rule, 6, 67

Simple default, 6, 67

Time to plead, 6, 67

Definition, 4, 337

Deposition:

Issuance of commission, 6, 490

Discretion of judge:

Injunctions, 4, 356

CHAMBERS AND VACATION, *con.*

Dismissal, discontinuance, and non-suit, 6, 832

Extending time to take testimony, 4, 339

Form and requisites of order, 4, 365

Habeas corpus, 4, 360

Custody of minor, 4, 362

In general, 4, 360

Infants, 4, 351

Habeas corpus, 4, 362

Injunctions, 4, 354

Discretion of judge, 4, 356

Dissolution, 4, 357

Express statutory authorization, 4, 354, 355

Granting injunctions, 4, 354

Injunction to operate throughout the state, 4, 357

Notice, 4, 358

Perpetual injunctions, 4, 356

Territorial limitation of power, 4, 356

What record must show, 4, 357

Judgments:

Confession of judgment, 11, 1010

Rendition of judgment at unauthorized time or place, 11, 812

Rendition of judgment in vacation, 11, 814

Rendition of judgment or final order, 4, 343

Trial at chambers by consent, 11, 812

Vacation and amendment of judgments and orders, 4, 347

Judicial powers, 4, 337

Mandamus, 4, 358

Alternative writ, 4, 359

Award of writ, 4, 358

Peremptory writ, 4, 359

Miscellaneous powers, 4, 364

Motions, 14, 104

New trial, 4, 348; 14, 902

Notice:

Injunctions, 4, 358

Opening, amending, and vacating judgments, 15, 231

Orders, 15, 320, 321

Final orders, 4, 343

Form and requisites of order, 4, 365

Orders to show cause, 15, 367

Vacation and amendment of judgments and orders, 4, 347

Power of judges at chambers in term and in vacation, 4, 337

Proceedings supplementary to execution, 4, 341

Prohibition, 4, 364; 16, 1140

Quo warranto, 4, 363

Receivers, 17, 684, 700

Ancillary to injunction, 17, 701

CHAMBERS AND VACATION, *con.*

Receivers, *cont'd.*

Appointment, 17, 697

Appointment and discharge of receiver, 4, 351

Discharge or removal in vacation, 17, 851

English practice, 17, 700

Irregular appointment cured, 17, 700

Judge, 17, 700

Statutory provisions, 17, 701

Records:

Amendment, 17, 921

Correction of minutes and records, 4, 339

References, 17, 1026

Reinstatement of the case, 4, 339

Rendition and entry of judgments, 18, 433

Entry in vacation, 18, 446

In general, 18, 446

Necessity of memoranda for guidance of clerk, 18, 447

Sham and frivolous pleadings:

Judgment, 20, 86

Supersedeas and stay of proceedings, 20, 1277

Supplementary proceedings, 21, 97

Trial of causes, 4, 341

Trusts and trustees:

Administration under direction and control of court, 22, 115

Power over trust estates, 4, 350

Resignation, 22, 55

Sale, mortgage, or lease of trust property, 22, 74

CHAMPERTY AND MAINTENANCE, 4, 368

Action for maintenance, 4, 371

Answers in code pleading, 1, 849

Champertous agreements, 4, 368

Criminal procedure, 4, 372

Dismissal of action, 4, 368, 370

Indictment for champerty, 4, 372

CHANCERY, see EQUITY.

CHANGE OF NAME, see NAMES.

CHANGE OF VENUE, 4, 373

Action brought in wrong county, 4, 393

Attorney's residence, 4, 393

Examples, 4, 393, 397

Foreclosure of mortgage, 4, 396

In general, 4, 393

Local actions, 4, 395

Loss of right, 4, 397

Transitory actions, 4, 396

Advice of counsel, 4, 415

Affidavit, see *infra*, Application.

Affidavit of merits, 4, 439

Affidavits of merits or defense, 1, 355, 373

Allegations, 1, 373

CHANGE OF VENUE, *cont'd.*

- Affidavits of merits or defense, *cont'd.*
 - Examples, 1, 373, 374
 - What defendant must swear to, 1, 373
- Amendments, 1, 590
 - Change by amendment of complaint, 4, 454
- Appeals, 4, 492
 - Abuse of discretion, 4, 502
 - Bill of exceptions, 4, 497
 - Correcting errors made in awarding or denying, 4, 492
 - Determination, 4, 505
 - Discretion of court, 4, 499
 - In general, 4, 492
 - Interlocutory, 2, 83
 - Objections below, 4, 493
 - Review, 4, 498
 - Stay of proceedings, 4, 495
 - The record, 4, 496
 - What is appealable, 4, 495
 - What the court will consider, 4, 494
 - What will be reviewed, 4, 496
 - Who may object, 4, 493
- Appearances, 2, 612
 - Effect of application, 2, 612
 - Entry of general appearance, 2, 612
 - Justices of the peace, 2, 613
 - To what court objection should be made, 2, 613
 - Waiver of irregularity, 4, 484
 - Waiver of objection to change, 2, 612
- Application (see *infra*, Witnesses), 4, 419
 - Abandonment, 4, 440
 - Affidavit of merits, 4, 439
 - Affidavit of party making application, 4, 436
 - Affidavits in opposition to application, 4, 446
 - Affidavit submitted, 4, 435
 - After cause has been reached for trial, 4, 426
 - After judgment, 4, 428
 - After mistrial, 4, 428
 - After procuring continuance, 4, 423
 - After verdict, 4, 428
 - Application by defendant, 4, 419
 - Application by plaintiff, 4, 420
 - Application for delay, 4, 428
 - Application must comply with statute, 4, 433
 - Before or after joining issue, 4, 424
 - Change as of right, 4, 440
 - Compliance with statute, 4, 440
 - Compulsory grant, 4, 444
 - Costs, 4, 453

CHANGE OF VENUE, *cont'd.*

- Application, *cont'd.*
 - Court granting change on its own motion, 4, 448
 - Determination, 4, 452
 - Diligence required, 4, 421
 - Discretion to grant, 4, 442
 - Effect of application, 4, 431
 - Ex mero motu*, 4, 448
 - Facts must be shown, 4, 434
 - Failure to oppose, 4, 441
 - Form, sufficiency, and support, 4, 431
 - Hearing, see *infra*, Hearing.
 - Information and belief, 4, 434
 - Joinder by defendants, 4, 419
 - Opposition to application, 4, 444
 - Positiveness, 4, 433
 - Province of judge, 4, 447
 - Rebuttal to application, 4, 446
 - Renewal of application, 4, 454
 - Retention of cause for convenience of witnesses, 4, 448
 - Support of application, 4, 437
 - Surplusage, 4, 436
 - Time of application, 4, 421
 - Time of application in criminal cases, 4, 429
 - What constitutes reasonable time, 4, 423
 - When application should be made, 4, 421
 - Who may apply, 4, 419
 - Who may apply in a criminal proceeding, 4, 421
 - Who may entertain, 4, 421
 - Withdrawal, 4, 440
 - Witnesses in support of application, 4, 438, 439
- Arguments of counsel, 2, 732
- Arraignment and plea, 2, 767; 4, 421, 429, 489
 - Necessity of new arraignment, 4, 489
- Attorney and client:
 - Attorney's residence, 4, 393
 - Disbarment of attorney, 4, 385
 - Judge formerly employed as counsel, 4, 406
 - Undue influence of attorney, 4, 410
- Authentication, 4, 477
- Bankruptcy, 4, 386
- Bastardy, 3, 295
- Bias*, see *infra*, Judge; Local prejudice.
- Bills of exceptions, 4, 497
- Certiorari, 4, 493
- Chambers and vacation, 4, 339
- Change other than by application (see *infra*, Amendments; Consent; Demand and consent), 4, 454

CHANGE OF VENUE, *cont'd.*

- Consent (see *infra*, Demand and consent), 4, 455, 456
 - Change by consent, 4, 455
 - Criminal procedure, 4, 456
 - Presumption of regularity, 4, 456
 - Statutory authority, 4, 455
- Contempt, 4, 386, 787
- Continuances:
 - After procuring continuance, 4, 423
 - Waiver of irregularity, 4, 485
- Convenience of witnesses*, see *infra*, Witnesses.
- Corporations, 4, 389
- Costs, 4, 453, 470
 - Clerk's fees in costs, 4, 479
 - Failure to pay fees or costs, 4, 480
 - Justices, 4, 479
- County*, see *infra*, Action brought in wrong county.
 - County as party, 4, 418
- County or place to which change may be had, 4, 458
 - Adjoining county, 4, 459
 - Change in county lines, 4, 464
 - Change of court having exclusive jurisdiction within county, 4, 463
 - Change to county outside circuit or district, 4, 462
 - Convenience of parties and witnesses, 4, 462
 - Convenient county, 4, 459
 - Courts of competent jurisdiction, 4, 464
 - Court without jurisdiction, 4, 463
 - Discretion of court, 4, 461
 - Nearest county, 4, 458
 - Objections to county to which cause is sent, 4, 461
 - Province of judge, 4, 460
- Courts:
 - Ex mero motu*, 4, 448
 - Power of the court, 4, 382
 - Province of court, 4, 447
- Criminal cases (see *infra*, Local prejudice):
 - Application, 4, 421
 - Legislative power, 4, 378
- Criminal procedure:
 - Consent, 4, 456
 - Time of making application, 4, 429
 - Transcript or record, 4, 475
- Decedents' estates, 4, 387
- Definition, 4, 375
- Demand and consent, 4, 456, 457
 - In general, 4, 456
 - Object of demand, 4, 457
 - Rights of joint defendants, 4, 456
 - Sufficiency, service, and effect, 4, 457

CHANGE OF VENUE, *cont'd.*

- Discretion of court, 4, 442
 - Place of trial, 4, 461
 - Review, 4, 499
- Dismissal, discontinuance, and nonsuit, 6, 924
- Dismissal of cause, 4, 491
- Divorce, 7, 116
 - Divorce proceedings, 4, 385
- Eminent domain, 4, 387; 7, 563
- Equitable cases, 4, 384
- Ex mero motu*, 4, 448
- Filing, 4, 481
- Fines and costs in criminal cases:
 - Costs on change of venue, 8, 991
- Foreclosure of mortgage, 4, 396; 9, 256
- Garnishment:
 - Garnishee, 4, 389
- Grounds for the change, 4, 392
 - Action brought in wrong county, 4, 393
 - Convenience of witnesses*, see *infra*, Witnesses.
 - County, public officers, city, or town as party, 4, 418
 - Good cause, 4, 392
 - In general, 4, 392
 - Interest, bias, prejudice, etc., of judge*, see *infra*, Judge.
 - Local prejudice*, see *infra*, Local prejudice.
 - Political prominence, 4, 392
 - Undue influence of party or attorney, 4, 410
- Hearing, 4, 450
 - Calling witnesses, 4, 450
 - Examination of persons called as jurors, 4, 451
 - Examining affiants, 4, 451
 - In general, 4, 450
 - Presence of applicant, 4, 452
 - Time of hearing, 4, 451
- Information and belief, 4, 434
- Insolvency, 4, 386
- Interest*, see *infra*, Judge; Local prejudice.
- Issues to the jury, 11, 676
- Joinder of parties, 4, 419
- Judge:
 - Ex mero motu*, 4, 448
 - Province of judge, 4, 447
- Judgment:
 - Interest, bias, or prejudice of judge*, 4, 405
 - Bias or prejudice, 4, 407
 - Consanguinity or affinity, 4, 406
 - Decisions, 4, 408
 - Effect of disqualification, 4, 409
 - Former relation as counsel, 4, 406

CHANGE OF VENUE, *cont'd.***Witnesses, *cont'd.***

- Change for convenience of witnesses, *cont'd.*
 - Necessity of showing facts, 4, 415
 - Number of witnesses, 4, 412
 - Overstatement of number of witnesses, 4, 413
 - Requisites of application, 4, 414
 - Resistance to application, 4, 416
 - Violation of game laws, 4, 411
 - Who may obtain change, 4, 414, 415
- County or place of trial, 4, 462
- Hearing, 4, 450
- Retention of cause for convenience of witnesses, 4, 448
- Whether witnesses are bound to follow the cause into a new county, 4, 400

CHARACTER IN EVIDENCE:

- Breach of promise of marriage, 3, 691
- Continuances, 4, 853
- Corroboration of witnesses, 10, 324
- Evidence of good character in corroboration of witnesses, 10, 325
- Credibility attacked on cross-examination, 10, 326
- In general, 10, 325
- Limits of rule, 10, 326
- Where witness is a stranger, 10, 328
- Good character presumed, 10, 324
- Impeachment of witnesses*, see IMPEACHMENT OF WITNESSES.
- Instructions, 11, 346
 - Effect of good character where crime is atrocious, 11, 347
 - Good character creating reasonable doubt, 11, 346
 - Introductory statement, 11, 346
 - Necessity of instruction, 11, 349
 - Mere proof of good character not ground for acquittal, 11, 348
 - Presumption of innocence from good character, 11, 349
 - What instructions proper, 11, 346
 - Where no proof of good character is offered, 11, 349

CHARGE TO JURY, see INSTRUCTIONS.**CHARITIES:**

- Informations in equity, 10, 859

CHARTER (see MUNICIPAL CORPORATIONS):

- Quo warranto*, see QUO WARRANTO.
- Scire facias*, see SCIRE FACIAS.

CHATTEL MORTGAGES, 4, 507

- Assignments for benefit of creditors:
 - Interests of assignees for benefit of creditors, 4, 533
- Assumpsit, 4, 514
- Attachment, 4, 528
 - Actions by attaching creditors, 4, 532
 - Contents of notice, 4, 529
 - Demand and notice, 4, 528
 - Election of remedies, 4, 517
 - Interests of attaching creditors, 4, 528
 - Reasonable time for demand or notice, 4, 529
 - Statutory time for notice, 4, 532
 - When demand necessary, 4, 532
- Bills in equity:
 - Bill for foreclosure, 4, 524
- Bills in equity to secure redemption, 4, 510
- Bona fide* purchasers, 4, 533
- Concurrent remedies, 4, 516
- Conflict of laws, 4, 508
- Cross-bill, 4, 526
- Decrees, 4, 527
- Demand, 4, 514
 - Demand and notice to attaching creditors, 4, 528
- Detinue, 4, 513
- Election of remedies, 4, 517
 - Attachment, 4, 517
 - Independent and concurrent remedies, 4, 516
 - Waiver of tort, 4, 514
- Equitable foreclosure, 4, 520
- Executions, 8, 545
 - Goods in possession of mortgagee, 8, 547
 - In general, 8, 545
 - Levy on part or whole of mortgaged property, 8, 548
 - Statutory provisions, 8, 547
- Foreclosure, 4, 518
 - Answer, 4, 526
 - Bill, 4, 524
 - Cross-bill, 4, 526
 - Cumulative methods, 4, 518
 - Decree, 4, 527
 - Demand and requisites, 4, 518
 - Demurrer, 4, 526
 - Equitable foreclosure, 4, 520
 - Interveners, 4, 524
 - Misjoinder of parties, 4, 523
 - Necessity for, 4, 518
 - Parties defendant, 4, 522
 - Parties plaintiff, 4, 520
 - Pleadings in statutory actions, 4, 519
 - Prayer, 4, 525
 - Proceedings to decree, 4, 527
 - Reply, 4, 526

CHATTEL MORTGAGES, *cont'd.*

Foreclosure, *cont'd.*

Statutory actions, 4, 519

Stipulated method, 4, 518

Foreclosure of mortgage, see infra,

Remedies of the mortgagee.

Fraud:

Cross-bill, 4, 526

Garnishment, 4, 533

Independent remedies, 4, 516

Indictments, 4, 534

Interests of strangers, 4, 533

Intervention, 4, 524

Joinder of parties:

Foreclosure:

Misjoinder of parties, 4, 523

Mortgagor or assignee, 4, 522

Other mortgagees, 4, 522

Parties defendant, 4, 522

Parties plaintiff, 4, 520

Persons claiming an interest, 4, 522

Unnecessary parties, 4, 523

Joint interests of the parties, 4, 528

Junior mortgages, 4, 527

Justices of the peace, 4, 508

Law governing, 4, 508

Misjoinder of parties, 4, 523

Notice:

Demand and notice to attaching creditors, 4, 528

Parties to action:

Actions at law, 4, 514

Parties defendant, 4, 515

Parties plaintiff, 4, 514

Penalties:

Actions for penalties, 4, 534

Prayers:

Prayer to foreclose, 4, 525

Reasonable time:

Interests, 4, 529

Redemption (see REDEMPTION), 4, 510

Reformation, 4, 510

Remedies of junior mortgagees, 4, 527

Remedies of the mortgagee, 4, 512

Answer, 4, 516

Complaint, 4, 515

Demand, 4, 514

Detinue, 4, 513

Election of remedies, 4, 517

Foreclosure, see infra. Foreclosure.

Form and requisites, 4, 513

Independent and concurrent remedies, 4, 516

Legal, 4, 513

Answer, 4, 516

Complaint, 4, 515

Demand, 4, 514

Detinue, 4, 513

Election of remedies, 4, 517

CHATTEL MORTGAGES, *cont'd.*

Remedies of the mortgagee, *cont'd.*

Legal, *cont'd.*

Foreclosure, see infra. Foreclosure.

Form and requisites, 4, 513

Parties defendant, 4, 515

Parties plaintiff, 4, 514

Pleadings, 4, 515

Replevin, 4, 513

Trespass, 4, 514

Trover, 4, 513

Parties defendant, 4, 515

Parties plaintiff, 4, 514

Pleadings, 4, 515

Replevin, 4, 513

Trespass, 4, 514

Trover, 4, 513

Remedies of the mortgagor, 4, 509

Contents of bill, 4, 512

Equitable relief, 4, 510

Injunctions, 4, 510

Legal, 4, 509

Redemption, 4, 510

Replevin, 4, 513

Set-off, recoupment, and counterclaim, 4, 509

Strangers, interests of, 4, 533

Trespass, 4, 514

Trover and conversion, 4, 513

CHATELS:

Criminal law:

Offenses and indictments, 4, 534

CHEAT (see FALSE PRETENSES; FALSE REPRESENTATIONS AND DECEIT):

Conspiracy, see CONSPIRACY.

CHECKS (see NEGOTIABLE INSTRUMENTS):

Illegal certification, 3, 259

Larceny, 12, 994

Parties to actions, 22, 170

CHILDREN (see ADOPTION; CRUELTY TO ANIMALS AND CHILDREN; DIVORCE; INFANTS; PARENT AND CHILD):

Affirmation, 1, 379

Apprenticeship, see APPRENTICESHIP.

Guardians, see GUARDIANS.

CHOSES IN ACTION (see EQUITABLE ASSIGNMENTS):

Executions, 8, 548

Parties to actions, 22, 170

CHURCH:

Burglary, 3, 747

Disturbing meetings, see DISTURBING MEETINGS.

CIRCUIT COURTS, see COURTS; UNITED STATES COURTS.

CIRCUMSTANTIAL EVIDENCE:

Instructions, 11, 358

CITATIONS, 4, 537

Alias citations, 4, 541

Amendments, 4, 541

CITATIONS, *cont'd.**Appeals*, see **APPEALS**.*Coram nobis* and *coram vobis*, 5, 36

Definition, 4, 538

Disbarment and suspension of attorneys, 6, 714

Exceptions and objections, 8, 180

Executors and administrators, 4, 539

Form and requisites, 4, 540

Guardian and ward, 4, 540

Notice distinguished from, 4, 538

Origin, 4, 538

Poor debtor acts, see **POOR DEBTOR ACTS**.

Present use, 4, 538

Statutory proceedings, 4, 540

Summary, 4, 540

Summons and process, 20, 1117

Summons distinguished from, 4, 538

Trusts and trustees, 4, 540

Wills, 4, 538

CITIZENSHIP (see **UNITED STATES COURTS**):

Bills of review, 3, 574

Mandamus:

Relator, 13, 679

Mines and mining, see **MINES AND MINING**.

Patents, 16, 44

Receivers:

United States courts, 17, 766

Removal of causes, see **REMOVAL OF CAUSES**.*United States courts*, see **UNITED STATES COURTS**.**CIVIL ACTIONS** (see **ACTIONS; CODE PROCEDURE**):

Estrays, 8, 18

CIVIL DAMAGE ACTS, 4, 542See **INTOXICATING LIQUORS**.

Allegations in declaration or complaint, 4, 546

Cause of intoxication, 4, 546

Charging injury, 4, 550

Injuries the result of intoxication, 4, 548

Kind of liquor sold, 4, 548

Knowledge of purchaser's intoxication, 4, 549

Knowledge of unlawful sale in action against owner, 4, 547

Knowledge that purchaser was habitual drunkard, 4, 549

Negating contributory negligence, 4, 551

Notice not to sell, 4, 550

Proximate cause, 4, 548

Waiver, 4, 549

Complaint, see *infra*, Declaration or complaint.

Contributory negligence:

Negating, 4, 551

CIVIL DAMAGE ACTS, *cont'd.*

Declaration or complaint, 4, 543

Allegations, 4, 546

Parties, 4, 543

General nature of acts, 4, 542

Joinder of parties, 4, 543

Joinder of husband and wife, 4, 544

Joinder of seller, 4, 544

Joinder of seller and owner of premises, 4, 546

Joinder of seller and surety on his bond, 4, 545

Joinder of wife and children, 4, 543

Knowledge of purchaser's intoxication, 4, 549

Knowledge of unlawful sale, 4, 547

Knowledge that purchaser was habitual drunkard, 4, 549

Nature and form of action, 4, 543

Notice:

Notice not to sell, 4, 550

Parties to action, 4, 543

Joinder of husband and wife, 4, 544

Joinder of seller, 4, 544

Joinder of seller and owner of premises, 4, 546

Joinder of seller and surety on his bond, 4, 545

Joinder of wife and children, 4, 543

Parties defendant, 4, 544

Parties plaintiff, 4, 543

Whether intoxicated person a necessary party, 4, 546

Petition, see *infra*, Declaration or complaint.

Proximate cause, 4, 548

Survival of actions, 21, 330

CIVIL DEATH:

Death, 5, 847

CIVIL RIGHTS ACTS, 4, 552

Criminal law, 4, 552

Indictments, 4, 552

Under state statutes, 4, 553

Under United States statute, 4, 553

Joinder of parties, 4, 552

Removal of causes, see **REMOVAL OF CAUSES**.**CLAIMS**, see **AMOUNT IN CONTROVERSY**.**CLERGYMEN:**

Discovery:

Privileged communications, 6, 757

CLERICAL ERRORS:

Construction of pleadings, 4, 747

CLERK OF COURT (see **FILING PLEADINGS AND PAPERS**):

Affidavits:

Authority to take, 1, 329

CLERK OF COURT, *cont'd.*

Appeals:

- Certificate of clerk, 2, 284
- Neglect of clerk to file transcript in time, 2, 280

Bail and recognizance, 3, 198

Bills of exceptions, 3, 431

- Certificate of clerk, 3, 388

- Signature, 3, 459

Certiorari, 4, 28

- Direction of writ, 4, 177

- Returns, 4, 215

Costs:

- Attorney's fees, 5, 227
- Collection of fees of court officers, 5, 258
- To whom payable, 5, 255

Defaults, see **DEFAULTS**.

Depositions:

- Issuance of commission, 6, 490
- Signature, 6, 492

Executions, see **EXECUTIONS**.

Funds and deposits in court, 9, 736

- Authority to receive, 9, 736

- Money paid to clerk, 9, 736

- Proceedings to recover, 9, 737

Indorsing papers, see **INDORSING PAPERS**.

Judgments:

- Entry of judgment by confession, 11, 1016

- Necessity and nature of entry, 11, 1016

- Time of entry, 11, 1016

- Entry of judgment on award, 11, 1054

- Signing by clerk, 11, 963

- Whether clerk can render judgment, 11, 810

Notes of issue, see **NOTES OF ISSUE**.

Rendition and entry of judgments, see **RENDITION AND ENTRY OF JUDGMENTS**.

Satisfaction and discharge of judgments:

- Vacating entry of satisfaction, 19, 140

Summons and process, 20, 1105

Warrants:

- Signature, 22, 1089

CLIENT, see **ATTORNEYS**.

CLOUD ON TITLE, see **QUIETING TITLE — REMOVAL OF CLOUD**.

CLUBS, see **UNINCORPORATED SOCIETIES**.

C. O. D.:

- Abbreviations, 1, 49

CODE PLEADING, 4, 556

See **CONSTRUCTION OF PLEADINGS**.

Accord and satisfaction, 1, 74, 76

Accounts and accounting, 1, 94

- Plea of account stated, 1, 102

CODE PLEADING, *cont'd.*

Actions:

- Ex contractu* and *ex delicto*, 1, 147
- Whether an action is equitable or legal, 1, 146

Alleging the facts, 4, 558

Answers in code pleadings, see **ANSWERS IN CODE PLEADINGS**.

Character of action, how determined under codes, 1, 146

- Actions *ex contractu* and *ex delicto*, 1, 147

- A question for construction, 1, 146

- Equitable or legal actions, 1, 147

- Prayer for relief, 1, 146

- When the prayer for relief may be consulted, 1, 146, 147

Complaint, see **DECLARATION AND COMPLAINT**.

Consolidation of actions, 4, 676

Counts, paragraphs, and separate statements, see **COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS**.

Cross complaints, see **CROSS-COMPLAINTS**.

Damages, see **DAMAGES**.

Divorce, 7, 54

Introductory, 4, 556

Joinder of counts and causes (see **JOINDER OF COUNTS AND CAUSES**), 1, 180

- Husband and wife, 1, 210

Supplemental pleadings, see **SUPPLEMENTAL PLEADINGS**.

Supplementary proceedings, see **SUPPLEMENTARY PROCEEDINGS**.

Surplusage, irrelevant or redundant matter, see **SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER**.

Theory of the case, see **THEORY OF THE CASE**.

CODE PRACTICE:

Additional allowances of costs, see **ADDITIONAL ALLOWANCES OF COSTS**.

Address, 1, 236

- Address printed, 1, 236

- Compelling attorney to disclose address, 1, 236

- In general, 1, 136

- New York code, 1, 136

- Notice of motion, 1, 236

COGNOVIT, 4, 560

Attestation, 4, 563

Conditional cognovits, 4, 562

Costs, 4, 561

Death, 4, 565

Judgment, 4, 564

- Against copartners, 4, 565

- Cognovit actionem*, 11, 973

- Death of party, 4, 565

- Sufficiency of cognovit, 11, 974

- When and how entered, 4, 564

COGNOVIT, *cont'd.*

- New trial, 4, 561
- Partnership, 4, 565
- When given, 4, 563

COHABITATION, see LEWDNESS.**COINS, see COUNTERFEITING.****COLLATERAL ATTACK (see JURISDICTION):**

- Administration, see SETTLEMENT OF DECEDENTS' ESTATES.*

Appearances:

- Unauthorized appearance by attorney, 2, 693

Defaults, see DEFAULTS.**Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.****Judgments:**

- Judgment for or against a deceased party, 11, 846

Land patents, see LAND PATENTS.**Publication, see PUBLICATION.****Quo warranto, 17, 408****Receivers, see RECEIVERS.****Returns, 18, 967****Service of process:**

- Defective service, 19, 707

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.**Streets and highways, 20, 903****Substitution of parties, 20, 1066****Taxation, 21, 441****Usury, 22, 477****Winding up corporations, 22, 1225****COLLATERAL SECURITY (see PLEDGES):****Equitable assignments, 7, 765****Splitting causes of action, 1, 158****Attorneys:**

- Action for money collected, 3, 108

- Summary proceedings against attorneys, 3, 108

COLLISIONS, see ADMIRALTY.**COLLOQUIUM:****Obscenity, 14, 1160****COLLUSION:*****Divorce, see DIVORCE.*****COLLUSIVE SUITS, see FICTITIOUS SUITS.****COLOR:****Confession and avoidance, 4, 669**

- Express color, 4, 669

- Implied color, 4, 671

- In general, 4, 669

COLORLED PERSONS:**Affidavits, 1, 325*****Civil right acts, see CIVIL RIGHTS ACTS.*****Grand juries, 10, 354****COLOR IN PLEADING, see CONFESSION AND AVOIDANCE.****COMMENCEMENT OF ACTIONS, see ACTIONS.****COMMERCE, see INTERSTATE COMMERCE.****COMMISSION:*****Depositions, see DEPOSITIONS.*****Supersedeas and stay of proceedings 20, 1260****COMMISSIONER (see UNITED STATES COMMISSIONER):****Appearances, 2, 620****Bail and recognizance, 3, 197****Costs:**

- Appeals from commissioners, 5, 208

Patents, see PATENTS.***Railroads, see RAILROADS.*****COMMISSION MERCHANTS, see FACTORS AND BROKERS.****COMMISSIONS TO TAKE TESTIMONY, see DEPOSITIONS.****COMMITMENTS, 4, 566****Amendments, 4, 581****Authority, 4, 570, 577****Bail:**

- Indorsement on bail, 4, 575

Cause to suspect, 4, 576**Commitments for trial, 4, 567**

- For what offense, 4, 569

- On what founded, 4, 569

- When made, 4, 567

- Witnesses, 4, 568

Conclusions, 4, 579**Coroners, 4, 570****Defective warrant, 4, 580****Definition, 4, 567****Depositions:**

- Indorsement of order of commitment on deposition, 4, 575

Disorderly conduct, 7, 3**Habeas corpus, 4, 581**

- Discharge for defects in commitment, 9, 1043

- Extent of inquiry, 9, 1049

- Jurisdiction, 4, 581

- Legality of commitment, 4, 581

- Necessity of commitment and inquiry where none exists, 9, 1048

- Probable cause, 4, 582

- Review on habeas corpus, 4, 581

- United States courts, 9, 1048

Infants, 4, 582

- Age of the delinquent, 4, 583

- Approval of, 4, 582

- Form and requisites, 4, 583

- Notice of the proceedings, 4, 584

- Object of, 4, 582

- Recital of facts, 4, 583

- Term of commitment, 4, 584

Judges, 4, 570**Jurisdiction, 4, 570, 577**

- Habeas corpus, 4, 581

Justices of the peace, 4, 570

COMMITMENTS, *cont'd.*

Mittimus, see *infra*, Warrant of commitment or mittimus.

Oath or affirmation, 4, 576

Offenses, 4, 576, 577

Preliminary examination:

Commitment by coroner, 16, 824

Probable cause, 4, 576, 582

Seal, 4, 573.

Term of commitment, 4, 579

Verbal warrant, 4, 572

Warrant of commitment or mittimus, 4, 571

Amendment of warrant, 4, 581

Authority, 4, 577

Cause to suspect, 4, 576

Commissioner's offense, 4, 576

Conclusion, 4, 579

Defective warrant, 4, 580

Description of party committed, 4, 573

Form, 4, 573

Indorsement of bail, 4, 575

Indorsement of order of commitment on depositions, 4, 575

Jurisdiction, 4, 577

Necessity of, 4, 571

Oath or affirmation, 4, 576

Offense, 4, 576, 577

Place of imprisonment, 4, 574

Probable cause, 4, 576

Proceedings before magistrate or court, 4, 577

Recital of offense, 4, 577

Requisites of, 4, 573

Seal, 4, 573

Several crimes chargeable, 4, 579

Substance, 4, 576

Sufficient statement of offense, 4, 578

Term of commitment, 4, 579

To whom directed, 4, 574

Verbal warrant, 4, 572

Writing, 4, 571

Witnesses, 4, 568

Writing, 4, 571

COMMON CARRIERS (see CARRIERS):

Passengers, see PASSENGERS.

Telegraphs and telephones, see TELEGRAPHS AND TELEPHONES.

COMMON COUNTS (see ASSUMPSIT):

Accounts stated, see ACCOUNTS AND ACCOUNTING.

Attorney's fees, 3, 105

Debt, 5, 914

Goods sold, see SALES.

Money counts, see MONEY COUNTS.

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Use and occupation, see USE AND OCCUPATION.

COMMON COUNTS, *cont'd.*

Work and labor, see WORK AND LABOR.

Work, labor, and materials, see WORK AND LABOR.

COMMON GAMBLER:

Gaming, 9, 800

COMMON LAW:

Appeal bonds and undertakings:

Invalid statutory bonds good as common-law obligations, 1, 998

Certiorari, see CERTIORARI.

COMMONS:

Ejectment, 7, 267

COMMON SCOLD, 4, 585

Criminal procedure, 4, 585

Definition, 4, 585

Indictment, 4, 585

Joinder of parties, 4, 586

COMMONWEALTH ATTORNEYS, see PROSECUTING ATTORNEYS.**COMMUNITY PROPERTY:**

Husband and wife:

Abandonment of wife by husband, 10, 222

Actions concerning community property, 10, 254

Husband suing alone, 10, 222

Joinder of husband and wife where damages become community property, 10, 209

Parties in actions against community property, 10, 254

COMPLAINTS, see BILLS IN EQUITY; DECLARATION OR COMPLAINT.**COMPOUNDING FELONY, 7, 253**

Examples, 7, 253, 255

Extortion, see EXTORTION.

In general, 7, 253

Pleas, 7, 253

COMPOUNDING OFFENSES:

Penalties and penal actions, 16, 247

COMPROMISE (see ACCORD AND SATISFACTION):

Costs, 5, 146

Equitable assignments, 7, 774

Next friend, 14, 1040

COMPROMISE OF SUITS:

Stipulations, 20, 629

COMPROMISE VERDICT (see VERDICT):

New trial, 14, 774

COMPUTATION OF TIME, see TIME, COMPUTATION OF.**CONCEALED WEAPONS, see CARRYING WEAPONS.****CONCLUSIONS:**

Warrants, 22, 1083

CONCLUSIONS OF LAW, see LEGAL CONCLUSIONS.**CONDEMNATION PROCEEDINGS, see EMINENT DOMAIN.**

- CONDITIONAL DECREES**, see **DECREEES**.
- CONDITIONAL SALES**, see **SALES**.
- CONDITIONS**:
Tender, see **TENDER**.
- CONDITIONS PRECEDENT**, 4, 626
 Answer, 4, 661, 662
 Antecedent consideration, 4, 635
 Arbitration and award:
 Reference to umpire or to arbitrators, 4, 645
 Architects:
 Certificate of architect, 4, 643
 Arising in agreement, 4, 635
 Arrest of judgment, 4, 662
 Assumpsit, 2, 999
 Bills of exchange and promissory notes, 4, 649
 Action against indorser, 4, 650
 Action against maker, 4, 649
 Demand and notice in actions on commercial paper, 4, 649
 Bills of lading, 4, 640
 Certificates of architect and engineers, 4, 643
 Concurrent acts, 4, 636
 Contracts for personal service, 4, 536
 Contract to perform work satisfactorily, 4, 645
 Copyright, 5, 19
 Corporations, 5, 83
 Costs, 5, 261
 Payment as a condition precedent of granting relief or favors, 5, 263
 Payment as a condition precedent of prosecution of second suit, 5, 261
 Counties:
 Notice of injuries and statement of claim, 4, 659
 Presentation and disallowance of claim, 4, 658
 Covenant:
 Performance of conditions precedent, 5, 368
 Decedent's estate:
 Presentation of claim, 4, 657
 Definition, 4, 627
 Demand, 4, 646
 Demand and notice in actions on commercial paper, 4, 649
 Demurrer, 4, 661
 Dismissal, 4, 661
 Engineers:
 Certificate of engineer, 4, 643
 Excuse for failure to perform, 4, 638
 Excuse for failure to produce architect's certificate, 4, 644
 Excuses for nonperformance, 4, 629
 Executors and administrators:
 Presentation of claim to executor or administrator, 4, 657
- CONDITIONS PRECEDENT, cont'd.**
 Fire insurance:
 Notice and proof of loss in contract of insurance, 4, 640
 Certificate of magistrate, 4, 641
 How pleaded at common law, 4, 641
 How pleaded under code, 4, 642
 In general, 4, 640
 Implication of law, 4, 647
 Demand, 4, 647
 Demand and notice in actions on commercial paper, 4, 649
 Insurable interest, 4, 652
 Notice, 4, 653
 Request generally, 4, 647
 Insurable interest, 4, 652
 Master and servant, 4, 636
 Municipal corporations:
 Notice of injuries and statement of claim, 4, 659
 Presentation and disallowance of claims, 4, 658
 Mutual covenants, 4, 635
 Nonsuit, 4, 663
 Notice, 4, 653
 Demand and notice in actions on commercial paper, 4, 649
 Examples, 4, 653, 654
 How pleaded, 4, 654
 Implication of law, 4, 653
 Notice renouncing contract, 4, 630
 Objection for failure to plead performance, 4, 660
 At any stage of the action, 4, 660
 Defects cured by verdict, 4, 662
 General demurrer, 4, 661
 Motion in arrest of judgment, 4, 662
 Motion to dismiss, 4, 661
 Objection on the trial, 4, 662
 Plea or answer, 4, 661
Official bonds, see **OFFICIAL BONDS**.
 Particular instances of conditions precedent, 4, 635
 Payment, 4, 646
 Payment of money, 4, 646
 Penalties and penal actions, 4, 657
Performance, see **PLEADING OF PERFORMANCE IN GENERAL**.
 Performance upon a contingency, 4, 645
 Plea, 4, 661, 662
 Pleading of performance in general, 4, 627
 Defendant disabling himself from performance, 4, 629
 Defendant preventing performance, 4, 630
 Excuse for nonperformance, 4, 629

CONDITIONS PRECEDENT, *cont'd.*

Pleading of performance in general, *cont'd.*

How pleaded at common law, 4, 632

How pleaded under statutes, 4, 633

Necessity for pleading, 4, 627

Notice renouncing contract, 4, 630

Performance by third person, 4, 635

Repudiation of contract, 4, 630

Sufficiency in point of form, 4, 634

Waiver of performance, 4, 630

Plea or answer to allegation of performance, 4, 662

Readiness and willingness to perform, 4, 639

Reference to umpire or arbitrators, 4, 645

Repudiation of contract, 4, 630

"Satisfactorily," 4, 645

Statutory conditions precedent, 4, 655

Action authorized by statute, 4, 655

Actions against counties or municipalities, 4, 658

Actions against heirs on claims against decedent, 4, 658

In general, 4, 655

Notice of injuries and statement of claims, 4, 659

Penal actions, 4, 657

Pleading performance, 4, 660

Presentation and disallowance of claim generally, 4, 658

Presentation of claim to executor or administrator, 4, 657

Tender, 4, 636

Verdict:

Defect cured by verdict, 4, 662

Waiver of performance, 4, 630

CONDONATION:

Divorce, see **DIVORCE**.

CONDUCT, see DISORDERLY CONDUCT.**CONFESSION AND AVOIDANCE,**

4, 664

Color, 4, 669

Express color, 4, 669

Implied color, 4, 671

In general, 4, 669

Conclusion, 4, 672

Discharge, 4, 665

Ex contractu and *ex delicto*, 4, 665, 666, 667

Frauds, statute of, 4, 668

Justification or excuse, 4, 666

Actions *ex contractu* or *ex delicto*, 4, 667

Definition, 4, 666

Technical requirements, 4, 667

CONFESSION AND AVOIDANCE, *cont'd.*

Limitation of actions, 4, 666

Plea in discharge, 4, 665

Definition, 4, 665

Examples, 4, 666

In actions *ex contractu*, 4, 665

In actions *ex delicto*, 4, 666

Rejoinders and subsequent pleadings, 18, 78

Release, 4, 666

Replication, 4, 672

Replications and replies, 18, 646, 669

Traverse and confession and avoidance not allowable, 18, 654

Requisites as to form, 4, 671

Requisites as to quality, 4, 669

Confined to the plea alone, 4, 670

Design, 4, 670

Express color, 4, 669

Four essential qualities, 4, 670

General rule, 4, 669

Implied color, 4, 671

Requisites as to subject matter, 4, 665

Stock and stockholders, 20, 697

Traverse of confession and avoidance, 16, 542

Absque hoc, 16, 547

Confession and avoidance, 16, 548

General traverse or general issue, 16, 542

Form and nature of general issue in particular actions, 16, 543

Nature, 16, 542

Nil debet, 16, 545

Non assumpsit, 16, 544

Non cepit, 16, 544

Non detinet, 16, 544

Non est factum, 16, 545

Not guilty, 16, 544

Nul tiel record, 16, 545

Plea must be appropriate to action, 16, 546

Special *non est factum*, 16, 546

Verification of *non est factum*, 16, 546

Inducement cannot be traversed or confessed and avoided, 16, 548

Nature of traverse, 16, 542

Necessity for special plea, 16, 548

Necessity of one form, 16, 542

Requisites and sufficiency of plea, 16, 561

Special plea amounting to general issue, 16, 549

Manner of raising objection, 16, 552

CONFESSION AND AVOIDANCE,*cont'd.*

Traverse of confession and avoidance, *cont'd.*

Special plea amounting to general issue, *cont'd.*

Matters in mitigation, 16, 552

Overruling special plea when general issue is filed, 16, 551

Rule against, 16, 549

Scope of article, 16, 550

Special pleading, 16, 548

Special traverse, 16, 547

Specific traverse, 16, 542

Statutory defense, 16, 549

Trespass, see TRESPASS.

Trover and conversion, 21, 1101

CONFESSION OF JUDGMENT (see JUDGMENTS; OFFER OF JUDGMENT):

Trusts and trustees, 22, 87

Usury, 22, 479

CONFESSIONS (see ADMISSIONS):

Instructions, 11, 333

Criminal cases, 11, 334

Instructions as to admissions of record, 11, 333

Instructions giving undue weight to, 11, 335

Miscellaneous examples, 11, 336

View that court may caution against, 11, 334

View that court should not caution against, 11, 333

Preliminary examination, see PRELIMINARY EXAMINATION.

Separate trials:

Confessions of codefendant, 19, 528

CONFISCATION:

Penalties and penal actions, 16, 255, 264

CONFLICT OF LAWS:

Admiralty:

Death claims, 1, 289

Personal injuries, 1, 289

Amendments:

Lex fori governs, 1, 509

Relation between federal and state practice, 1, 510

Bigamy, 3, 323

Bills to impeach decrees and judgments, 3, 622, 623

Chattel mortgages, 4, 508

Homicide:

Venue, 10, 109, 111

Indictments:

Border counties, 10, 527

Jurisdiction in two counties, 10, 526

Interest, 11, 438

Judgments, 11, 840, 925

Sufficiency, 11, 925

CONFLICT OF LAWS, cont'd.

Jurisdiction, 12, 139

Action of tort founded upon an injury to personal property, 12, 139

Concurrent and exclusive jurisdiction, 12, 150

Enforcement of right by comity, 12, 140

Limitations to the doctrine of comity, 12, 142

Right in derogation of the common law, 12, 139

Rights enforceable independently of concurrent statutes, 12, 141

Special remedies, 12, 141

Larceny, 12, 948

In general, 12, 948

Property stolen in another jurisdiction, 12, 1001

Property stolen in foreign country or sister state, 12, 949, 1002

Property stolen in one county and conveyed into another, 12, 948

Liens:

Attorneys' liens, 13, 151

Master and servant:

Plea or answer that there was no cause of action in state where injury occurred, 13, 915

Rights and remedies for injuries occurring in another state, 13, 892

Negotiable instruments, 14, 463

Parties to actions, 15, 483

Receivers:

Nonresident defendants, 17, 702

Property in foreign state, 17, 702

Receiving stolen goods, 17, 888

Specific performance, 20, 405

Stock and stockholders, see STOCK AND STOCKHOLDERS

Survival of actions, 21, 321, 342

Trusts and trustees:

Right to sue in another state, 22, 152

Usury

Pleading usury statutes of foreign states, 22, 441

Venue:

Murder, 10, 109, 111

CONFUSION OF GOODS:

Executions, 8, 533

CONJUNCTIVE DENIALS, 1, 777**CONSENT:**

Appeals:

Jurisdiction by consent, 2, 24

References, see REFERENCES.

CONSENT DECREES, see DECREES.

CONSENT JUDGMENTS, see JUDGMENTS.**CONSIDERATION:**

Answers in code pleading, 1, 834, 848

Assumpsit, see ASSUMPSIT.

Covenant, 5, 365

Debt:

Declaration, 5, 914

Plea to action on simple contracts, 5, 923

Declaration or complaint, 4, 928

Concurrent consideration, 4, 931

Consideration partly frivolous, void, or illegal, 4, 931

Executed consideration, 4, 931

Executory consideration, 4, 930

How pleaded, 4, 930

Necessity for pleading, 4, 928

Remedies for defective statement, 4, 930

Remedies for failure to state, 4, 929

Statutes, 4, 929

Sufficiency, 4, 929, 930

Whole consideration stated, 4, 930

Guaranty, 16, 944

Rescission, cancellation, and reformation of contracts:

Inadequacy of consideration, 18, 770

Suretyship, 16, 933

Variance, see VARIANCE.

Vendor and purchaser:

Averments in declaration, 22, 674

Plea of failure of consideration in vendor's action for price, 22, 682

CONSISTENCY, see REPUGNANCY.**CONSOLIDATION OF ACTIONS**,

4, 673

See SPLITTING CAUSES OF ACTION.

Admiralty, 1, 289

Affidavits, 4, 682, 683

Appeals:

Consolidation of appeals, 4, 696

Orders, 4, 697

Suits on distinct causes of action, 4, 696

Whether discretion reviewable, 4, 688

Attachment, 4, 677

Codes, 4, 676

Common law, 4, 676

Conditions, 4, 677

Common-law rules, 4, 676

Conditions essential at common law, 4, 677

Costs:

Several suits which might have been consolidated, 5, 141

Taxation of costs, 4, 699

CONSOLIDATION OF ACTIONS, *cont'd.*

Courts, see *infra*, Discretion of court.

Inherent power, 4, 676

When courts will compel, 4, 677

When courts will refuse, 4, 678

Creditors' bills, 5, 614

Cross actions, 4, 696

Defenses different, 4, 679

Discontinuance, 4, 702

Discretion of court, 4, 683

Ejectment suit, 4, 686

In general, 4, 683

Suits brought at different times, 4, 683

Usually allowed when no defense intended, 4, 687

When reviewable on appeal, 4, 688

Effect of consolidation, 4, 701

Discontinuance, 4, 702

Judgment, 4, 705

On the trial, 4, 702

On the verdict, 4, 703

Stipulations, 4, 704

Where all the parties consent, 4, 701

Ejectment, 4, 686

Equity, 4, 689

Actions to enforce liens, 4, 692

Consolidation of law and equity causes, 4, 695

Effect of order granted, 4, 695

Foreclosure suits, 4, 693

Granting of order a matter of discretion, 4, 693

Identity of parties, 4, 692

Power of court in general, 4, 689

Statutory actions, 4, 696

When consolidation allowed, 4, 690

Whether rule of pleading is changed, 4, 691

Executions, 8, 411

Foreclosure, 4, 693

Hearing, 10, 14

Inherent power to consolidate, 4, 676

Judgment, 4, 705

Jurisdiction:

Ouster of jurisdiction, 4, 678

Libel and slander, 4, 687

Liens, 4, 692

Mechanics' liens, 13, 1024

Modes, 4, 674

Motions, 4, 681

At what stage motion should be made, 4, 682

By whom motion to be made, 4, 681

Motion in general, 4, 681

Proof, 4, 682

Negotiable instruments, 14, 368, 695

Object, 4, 675

CONSOLIDATION OF ACTIONS,*cont'd.*

- Open and close, 15, 199
- Ouster of jurisdiction, 4, 678
- Personal injuries, 16, 376
- Power to consolidate, 4, 676
- Proceedings for consolidation, 4, 681
- Proof, 4, 682
- Removal of causes, 4, 699
- Stipulations, 4, 701, 704
- Taxation of costs, 4, 699
 - Costs of rule only, 4, 700
 - Discontinued actions, 4, 700
 - Discretionary power, 4, 699
- United States courts, 4, 698
 - Consolidation or removal of cause, 4, 699
 - General rule, 4, 698
 - Question of fact, 4, 699
 - Question of law, 4, 698
- Verdict, 4, 703

CONSOLIDATION OF CAUSES:

Ejectment, 7, 313

CONSPIRACY, 4, 706

- Abduction, 4, 731
- Accusation of crime, 4, 731
- Actions, see *infra*, Civil actions.
- Arrest of judgment, 4, 735
- Bastardy, 4, 731
- Bills of particulars, 3, 551; 4, 723
- Boycotts, 4, 727
- Burglary, 3, 800; 4, 731
- Business, to ruin, 4, 732
- Certainty, 4, 720
- Cheat and defraud, 4, 724
 - Allegation of means, 4, 724
 - Conspiracy to defraud the public, 4, 726
 - Means, 4, 724
 - Names of persons defrauded, 4, 726
 - Overt acts, 4, 725
- Civil actions, 4, 736
 - Action on the case, 4, 738
 - Allegation of damage, 4, 737
 - In general, 4, 736
 - Judgment, 4, 740
 - Statute of limitations, 4, 740
 - Survival of action, 4, 738
- Corporations:
 - To publish false statements concerning corporate affairs, 4, 733
- Crime, to accuse of, 4, 731
- Definition, 4, 707
- Defraud, 4, 731, 732
- Duplicity, 4, 719
- Election:
 - To prevent from voting, 4, 733
- Error, writ of, 4, 736
- Extortion, 4, 726
- Fraud, see *infra*, Cheat and defraud.
- General trial, 4, 733
- Hissing, 4, 732

CONSPIRACY, *cont'd.*

Indictment, 4, 710

- Accomplishment of conspiracy, 4, 712
- Bill of particulars, 4, 723
- Certainty required, 4, 720
- Conspiracy to defraud, 4, 711
- Degree of certainty, 4, 711
- Duplicity, 4, 719
- Execution of agreement, 4, 713
- Following language of statute, 4, 723
- General allegations, 4, 710
- Joinder of counts, 4, 718
- Object of conspiracy an offense at common law, 4, 713
- Object of conspiracy an offense by statute, 4, 713
- Overt acts, 4, 716
- Purpose, 4, 712
- Statute of limitations, 4, 724
- Where the means are unlawful, 4, 714
- Where the object is unlawful, 4, 714

Injunction:

Strikes and boycotts, 4, 728

Instructions, 4, 734

Joinder of counts and causes, 4, 718

Judgment, 4, 736

Civil actions, 4, 740

Justices:

Jurisdiction of justices, 4, 727

To pervert justice, 4, 732

Larceny, 4, 731

Limitation of actions, 4, 624

Malicious prosecution, see **MALICIOUS PROSECUTION.**

Marriage, 4, 731

Means unlawful, 4, 714

Miscellaneous conspiracies, 4, 731, 733

Monopolies, see **MONOPOLIES.**

Motion to quash, 4, 734

Murder, 4, 731

New trial, 4, 736

Object, see *infra*, Indictment.

Obstructing justice, 4, 727

Order of proof, 15, 388

Overt acts, 4, 716

Cheat and defraud, 4, 725

Conspiracy against the United States, 4, 730

In general, 4, 716

Obstructing justice, 4, 727

Omission to allege overt act, 4, 734

Statutes, 4, 717

Surplusage, 4, 717

Parties to indictment, 4, 709

At common law, 4, 709

Present practice, 4, 709

Profession, to ruin, 4, 732

CONSPIRACY, *cont'd.*

- Rape, 4, 731
- Robbery, 4, 731
- Scienter:
 - Obstructing justice, 4, 727
- Seduction, 4, 731
- Sentencing conspirators, 4, 736
- Statutes, following language of, 4, 723
- Strikes, 4, 727
- Survival of action, 4, 738
- Theatres:
 - Hissing, 4, 732
- Trespass on the case, 4, 738
- Trial, 4, 733
 - Death or acquittal, 4, 734
 - In general, 4, 733
 - One only appearing, 4, 733
- Trusts and trade combinations*, see MONOPOLIES.
- United States:
 - Conspiracy against United States, 4, 729
- Venue, 4, 708
- Verdict, 4, 735
- Witnesses, 4, 732
- Workmen:
 - Conspiracy among workmen, 4, 732
 - Molesting workmen, 4, 732
 - Strikes and boycotts, 4, 727

CONSTABLES, see SHERIFFS AND CONSTABLES.**CONSTITUTIONAL LAW:**

- Alimony:
 - Allowance, 1, 439
- Amendments:
 - Statutes authorizing amendments to indictment, 1, 692
- Appeals:
 - Jurisdiction depending on constitutionality of statute, 2, 40
 - Right of appeal, 2, 13
 - Abolition and impairment by statute, 2, 13
 - Failure by the legislature to provide for appeals, 2, 14
 - Failure of the constitution to define limits of appellate jurisdiction, 2, 14
 - In general, 2, 13
 - Original jurisdiction, 2, 13
 - Rules of procedure, 2, 14
 - State as party, 2, 42
- Arguments of counsel:
 - Right to be heard by counsel, 2, 699
- Bail and recognizance:
 - Commissioners, 3, 198
 - Excessive bail, 3, 213
 - Right to give bail, 3, 200
 - Speedy trial, 3, 204
- Certified cases, 3, 955

CONSTITUTIONAL LAW, *cont'd.*

- Certiorari:
 - Denial of writ by statute, 4, 37
- Civil rights acts*, see CIVIL RIGHTS ACTS.
- Contempt:
 - Right to trial by jury, 4, 789
- Continuances:
 - Right to speedy trial, 4, 827
- Creditors' bills:
 - Right to trial by jury, 5, 466
- Criminal procedure:
 - Presence of accused, 21, 971
- Demurrers to evidence, 6, 439
- Depositions:
 - Criminal proceedings, 6, 609
- Eminent domain:
 - Jury trial, 7, 545
- Examination of witnesses:
 - Self-crimination, 8, 147
- Fines and costs in criminal cases:
 - Imprisonment for costs, 8, 994
 - Imprisonment to enforce fines, 8, 967
- Grand juries:
 - Number of persons required to constitute a grand jury, 10, 370
- Habeas corpus*, see HABEAS CORPUS.
- Indictments:
 - Necessity, 10, 351, 352
- Infants:
 - Sale of real estate under private or special acts, 10, 738
- Informations:
 - Felony, 10, 351, 352
- Interstate commerce*, see INTERSTATE COMMERCE.
- Judgments:
 - Impairing obligation of contracts, 11, 834
 - Judgments as contracts, 11, 833
- Juries*, see JURIES.
- Mandamus:
 - Determination of constitutional questions, 13, 496
 - Unconstitutionality of statute, 13, 728
- Official bonds:
 - Summary proceedings, 15, 165
- Opinions of courts, 15, 306, 308
- Publication, 17, 31
 - Constitutionality of statutes in general, 17, 31
 - Foreclosure, 17, 31
 - Quieting title, 17, 31
 - Resident defendants, 17, 32
- References*, see REFERENCES.
- Rehearing:
 - Cases involving constitutional questions, 18, 48
- Search warrants, 19, 325

CONSTITUTIONAL LAW, *cont'd.*

Self-crimination, see EXAMINATION OF PARTIES BEFORE TRIAL; EXAMINATION OF WITNESSES.

Cross-examination in criminal cases, 8, 147

Grand juries, 10, 397

Summary proceedings, 20, 1076

Trial:

Presence of accused, 21, 971

CONSTRUCTION (see ABATEMENT IN PLEADING; INTERPRETATION):

Accord and satisfaction:

Construction of plea, 1, 79

Adjournments:

Liberal construction of statutes, 1, 242

Appeal bonds and undertakings, see APPEAL BONDS AND UNDERTAKINGS.

Appeals, see APPEALS.

Bills of exceptions, see BILLS OF EXCEPTIONS.

Bills of particulars, 3, 538

Case made on appeal, 3, 909

Conflict with record, 3, 909

Verity, 3, 909

Dismissal, discontinuance, and non-suit:

Construction of discontinuances liberal, 6, 927

Findings of court, 8, 949

Fines and costs in criminal cases:

Strict construction, 8, 956

Indictments, 10, 479

Verdict, see VERDICT.

CONSTRUCTION OF PLEADINGS,

4, 741

Absurd construction, 4, 762

Aider by verdict, 4, 743

Ambiguity, 4, 744

Ambiguous expressions construed to support pleadings, 4, 744

Amendments, 4, 747

Appeals, 4, 757

Clerical errors, 4, 747

Code pleading:

Demurrer, 4, 755

Code system, 4, 749

Appeals, 4, 757

Application of the rule, 4, 750

Defective pleadings, 4, 757

Demand for judgment may aid construction, 4, 754

Forms, 4, 753

Greater liberality after answering, 4, 758

Liberal construction on the trial, 4, 756

Pleading as evidence, 4, 758

Pleadings to be liberally construed, 4, 749

Substance, 4, 753

CONSTRUCTION OF PLEADINGS, *cont'd.*

Code system, *cont'd.*

When code remedies are not resorted to, 4, 757

Whether pleadings are in tort or in contract, 4, 754

Common law, 4, 759

Absurd construction not to be given, 4, 562

Pleadings construed most strongly against pleader, 4, 746, 759

Court or jury, 4, 741

Demurrers, 4, 755; 6, 346, 389

Allegations separately construed, 4, 756

Liberal construction under the code, 4, 755

Pleadings supported if possible, 4, 756

Entire pleadings construed together, 4, 746

Clerical errors, 4, 747

In general, 4, 746

Plea filed as amendment, 4, 747

Separate and distinct pleas, 4, 748

Equity pleadings, 4, 762

Evidence:

Pleading as evidence, 4, 758

Ex contractu and *ex delicto*, 4, 754

General principles, 4, 741

Intention, 4, 745

Justices of the peace, 4, 749

Ordinary meaning, 4, 748

Popular meaning, 4, 748

Prayers for relief, 16, 784

Presumption against pleader, 4, 746, 759

Questions of law and fact, 4, 741

Regard had to facts, 4, 744

Repugnancy, 18, 738

Specific statements prevail against general, 4, 742

Technical objections not encouraged, 4, 742

Theory of the case, see THEORY OF THE CASE.

Time ambiguous, 4, 744

Verified pleadings, 4, 755

CONSTRUCTION OF WILLS, see WILLS.**CONSTRUCTION OF WRITINGS, see INSTRUCTIONS.****CONSTRUCTIVE NOTICE, 14, 1072****CONSTRUCTIVE SERVICE, see PUBLICATION.****CONSULS:**

Affidavits:

Authority to take affidavits, 1, 332

CONTEMPT, 4, 764

Abatement, 4, 787

Action for damages, 4, 820

Adjudication, 4, 797

Constructive contempts, 4, 797

Contemnor's disabilities, 4, 805

Costs, 4, 800

Counsel fees, 4, 807

Direct contempts, 4, 797

Double redress, 4, 803

Fines, 4, 800

Imprisonment, 4, 801

In general, 4, 797

Judgment, 4, 797

Miscellaneous punishments, 4, 804

Warrant of commitment, 4, 799

Advice of counsel, 4, 792

Affidavit, 4, 779

Contempt in court's presence, 4, 775

Jurisdiction of court, 4, 781

Necessity of affidavit, 4, 779

Prima facie case, 4, 780

Requisites of affidavit, 4, 780

Alimony, 1, 445

Jail liberties, 4, 803

Amendments:

Discharging contempt proceedings, 1, 492

Answer:

Conclusiveness of contemnor's answer, 4, 795

Answers in equity pleading:

Attachment to compel answer, 1, 894

Appeal and writ of error, 4, 809

By writ of error only, 4, 815

Civil contempts, 4, 812

Discretion of court, 4, 810

Final judgments, 4, 812

Interlocutory judgments, 4, 811

Judgments in contemnor's favor, 4, 811

Requisites of the record, 4, 814

Reviewable matters, 4, 814

Statutory provisions, 4, 813

Supersedeas, 4, 815

When allowed, 4, 811

When not allowed in criminal contempt, 4, 810

When not allowed in general, 4, 809

Where trial court has jurisdiction, 4, 811

Where trial court is without jurisdiction, 4, 813

Appeals, 2, 129, 147

Appeal from violated order, 4, 793

Right to appeal, 4, 805

Appearance, 4, 786

CONTEMPT, *cont'd.*

Bail, 4, 769

Amount of bail, 4, 770

Bankruptcy, 22, 372

Disabilities of bankrupt in contempt, 22, 372

In general, 22, 372

Boycott, 20, 985

Certiorari, 4, 124, 815

Coercion of officer to make return, 4, 231

Criminal and civil contempt, 4, 125

Habeas corpus, 4, 127

In general, 4, 124

Necessary requisites, 4, 125

Order refusing to punish, 4, 126

Refusal to comply with order of court, 4, 125

Review of the case on its merits, 4, 125

To review jurisdiction only, 4, 127

Where contempt proceedings may be reviewed, 4, 124

Chambers and vacation, 4, 340

Change of venue, 4, 386, 787

Character of the proceedings, 4, 766

Conclusiveness of contemnor's answer, 4, 795

Conditions, 4, 775

Constitutional law:

Right to trial by jury, 4, 789

Costs, 4, 806

As the only punishment, 4, 806

Collection of costs, 5, 260

Criminal contempts, 4, 807

Extenuating circumstances, 4, 806

In general, 4, 806

Limitation of imprisonment for failure to pay costs, 4, 802

Counsel fees, 4, 807

Criminal procedure, 4, 766

Rules of evidence, 4, 768

Default, 4, 795

Defense, 4, 790

Advice of counsel, 4, 792

Appeal from violated order, 4, 793

Conclusiveness of answer, 4, 795

Inability to obey, 4, 790

Indebtedness of prosecutor, 4, 795

Invalidity of violated order, 4, 793

Liability to indictment, 4, 794

Miscellaneous instances, 4, 794

Pecuniary inability, 4, 790

Performance, 4, 790

Res judicata, 4, 794

Sickness, 4, 790

Unavailable defenses, 4, 793

CONTEMPT, *cont'd.*Defense, *cont'd.*

Want of formal requisites, 4, 793

Want of intention, 4, 791

Want of jurisdiction in the court,
4, 792Want of notice of violated order,
4, 792

Demand, 4, 778

Demand and refusal, 4, 778, 780

Depositions:

United States courts, 6, 622

Disability of contemnor, 4, 805

Affecting favors, 4, 805

Affecting rights, 4, 805

Refusal to hear, 4, 805

Right to appeal, 4, 805

Striking out answer, 4, 805

Disbarment and suspension of attorney, 6, 709

Discretion of court, 4, 774

Dismissal, discontinuance, and non-suit:

Plaintiff in contempt, 6, 852

Double redress, 4, 803

In general, 4, 803

Necessity for election, 4, 804

Due process of law, 4, 771

Election, 4, 804

Entitling the proceedings, 4, 772

Distinctive, 4, 773

Distinctive after attachment issued, 4, 773

Immateriality, 4, 774

In general, 4, 772

Not distinctive, 4, 773

Equitable attachment, see **EQUITABLE ATTACHMENT**.*Error, writ of*, see *infra*, Appeal and writ of error.

Evidence:

Contempt in court's presence,
4, 775Rules of evidence criminal, 4,
768

Written evidence, 4, 772

Examination of parties before trial,
8, 65

Examination of witnesses:

Exclusion from court room, 8,
93

False imprisonment, 4, 821

Final judgments:

Appeal and writ of error, 4, 811,
812

Fines, 4, 800

Compensatory, 4, 800

In general, 4, 800

Limitation of imprisonment in
case of nonpayment of fines,
4, 802

Punitive, 4, 800

Whose benefit, 4, 800

CONTEMPT, *cont'd.*

Friendly suits, 9, 720

Habeas corpus, 4, 815

Arrest by wrong officer, 4, 817

Attachment without prior order,
4, 783Commitments and convictions
for contempt, 9, 1064Conflict of jurisdiction between
federal and state courts, 4, 816Contempt of court by nonreturn
or insufficient return, 9, 1033Enforcing return by attachment,
9, 1033

For want of jurisdiction, 4, 815

Illegal imprisonment, 4, 816

Jurisdictional questions, 4, 818

Matters examinable, 4, 818

Mere irregularities, 4, 818

No contempt, 4, 817

Perpetual imprisonment, 4, 817

Statutory provisions, 4, 819

Void judgment, 4, 816

When appropriate, 4, 815

When inappropriate, 4, 817

Hearing, 4, 788

Conclusiveness of contemnor's
answer, 4, 795

Contemnor's default, 4, 795

Contemnor's defense, see *infra*,
Defense.

Contemnor's rights:

To be heard, 4, 788

To trial by jury, 4, 789

In general, 4, 788

Interrogatories, see *infra*, Inter-
rogatories.

Opportunity to be heard, 4, 788

Reference to master, 4, 797

Refusal to hear, 4, 805

Sheriffs in contempt, 4, 790

Imprisonment, 4, 801

Duration, 4, 799, 801

Failure to pay costs, 4, 802

Jail liberties, 4, 802

Limitation, 4, 802

Limitation in case of nonpay-
ment of fines, 4, 802

Nonpayment of alimony, 4, 803

Summary, 4, 803

Warrants, 4, 799

Whether imprisonment for debt,
4, 803

Imprisonment for debt, 4, 803

Information, 4, 781

Injunctions, 10, 1098

Advice of counsel, 10, 1107

Affidavit or information, 10, 1112

Agents, 10, 1102

Answers to interrogatories, 10,
1113

Attachment, 10, 1110

Attorneys, 10, 1102

CONTEMPT, *cont'd.***Injunctions, *cont'd.***

- Compensation to the plaintiff, 10, 1114
- Construction of injunction, 10, 1108
- Corporations, 10, 1103
- Criminal proceedings, 10, 1110
- Discretion of court, 10, 1099
- Evasions, 10, 1109
- Exceptions to the general rule, 10, 1100
- Impairment of plaintiff's rights, 10, 1105
- Interrogatories propounded to the defendant, 10, 1113
- Jurisdiction of supreme court, 10, 1100
- Jurisdiction to punish disobedience, 10, 1098
- Knowledge of injunction, 10, 1101
- Landlord and tenant, 10, 1102
- Liability of defendant where injunction is violated by strangers, 10, 1101
- Liability of strangers, 10, 1102
- Mitigating circumstances, 10, 1115
- Notice, 10, 1112
- Notice of injunction, 10, 1101
- Order to show cause, 10, 1111
- Penalty for disobedience, 10, 1114
- Pendency of appeal, 10, 1100
- Proceedings against contemnors, 10, 1110
- Punishment of servants and agents, 10, 1103
- Receivers, 10, 1102
- Servants, 10, 1102
- Stipulation between parties, 10, 1108
- Strangers, 10, 1101
- Subterfuges, 10, 1109
- Violation by plaintiff, 10, 1104
- Violation of injunction by strangers, 10, 1101
- Void writ, 10, 1106
- What constitutes violation, 10, 1107
- What court has power to punish, 10, 1099
- Whether mere irregularities may be questioned, 10, 1105
- Insolvency, 4, 809
- Instituting the proceedings, 4, 774
- Intention, want of, 4, 791
- Interrogatories, 4, 786, 796
 - In general, 4, 796
 - When necessary, 4, 796
 - When unnecessary, 4, 796
- Irregularities of proceedings, 4, 770
- Index Pl. & Pr. — 12

CONTEMPT, *cont'd.***Jail liberties, 4, 802****Judgments:**

Enforcing judgments, 11, 1084

Judicial notice, 4, 776**Jurisdiction:**

Appeal and writ of error, 4, 811, 813

Fictitious issues, 12, 167

Habeas corpus, 4, 815, 818

Want of jurisdiction in the court, 4, 792

Jurisdiction of court, 4, 781

Jury and jury trials:

Right to trial by jury, 4, 789

Knowledge, 4, 777, 793

Laches, 4, 774

Mandamus, 4, 819; 13, 606, 807

Against whom obedience enforced, 13, 812

Attachment, 13, 810

Continued disobedience, 13, 808

Costs, 13, 819

Court without jurisdiction, 13, 607

Delay in performance, 13, 808

Excusing compliance, 13, 808

Fine, 13, 814

Guilty persons only punished, 13, 812

Imprisonment, 13, 813

Members of board, 13, 813

Nature of punishment, 13, 814

Officer of corporation, 13, 813

Persons causing disobedience, 13, 812

Persons who owe obedience, 13, 812

Punishment inflicted on individuals, 13, 813

Refusal to obey, 13, 807

Resignation to escape obedience, 13, 808

Rule to show cause, 13, 811

Successor, 13, 813

To hear contempt proceedings, 13, 607

To punish for contempt, 13, 607

To review contempt proceedings, 13, 606

What is a contempt, 13, 807

When respondent has no power to perform, 13, 809

Writ issued in excess of jurisdiction, 13, 809

Master in chancery, 4, 797

Motions:

Party in contempt, 14, 96

Motion to vacate, 4, 807

Criminal contempt, 4, 809

Discharge in insolvency, 4, 809

Inability to obey, 4, 808

In general, 4, 807

CONTEMPT, *cont'd.*

- Motion to vacate, *cont'd.*
 - Irregularities in prior proceedings, 4, 808
 - Prompt obedience, 4, 808
 - Unequivocal proof, 4, 808
- Notice, 4, 777, 781
 - Want of notice of violated order, 4, 792
- Orders:
 - Attachment without prior order, 4, 783
 - Defaulting witnesses, 4, 784
 - Disobedience to writs of habeas corpus, 4, 783
 - In general, 4, 783
 - Requisites, 4, 784
 - Service, 4, 784
 - Enforcement of orders, 15, 361
- Order to show cause, 4, 782
 - In general, 4, 782
 - Order renewable, 4, 782
 - Requisites, 4, 782
 - Service, 4, 782
- Pardon, 4, 821
- Pleadings generally, 4, 772
- Prerequisite conditions, 4, 775
- Presence of court, 4, 775
 - Affidavit, 4, 775
 - Contempts out of court's presence, 4, 776
 - Against parties to original proceedings, 4, 778
 - Court acting on its own motion, 4, 776
 - Demand and refusal, 4, 778
 - Disobedience distinctly set forth, 4, 776
 - Injury to prosecutor, 4, 778
 - Interest of prosecutors, 4, 778
 - Judicial notice, 4, 776
 - Knowledge of service of violated order, 4, 777
- Evidence, 4, 775
- Presumption, 4, 772
 - Presumption in favor of accused, 4, 769
- Primary process, 4, 781
 - Attachment without prior order, 4, 783
 - In general, 4, 781
 - Notice, 4, 781
 - Opportunity to make defenses, 4, 781
 - Order to show cause, *see infra*
 - Order to stand committed, 4, 785
 - Process without attachment, 4, 784
- Privilege, 16, 983
- Process, *see infra*, Primary process.
- Process without attachment, 4, 784

CONTEMPT, *cont'd.*

- Prohibition, 4, 820; 16, 1112
- Enforcement of writ, 16, 1142
- Receivers*, *see* RECEIVERS.
- Reference, 4, 797
- Remedies of contemnor (*see infra*, Appeal and writ of error; Habeas corpus; Motion to vacate):
 - Certiorari, 4, 815
 - Mandamus, 4, 719
 - Pardon, 4, 821
 - Prohibition, 4, 820
 - Suits, 4, 820
- Res judicata*, 4, 794
- Return of process, 4, 785
 - Appearance, 4, 786
 - Before whom returnable, 4, 785
 - Effect of appearance on defective returns, 4, 786
 - Interrogatories, 4, 786
 - Officer of court, 4, 786
 - Time of return, 4, 785
- Returns, 4, 781
- Right to trial by jury, 4, 789
- Scandal and impertinence, 19, 220
- Self-incrimination, 4, 769
- Service of process, 4, 777
 - Attachment without prior order, 4, 784
 - Order to show cause, 4, 784
- Sham and frivolous pleadings, 20, 89
- Sheriff:
 - Defense, 4, 790
- Sheriffs and constables, 20, 118
- Sickness, 4, 790
- Special proceedings, 4, 771
- Specific performance, 20, 519
- Specific relief, 4, 804
- Strict construction, 4, 770
- Strikes and boycotts, 20, 985
- Striking out answer, 4, 805
- Suits, 4, 820
- Summary proceedings, 4, 771
- Supersedeas and stay of proceedings, 20, 1246
 - Habeas corpus, 4, 815
- Supplementary proceedings*, *see* SUPPLEMENTARY PROCEEDINGS.
- Trial:
 - Failure of witness to comply with order, 21, 989
- Vacation*, *see infra*, Motion to vacate.
- Waiver of irregularities, 4, 770
- Warrants:
 - Duration of imprisonment, 4, 799
 - Formal requisites, 4, 799
 - Necessity, 4, 799
 - Warrant of commitment, 4, 799
- Witnesses:
 - Attachment without prior order, 4, 784

CONTEMPT, *cont'd.***Witnesses, *cont'd.***

- Delinquent witness, 4, 778
- Hearing apart, 21, 989
- Materiality of a witness, 4, 781

CONTESTED ELECTIONS, see ELECTIONS.**CONTEST OF WILLS, see PROBATE AND CONTEST OF WILLS.****CONTINUANCES, 4, 822****See PUIS DARREIN CONTINUANCE.**

- Absence of counsel, 4, 827, 839
 - Absence of leading counsel, 4, 840
 - Absence of sole counsel, 4, 840
- Affidavit, 4, 879
- Death of attorney, 4, 840
- Harmless error, 4, 909
- In general, 4, 839
- Member of congress or legislature, 4, 840
- On account of sickness, 4, 841
- Professional engagements, 4, 841
- Review, 4, 904
- Withdrawal of attorney, 4, 840
- Absence of evidence, 4, 845
 - Affidavit, 4, 880
 - Absent papers, 4, 880
 - Cumulative evidence, 4, 881
 - Expectation of obtaining evidence, 4, 882
 - In general, 4, 880
 - Materiality and statement of facts, 4, 884
 - No other witness to same facts, 4, 887
 - Not made for delay merely, 4, 887
 - Statement of diligence, 4, 881
- Alibi, 4, 851
- As to character, 4, 853
- Attachment, 4, 857
- Cumulative evidence, 4, 852
- Death of witness, 4, 862
- Departure of witness after attendance, 4, 853
- Deposition, 4, 857
- Diligence, 4, 849
- Diligence in ascertaining whereabouts of witnesses, 4, 855
- Diligence in case of nonresident witnesses, 4, 856
- Diligence in consulting counsel, 4, 856
- Diligence in criminal cases, 4, 856
- Diligence in securing papers, 4, 855
- Diligence of applicant, 4, 854
- Diligence where application is by state, 4, 855

CONTINUANCES, *cont'd.***Absence of evidence, *cont'd.***

- Excuses for omission to summon absent witnesses, 4, 861
- Federal and state practice as to diligence, 4, 857
- Harmless error, 4, 910
- Indefinite, immaterial, irrelevant, or incompetent evidence, 4, 850
- In general, 4, 845
- Insufficient answer, 4, 852
- Insufficient excuse for not summoning witness, 4, 862
- Interests, 4, 851
- Judicial notice of diligence, 4, 863
- Knowledge of intended departure of witness, 4, 861
- No absolute standard of diligence, 4, 856
- Nonresident witness, 4, 849
- Presumption in favor of trial court, 4, 856
- Recognizance, 4, 857
- Seasonable beginning, 4, 856
- Sickness of witness, 4, 861
- State entitled to a continuance, 4, 849
- Subpoena, 4, 857
- To fortify character, 4, 853
- To impeach character, 4, 853
- To search for evidence, 4, 850
- To take depositions, 4, 849
- Uncertainty of place for holding court, 4, 849
- Unremitting diligence, 4, 857
- Unverified plea, 4, 852
- What constitutes due diligence, 4, 856
- Witness not likely to testify, 4, 846
- Absence of justice, 4, 898
- Absence of parties on adjourned day, 4, 898
- Absence of party, 4, 842
 - Absence of adverse party, 4, 844
 - Absence of coparty, 4, 844
 - Affidavit, 4, 879
 - Application merely for delay, 4, 844
 - Apprehension of ill health, 4, 843
 - Death of a party, 4, 844
 - Military service, 4, 843
 - Necessity of party's presence, 4, 843
 - On account of sickness, 4, 842
 - Review, 4, 904
 - Trial for misdemeanor, 4, 844
 - Voluntary absence, 4, 842
- Admission, 4, 865
 - Admission as evidence merely, 4, 867

CONTINUANCES, *cont'd.***Admission, *cont'd.***

- Admission as to evidence, 4, 869
- Admission of truth in criminal cases, 4, 867
- Avoiding continuances by admission at common law in civil cases, 4, 866
- Avoiding continuances by admission at common law in criminal cases, 4, 865
- Civil cases, 4, 869
- Effect of admission, 4, 869
- Effect of admission where facts are admitted, 4, 869
- Effect of admission where testimony is admitted, 4, 870
- Evidence only *pro hac vice*, 4, 870
- Lack of diligence, 4, 868
- Statutes, 4, 867
- Witness out of reach of process, 4, 868

Advice of counsel, 4, 839**Affidavit:**

- Identification and part of record, 4, 909
- Surprise, 4, 864

Affidavit for continuance, 4, 873

- Absence of counsel, 4, 879
- Absence of evidence, 4, 880
- Absence of party, 4, 879
- Affidavit of merits, 4, 877
- Amendment of affidavit, 4, 875
- Amendment of pleading, 4, 878
- By whom to be made, 4, 875
- Compliance with statute, 4, 877
- Counter affidavit, 4, 876
- Entitling, 4, 878
- Necessity for affidavit, 4, 873
- Newly discovered evidence, 4, 887
- Precision, 4, 878
- Public prejudice or excitement, 4, 878
- Requisites of affidavit, 4, 877
- Strict construction, 4, 877
- Want of preparation, 4, 878

Affidavit of merits, 4, 877**Alibi, 4, 851****Amendments, 4, 836**

- Affidavit, 4, 878
- Amendment or complaint, 4, 837
- Amendment requiring continuance, 4, 838
- At common law, 4, 836
- Continuance properly refused, 4, 837
- Immaterial amendments, 4, 837
- Modern rule, 4, 837
- Review, 4, 904

Appeals (see *infra*, Review), 2, 363**Interlocutory, 2, 86****CONTINUANCES, *cont'd.*****Appearances, 2, 646**

- Procuring or consenting to a continuance as general appearance, 2, 633

Appellate courts, 4, 899**Application for continuance, 4, 870**

- Continuance or adjournment *sua sponte*, 4, 871

- Duty of court to entertain application, 4, 873

- Motion necessary, 4, 870

- Premature application, 4, 872

- Renewal of application, 4, 873

- Time for application, 4, 871

Arguments of counsel, 2, 732**Attachments, 4, 860****Attorneys, see *infra*, Counsel.****Avoiding continuances by admission, see *infra*, Admission.****Bastardy, 3, 297****Bill of discovery:**

- Pendency of bill of discovery, 4, 832

Bills of exceptions, 3, 394; 4, 908

- Amendments, 3, 503

Capital cases, 4, 728**Certiorari, 2, 311****Chambers and vacation, 4, 339****Change of venue:**

- After procuring continuance, 4, 423

- Waiver of irregularity, 4, 485

Character of evidence, 4, 853**Civil cases, 4, 827****Conditions, see *infra*, Terms.****Constitutional law:**

- Right to a speedy trial, 4, 827

Costs:

- Failure to give security for costs, 4, 831

Counsel:

- Business engagements of counsel, 4, 835

- Duty to consult counsel, 4, 856

- Mistaken advice of counsel, 4, 839

- Misunderstanding of counsel, 4, 839

Courts:

- Discretion of court, 4, 827, 828

- After long delays or several continuances, 4, 828

- As an exercise of discretion, 4, 828

- Where circumstances are suspicious, 4, 829

- Inherent power, 4, 825

Courts of last resort, 4, 899**Criminal cases, 4, 827**

- Want of preparation, 4, 834

Cumulative evidence, 4, 852

- Affidavit, 4, 881

CONTINUANCES, *cont'd.*

- Death of attorney, 4, 840
- Death of party, 4, 844
 - Review, 4, 904
- Defaults, 6, 68
- Definition, 4, 824
- Depositions, 4, 840, 857
- Diligence (see *infra*, Absence of evidence), 4, 834
 - Admission, 4, 868
 - Statement of diligence in affidavit, 4, 881
- Discretion of court, see *infra*, Courts.
- Dismissal, discontinuance, and non-suit:
 - Want of prosecution, 6, 917
- Divorce, 7, 115
 - Examples, 7, 115, 116
 - In general, 7, 115
 - Service void or defective, 7, 115
- Drunkenness, 4, 864
- Effect of continuance, 4, 892
 - As an appearance or waiver, 4, 892
 - For one of several defendants, 4, 892
 - In general, 4, 892
- Eminent domain, 7, 564
- Entitling affidavit, 4, 878
- Equity, 4, 826
- Estoppel:
 - Justices of the peace, 4, 898
- Evidence (see *infra*, Admission):
 - Absence of evidence, see *infra*, Absence of evidence.
 - Newly discovered evidence, 4, 863, 887
- Exceptions, 4, 908
- Excuses for omission to summon witnesses, 4, 861, 863
- Grounds for continuance, 4, 831
 - Absence of evidence, see *infra*, Absence of evidence.
 - Absence of party, see *infra*, Absence of party.
 - Amendment of pleadings, 4, 836
 - Another suit pending, 4, 865
 - Death of party, 4, 844
 - Failure to give security for costs, 4, 831
 - Intoxication of party on the trial, 4, 864
 - Miscellaneous, 4, 865
 - Misunderstanding of counsel, 4, 839
 - Newly discovered evidence, 4, 863
 - Pendency of bill of discovery, 4, 832
 - Public excitement or prejudice, 4, 832
 - Stipulations of counsel, 4, 831
 - Surprise on the trial, 4, 863

CONTINUANCES, *cont'd.*

- Grounds for continuance, *cont'd.*
 - To perfect service of process, 4, 832
 - Want of preparation, see *infra*, Want of preparation.
- Habeas corpus, 9, 1052
- Harmless error, see *infra*, Review of ruling on application for continuance.
- Illness:
 - Of attorney, 4, 841
 - Of counsel, 4, 909
 - Harmless error, 4, 909
 - Of party, 4, 842, 910
 - Of witness, 4, 861
- Inherent power, 4, 825
- Insane persons:
 - Insanity as a defense, 10, 1223
- Intoxication of party at trial, 4, 864
- Issues to the jury, 11, 681
- Judicial notice, 4, 863
- Justices of the peace, 4, 892
 - Absence of justice, 4, 898
 - Absence of parties, 4, 898
 - Adjournment by another justice, 4, 894
 - Adjournment for further consideration, 4, 895
 - Adjournment without showing cause, 4, 894
 - Consent of parties, 4, 893
 - Docket entry, 4, 895
 - Duty, 4, 895
 - Effect of unauthorized continuance, 4, 896
 - Estoppel, 4, 898
 - Justice's own motion, 4, 893
 - Mandamus to proceed without trial, 4, 897
 - Nonappearance on adjourned day, 4, 898
 - Period of adjournment, 4, 894
 - Power and duty, 4, 892
 - Review for abuse, 4, 896
 - Specification of hour and place, 4, 895
 - Subsequent proceedings void where continuance is unauthorized, 4, 896
 - Time for adjournment, 4, 893
 - Void or voidable, 4, 897
 - Waiver, 4, 898
- Long delay, 4, 828
- Mandamus, 13, 550
 - Justices of the peace, 4, 897
 - To grant continuances, 13, 550
 - To set aside continuances, 13, 550
- Mechanics' liens, 13, 1025
- Military law:
 - Party in military service, 4, 843
- Motion, 4, 870; 14, 165

CONTINUANCES, *cont'd.*

- Newly discovered evidence, 4, 863
- Affidavit, 4, 887
- New trial:
 - Failure to apply for continuance in cases of accident or surprise, 14,749
- Nonresident witnesses, see infra, Absence of evidence.*
- Operation of law, 8, 830
- Orders granting continuances, 4, 890
 - Construction of order, 4, 890
 - Notice of further proceedings, 4, 891
 - Power to set aside, 4, 891
- Parties, see infra, Absence of party.*
- Postponements, 4, 824
- Power to continue, 4, 825
- Prejudice, 4, 832
- Preliminary examination, see PRELIMINARY EXAMINATION.*
- Preparation, see infra, Want of preparation.*
- Probate and contest of wills, 16, 1006
- Public excitement or prejudice, 4, 832, 878
 - Harmless error, 4, 912
 - Review, 4, 904
- Recognizance, 4, 860
- Record, 4, 906
- References, 4, 825
- Review:
 - Abuse of discretion as to terms, 4, 890
 - Justices of the peace, 4, 896
 - Terms, 4, 890
- Review of ruling on application for continuance, 4, 899
 - Absence of counsel, 4, 904, 909
 - Absence of evidence, 4, 910
 - Absence of party, 4, 904
 - Absolute right by statute, 4, 906
 - Affidavit, 4, 909
 - Amendment of pleadings, 4, 904
 - Appeal, 4, 907
 - Bills of exceptions, 4, 908
 - Death of a party, 4, 904
 - Error, 4, 907
 - Exceptions, 4, 908
 - Harmless error, 4, 909
 - Absence of evidence, 4, 910
 - Illness of party, 4, 910
 - Illness or absence of counsel, 4, 909
 - In general, 4, 909
 - Public excitement or prejudice, 4, 912
 - Illness of counsel, 4, 909
 - Illness of party, 4, 910
 - Motion for new trial, 4, 906
 - Public excitement or prejudice, 4, 904, 912
 - Record, 4, 908

CONTINUANCES, *cont'd.*

- Review of ruling on application for continuance, *cont'd.*
 - Surprise, 4, 904
 - Where continuance was granted, 4, 899
 - Where continuance was refused at common law, 4, 901
 - Where continuance was refused for supposed want of power, 4, 905
 - Where continuance was refused under modern practice, 4, 902
- Right of property, trial of, 18, 1179
- Service of process:
 - To perfect service of process, 4, 832
- Settlement of decedents' estates:
 - Sales of realty, 19, 898
- Several continuances, 4, 828
- Sickness, see infra, Illness.*
- Speedy trial, 4, 827
- Statute, 4, 826
- Stipulations, 4, 831; 20, 614
- Subpœna, 4, 857
- Surprise, 4, 863
 - Insufficient ground, 4, 864
 - Motion and affidavit, 4, 864
 - Review, 4, 904
 - Sufficient ground, 4, 863
- Suspicious circumstances, 4, 829
- Tender of witness fees, 4, 859
- Terms, 4, 888
 - Effect of nonpayment, 4, 889
 - Enforcing payment, 4, 888
 - Illustrations, 4, 889
 - Power to impose terms, 4, 888
 - Proper terms, 4, 888
 - Review for abuse, 4, 890
- Time for application, 4, 871
- Waiver, 4, 892
 - Irregularity of continuance granted by justice without objection, 4, 898
- Want of preparation, 4, 833
 - Affidavit, 4, 878
 - Business engagements of counsel, 4, 835
 - Criminal cases, 4, 834
 - Diligence, 4, 834
 - Illness of counsel, 4, 835
 - In general, 4, 832
 - Refusal reviewed only for abuse of discretion, 4, 835
- Witnesses (*see infra, Absence of evidence*):
 - Admission, 4, 868

CONTINUANDO:

- Indictments, 10, 514, 517
- Trespass, see TRESPASS.*

Variance:

- Time laid with *continuando*, 22, 615

CONTRACT LABOR LAW, 10, 278
CONTRACTORS, see **INDEPENDENT CONTRACTORS**.

CONTRACTS, 4, 913

See **CONSIDERATION**; **EX CONTRACTU**
AND EX DELICTO.

Actions, 111

Actions of tort and of contract distinguished, 4, 915

Alder by verdict, 4, 938, 942, 944

Alternative contracts, 4, 920

Ambiguity, 4, 918

Answers, see *infra*, Plea or answer.

Answers in code pleading:

Argumentative denials, 1, 800

General denial, 1, 818

Bills and notes, 1, 820

Failure of plaintiff to perform contract, 1, 819

Invalidity of contract, 1, 819

Sales, 1, 820

Want of consideration, 1, 818

What the defendant may show under a general denial, 1, 818

Knowledge of contents of contract, 1, 814

Specific denial, 1, 788

Assumpsit, see **ASSUMPSIT**.

Attachment:

Affidavit, 3, 16

Breach, 4, 937

Alder by verdict, 4, 938, 942

Breach assigned not broader than covenant, 4, 940

Breach assigned not narrower than covenant, 4, 941

Contract for payment of money, 4, 942

Effect of failure to state or of defective statement, 4, 938

How to state breach, 4, 939

Necessity of averment, 4, 937

Negating words of covenant insufficient, 4, 939

Setting out covenant, 4, 940

Several breaches, 4, 941

Breach of promise of marriage, 3, 683

Conditional contracts, 4, 920

Conditions concurrent, 4, 932

Conditions precedent, see **CONDITIONS PRECEDENT**.

Considerations (see *infra*, Plea or answer), 4, 928

Concurrent consideration, 4, 931

Consideration partially frivolous, void, or illegal, 4, 931

Executed consideration, 4, 931

Executory consideration, 4, 930

How pleaded, 4, 930

Necessity for pleading, 4, 928

Remedies for defective statement, 4, 930

CONTRACTS, *cont'd.*

Considerations, *cont'd.*

Remedies for failure to state, 4, 929

Statutes, 4, 929

Sufficiency, 4, 930

Sufficient consideration, 4, 929

Whole consideration, 4, 930

Covenant, see **COVENANT**.

Damages, see **DAMAGES**.

Debt, see **DEBT**.

Declaration or complaint, 4, 916

Ambiguous contract, 4, 918

Bills of exchange and promissory notes, 4, 926

Breach, 4, 937

Effect of variance, 4, 917

Execution, 4, 943

General and special clauses, 4, 921

How much of contract to be stated, 4, 919

How to state contract, 4, 916

In hac verba or according to legal effect, 4, 916

Performance, 4, 932

Pleading and proof, 4, 927

Recitals, 4, 918

Rule as to correctness and certainty, 4, 918

Specific agreement corresponding to legal obligations, 4, 926

Statement of alternative contract, 4, 920

Statement of conditional contract, 4, 920

Statement of exceptions and provisos, 4, 920

Statement of legal effect, 4, 918

Statement of modified contract, 4, 921

The consideration, 4, 928

The promise, 4, 927

Variance, 4, 919

Where a special contract is imperfect, 4, 927

Where contract is at an end, 4, 926

Definiteness and certainty in pleadings, 4, 918; 6, 263, 266

Breach, 6, 267

Consideration, 6, 266

In general, 6, 266

Modification, 6, 266

Demurrers, see **DEMURRERS**.

Exceptions, 4, 920, 923

Execution, 4, 943

Denial of execution, 4, 944

Illegality of consideration, 4, 952

Insurance, see **INSURANCE**.

Joinder of parties, see **JOINDER OF PARTIES**.

CONTRACTS, *cont'd.***Judgments:**

- Judgments as contracts, 11, 831
 - In general, 11, 831
 - Legal fiction, 11, 832
 - Specialty, 11, 831
- Judgments as part of contracts:
 - Action on judgment, 11, 832
 - Assignment of choses in action *ex delicto*, 11, 834
 - Constitutional provisions, 11, 833
 - Contracts express or implied, 11, 835
 - Execution against the body, 11, 835
 - Impairing obligation of contract, 11, 834
 - Joinder of actions, 11, 835
 - Joinder of parties, 11, 835
 - Provisional remedies, 11, 832
 - Set-off and counterclaim, 11, 834
 - Statute of limitations, 11, 834
 - Statutes conferring or limiting jurisdiction, 11, 834
 - Statutes requiring real party in interest to sue, 11, 834
 - Statutory liability of officers and stockholders, 11, 835
 - Statutory provisions, 11, 833

Parties to actions, see **PARTIES TO ACTIONS**.

Patents, see **PATENTS**.

Performance, 4, 932

- Conditions concurrent, 4, 932
- How independent covenants determined, 4, 934

Independent covenants, 4, 933

Plea or answer, 4, 944

Contract showing want of consideration, 4, 947

Denial of execution, 4, 944

Failure of consideration, 4, 948

At common law, 4, 948

Under the code, 4, 951

Under the statutes, 4, 949

How failure of consideration pleaded, 4, 950

How to state want of consideration, 4, 947

Illegality of consideration, 4, 952

At common law, 4, 952

Under the code, 4, 953

Under the statutes, 4, 953

Necessity for pleading failure of consideration, 4, 948, 949, 951

Non est factum, 4, 944

Nonexistence of consideration for contract, 4, 948

Nonperformance by plaintiff, 4, 953

CONTRACTS, *cont'd.***Plea or answer, *cont'd.***

Partial want of consideration, 4, 947

Plea assuming to set up total failure, 4, 951

Pleading want of consideration, 4, 944

Showing partial failure of consideration under plea of total failure, 4, 951

Want of consideration, 4, 944

Under rules of court, 4, 945

Under the code, 4, 946

Under the statutes, 4, 945

Provisos, 4, 920

Recitals; 4, 918

Replication, see **REPLICATION**.

Reward, see **REWARD**.

Sales, see **SALES**.

Specific performance, see **SPECIFIC PERFORMANCE**.

Stipulations, see **STIPULATIONS**.

Sundays and holidays, see **SUNDAYS AND HOLIDAYS**.

Trover and conversion:

Breach of, 21, 1020

Variance, 4, 917, 919

Vendor and purchaser, see **VENDOR AND PURCHASER**.

Venue, 22, 783

CONTRACTU, see **EX CONTRACTU AND EX DELICTO**.

CONTRA FORMAM:

Informations, 10, 461

CONTRA PACEM (see INDICTMENTS):

Informations, 10, 461

CONTRIBUTION:

Assumpsit, 2, 1014

Executions, 8, 552

Stock and stockholders, see **STOCK AND STOCKHOLDERS**.

Suretyship, see **SURETYSHIP**.

CONTRIBUTORY NEGLIGENCE,

5, 1

Answer, see *infra*, **Plea or answer**.

Answer in actions for negligence, 14, 342

Answers in code pleading, 1, 826, 847

General denials, 1, 824

Arrest of judgment, 5, 14

Civil damage acts:

Negating, 4, 551

Confession and avoidance, 5, 11

Death by wrongful act:

Rebutting contributory negligence, 5, 870

Declaration or complaint, 5, 1

Averring due care on the part of others than the plaintiff, 5, 8

Freedom from contributory negligence shown by facts, 5, 5

CONTRIBUTORY NEGLIGENCE,*cont'd.*

- Declaration or complaint, *cont'd.*
 - Motion to make complaint more definite and certain, 5, 14
 - Negating contributory negligence, 5, 1
 - Negating contributory negligence in actions for injuries to infants, 5, 6
 - Negating in general terms, 5, 7
 - Negating negligence of third persons, 5, 8
 - Overcoming presumption arising from facts, 5, 7
 - Prima facie* negligence, 5, 7
 - States in which plaintiff must negative contributory negligence, 5, 4
 - Statute requiring absence of contributory negligence, 5, 9
 - Sufficiency of general averments negating contributory negligence, 5, 5
 - Willful negligence, 5, 9
- Demurrer, 5, 10
 - Demurrer to complaint showing contributory negligence, 5, 10
 - Failure to negative contributory negligence, 5, 10
- Druggists, 7, 228
- Fires, 9, 6
- Malpractice, 16, 531, 533
 - Negating contributory negligence, 16, 530
- Master and servant:
 - Negating, 13, 901
 - Plea or answer, 13, 913
- Motions on the pleadings, 5, 14
 - To make answer more definite and certain, 5, 14
 - To make complaint more specific and certain, 5, 14
- Negating contributory negligence (see *infra*, Declaration or complaint):
 - Demurrer, 5, 10
 - Railroads, 17, 569, 570
 - Street railways, 20, 870
- Passengers, 15, 1131
- Personal injuries:
 - Self-aggravation, 16, 430
 - Evidence demanding instruction in behalf of defendant, 16, 432
 - Nature of negligence retarding recovery, 16, 431
 - Objections that instructions are too general, 16, 433
 - Want of due care or medical attention, 16, 430

CONTRIBUTORY NEGLIGENCE,*cont'd.*

- Plea or answer, 5, 10
 - Confession and avoidance under the code, 5, 12
 - Defense available without plea, 5, 13
 - General denial, 5, 10
 - Motion to make answer more definite and certain, 5, 14
- Presumptions:
 - Overcoming presumption arising from facts, 5, 7
- Railroads:
 - Injuries to animals, 17, 589
 - Instructions as to injuries to animals, 17, 602
 - Negating contributory negligence, 17, 569, 570
- Replication, 5, 13
- Street railway, 20, 872
- Streets and highways*, see **STREETS AND HIGHWAYS**.
- Telegraphs and telephones, 21, 514
- Willful wrongs, 5, 9
- CONTROVERSY**, see **AMOUNT IN CONTROVERSY**.
- CONVERSATION**, see **CRIMINAL CONVERSATION**.
- CONVERSION**, see **TROVER AND CONVERSION**.
- CONVICTION**, see **FORMER CONVICTION OR ACQUITTAL**.
- CONVICTS**, 5, 15
 - Actions, 5, 15
 - Indictments, 5, 15
- COPARCENERS**, see **PARCENARY**.
- COPIES**:
 - Examination of witnesses:
 - Refreshing the memory, 8, 140
- COPYRIGHT**, 5, 16
 - Accounting, 5, 25
 - Actions for penalties, 5, 22
 - Authorship, 5, 19
 - Bill in equity:
 - Necessary allegations, 5, 18
 - Conditions precedent, 5, 19
 - Costs, 5, 25
 - Declaration or complaint:
 - Necessary allegations, 5, 18
 - Authorship, 5, 19
 - Compliance with conditions precedent, 5, 19
 - Infringement in part, 5, 19
 - In general, 5, 18
 - Knowledge, 5, 19
 - Decree, 5, 25
 - Deposit of copies with librarian, 5, 20
 - Discovery, 5, 22
 - False notice of copyright, 5, 23
 - Form of action, 5, 17
 - Injunctions, 5, 24
 - At what stage of suit, 5, 24

COPYRIGHT, *cont'd.*

- Injunctions, *cont'd.*
 - Motion to dissolve, 5, 24
 - Permanent injunction, 5, 24
 - Temporary injunction, 5, 24
- Joinder of parties, 5, 18
- Jurisdiction, 5, 16
 - At law and in equity, 5, 16
 - Federal and state jurisdiction, 5, 17
 - Form of action, 5, 17
 - Penalties and forfeitures, 5, 17
- Knowledge, 5, 19
- Laches, 5, 21
- Penalties and forfeitures, 5, 22
 - Actions for penalties, 5, 22
 - False notice of copyright, 5, 23
 - In general, 5, 22
 - Jurisdiction, 5, 17
 - Waiver of forfeiture, 5, 22
- Proof, 5, 20
- Reference, 5, 23
- Right of action, 5, 18
- Survival of actions, 21, 359
- Waiver of forfeiture, 5, 22

CORAM NOBIS AND CORAM VOBIS, 5, 26

- See ERROR, WRIT OF.
- Affidavit, 5, 33
- Amendments, 5, 35
- Answer, 5, 36
- Appeals, 2, 27; 5, 37
- Bars to issuance of writ, 5, 35
- Character of proceedings, 5, 32
- Citation of parties and the writ, 5, 36
- Courts:
 - In what courts cognizable, 5, 33
- Defense, 5, 36
- Definitions, 5, 26
- Distinction, 5, 27
- Errors of fact, 5, 34
 - Before trial, 5, 27
 - Adjudicated issue, 5, 29
 - Known before trial, 5, 29
 - Newly discovered evidence, 5, 29
 - Relief from errors of fact, 5, 27
- Errors of law, 5, 29
- Error, writ of, distinguished from, 7, 821
- Forthcoming bonds, 5, 29
- Issue, 5, 36
- Joining errors in fact and at law, 5, 34
- Judgment, 5, 37
- Jurisdiction, 5, 33
- Limitation of actions, 5, 31
- Ministerial errors, 5, 29
- Motions, 5, 33
- Newly discovered evidence, 5, 29
- Office of the writ, 5, 27

CORAM NOBIS AND CORAM VOBIS, *cont'd.*

- Opening, amending, and vacating judgments, 15, 253
- Parties to action, 5, 31
 - Defendant, 5, 32
 - Plaintiff, 5, 31
- Petition, 5, 34
- Plea, 5, 36
- Review, see REVIEW.
- Status in modern practice, 5, 30
- Stay of execution, 5, 35
- Title of the action, 5, 32
- Trial, 5, 36
- Writ of error, 5, 31

CORONER:

- Executions:
 - Direction to coroner, 8, 385
 - Service of process, 19, 586
 - Venire facias, 12, 337
- CORONER'S INQUESTS, 5, 38**
- See INQUESTS AND INQUIRIES.
- Absence of coroner, 5, 41
- Access to coroner impossible, 5, 41
- Adjournment, 5, 48
- Attorneys:
 - Representation by counsel, 5, 44
- Authority of coroner judicial, 5, 40
- Burial before inquest, 5, 39
- Commitments, 4, 570
- Costs, 5, 40
- Delay, 5, 40, 41
- Evidence, see *infra*, Witnesses.
- Fees, 5, 40
- Further proceedings, 5, 50
- Inquisition, 5, 49
 - Certainty, 5, 50
 - Definition, 5, 49
 - Names of jurors, 5, 50
 - Requisites, 5, 49
 - Signing and attesting, 5, 50
- Jury, 5, 42
 - Charge from the coroner, 5, 46
 - Finding delinquent juror, 5, 42
 - How obtained, 5, 42
 - In general, 5, 42
 - Oath, 5, 45
 - Qualification of the jury, 5, 45
 - Summoning, 5, 42
- Justices of the peace, 5, 38
- Number of inquests, 5, 41
 - Upon several bodies, 5, 41
 - Upon the same body, 5, 41
- Oath:
 - Jury, 5, 45
- Physician and surgeon, 5, 43
 - Compensation, 5, 43
 - Employment discretionary, 5, 43
 - Summoning, 5, 43
- Post-mortem examination, 5, 44
- Preliminary examination:
 - Where coroner's inquest and commitment have been had, 16, 824

CORONER'S INQUESTS, *cont'd.*

- Publicity of the proceedings, 5, 43
- Exclusion of particular individuals, 5, 44
- In general, 5, 43
- Inquest proper, 5, 43
- Post-mortem examination, 5, 44
- Representation by counsel, 4, 44
- Reasonable inquiry, 5, 39
- Status of coroner's court, 5, 38
- Subjects of inquiry not specified by law, 5, 39
- Time to hold inquest, 5, 38
- Verdict, 4, 48, 49
- View, 5, 46
 - Examination of the body should be minute and careful, 5, 46
 - View of the body an essential requisite, 5, 46
- When coroner to hold inquest, 5, 38
- Witnesses, 5, 43, 46
 - Examination conducted by coroner, 5, 47
 - Hearing all persons who claim knowledge, 5, 47
 - Jury may question witness, 5, 47
 - Testimony may be reduced to writing, 5, 48
 - Witnesses should be enrolled and sworn, 5, 47

CORPORATIONS, 5, 52

See STOCK AND STOCKHOLDERS; WINDING UP CORPORATIONS.

- Abatement in pleading, 1, 10
- Abatement of action, 5, 96
 - Consolidation, 5, 98
 - Liability to be sued after dissolution, 5, 97
 - Right to sue after dissolution, 5, 96
- Accounts and accounting:
 - Parties to bill in equity, 1, 105
- Admissions:
 - Corporate existence, 5, 90
- Affidavits:
 - Who may make affidavits, 1, 326
- Allegations of corporate acts, 5, 92
- Amendments:
 - Names, 5, 65, 69
- Answer, see *infra*, Plea or answer.
- Appeals:
 - Aggrieved person, 2, 168
 - Service of notice of appeal, 2, 224
- Appearances, 4, 54
 - Admission of corporate existence, 2, 670
 - By attorney, 5, 54
 - Effect of general appearance, 5, 55
 - Manner of, 5, 54
 - Special appearance, 5, 56
 - United States courts, 5, 56

CORPORATIONS, *cont'd.*

- Appearances, *cont'd.*
 - Waiver of right to be sued where corporation has its residence, 2, 660
 - Warrant of attorney, 5, 55
 - Who may make appearance, 2, 669
- Arguments of counsel:
 - Appeals to prejudice against corporations, 2, 744
- Attachment:
 - Bond, 3, 35
- Attorneys:
 - Plea by, 5, 54
- Banks and banking, see BANKS AND BANKING.
- Bills of peace, 3, 565
- Burglary:
 - Averment of ownership, 3, 759
- By-laws:
 - Pleading charter or by-laws, 5, 94
- Certiorari, 4, 169
- Change of venue, 4, 389
- Charter:
 - Pleading charter or by-laws, 5, 94
- Citizenship, 18, 188
- Conditions precedent, 5, 83
- Consolidation, 22, 1297
 - Abatement of action, 5, 98
 - Name to sue and be sued, 5, 67
- Conspiracy:
 - To publish false statements concerning corporate affairs, 4, 733
- Corporate existence, 5, 70
 - Admission of corporate existence, 5, 90
 - Authorities holding averments necessary, 5, 73
 - Authorities holding that no averment is necessary, 5, 70
- Demurrer, 5, 89
- Denial of, 5, 77
 - Answer, 5, 86
 - At common law, 5, 77
 - Conditions precedent, 5, 83
 - Corporate existence of the defendant, 5, 79
 - General issue, 5, 77
 - Knowledge or information, 5, 87
- Null tiel* corporation, 5, 82
 - Amounting to general issue, 5, 84
 - Pleaded by defendant, 5, 84
 - Pleaded by third person, 5, 86
- Particularity required in denial, 5, 88
- Pleading over to the merits, 5, 81

CORPORATIONS, *cont'd.*Corporate existence, *cont'd.*Denial of, *cont'd.*

Special pleas, 5, 80

Under the code, 5, 79

Whether *nul tiel* corporation
is in bar or abatement, 5,
83Domestic corporation created by
private act, 5, 74

Estoppel, 5, 72

How dissolution pleaded, 5,
91

Judicial knowledge of, 5, 73

Legal conclusion, 5, 75

Name importing corporation, 5,
71Repetition in different counts, 5,
76

Sufficient allegations, 5, 76

Unnecessary allegations, 5, 75

What is sufficient allegation, 5,
75Whether necessary to allege, 5,
70

Creditors:

Parties to action, 5, 60

Creditors' bills:

Suits by creditors of corpora-
tions, 5, 395

Death:

Death of plaintiff, 5, 811

Declaration or complaints, 4, 599

Defaults:

Service of process, 6, 29

Demurrer:

Corporate existence, 5, 89

Denial of corporate existence (see
infra, Corporate existence):

Estoppel, 5, 72

Directing verdict, 6, 705

Dissolution:

Abatement of action, 5, 96

How pleaded, 5, 91

Ejectment, 7, 280

Foreign corporations, 7, 280

In general, 7, 280

Land improperly taken by mu-
nicipality, 7, 282

Municipal corporations, 7, 280

The state, 7, 280

Elections, see REVIEW OF CORPORATE
ELECTION.

Embezzlement:

Ownership, 7, 436

Error, writ of, 7, 858

Estoppel:

Denying corporate existence, 5,
72Examination of parties before trial,
8, 58

Exceptions and objections:

Corporate capacity, 8, 300

CORPORATIONS, *cont'd.*

Executions, 8, 419

Issuance against, 8, 419

Members of corporations, 8, 419

Variance in name, 8, 419

Writs intended to reach fran-
chises of corporations, 8, 395*Existence*, see *infra*, Corporate exist-
ence.

Forgery:

Existence of corporation, 9, 560

Fraud:

Joinder of parties, 9, 683

Garnishment:

Named in writ, 0, 000

Gas and gas companies, see GAS AND
GAS COMPANIES.

Indictments:

Description of corporation, 10, 509

Common though incorrect
name, 10, 510*De facto* corporation, 10, 509

Examples, 10, 509, 510

In general, 10, 509

Sufficiency of description,
10, 510

Injunctions:

Answer, 10, 1075

Violation of, 10, 1103

Intervention, 5, 60

Joinder of counts and causes:

Joinder of claims against cor-
poration with one against
stockholder, 20, 720

Joint demands, 5, 61

Judicial knowledge:

Corporate existence, 5, 73

Larceny:

Ownership of corporate prop-
erty, 12, 973

Legal conclusions, 12, 1035

Corporate existence, 5, 75

Mandamus, 13, 647

Corporation or officer, 13, 647

Joinder of parties in proceedings
affecting private corporations,
13, 658

Service of process, 13, 763, 765

What officer, 13, 648

Marshaling assets, 13, 890

Merger, 22, 1297

Mines and mining, see MINES AND
MINING.*Misnomer*, see *infra*, Name to sue
and be sued.*Monopolies*, see MONOPOLIES.*Municipal corporations*, see MUNICIPAL
CORPORATIONS.

Names:

Allegation of corporate exist-
ence, 5, 71Name in support of corporation,
5, 67

CORPORATIONS, *cont'd.*

- Name to sue and be sued, 5, 62
- Amendments, 5, 65, 69
- Attempt to change name unsuccessful, 5, 63
- Consolidation, 5, 67
- General rule, 5, 62
- How misnomer taken advantage of, 5, 68
- Names of officers, 5, 63
- Statutes authorizing suits by officers, 5, 65
- Stockholders, 5, 65
- Where contract with or by corporation is in wrong name, 5, 68
- Where corporate name is changed, 5, 66
- Where corporation is known by several names, 5, 66
- Negotiable instruments*, see **NEGOTIABLE INSTRUMENTS**.
- Nul tiel* corporations, 5, 82
- Officers of private corporations*, see **OFFICERS OF PRIVATE CORPORATIONS**.
- Parties to action (see **OFFICERS OF PRIVATE CORPORATIONS**), 5, 56
- Corporate wrong, 5, 57
- Corporation distinct from stockholders, 5, 53
- Creditors, 5, 60
- Fiduciary relationship, 5, 59
- Individual members, 5, 60
- In general, 5, 56
- Interest of corporation passing to successor, 5, 58
- Intervention, 5, 60
- Joint demands, 5, 61
- Substitution of parties*, see **SUBSTITUTION OF PARTIES**.
- Suit by stockholders, 5, 56
- Where property or franchise concerned, 5, 57
- Withdrawal from litigation, 5, 58
- Patents:
 - Joinder of corporations and their officers and agents, 16, 75
- Pleadings, 5, 61
 - All rules of pleading applicable to corporations, 5, 61
 - Corporate existence*, see *infra*, **Corporate existence**.
 - How to allege corporate acts, 5, 92
 - In what name to sue and be sued*, see *infra*, **Name to sue and be sued**.
 - Pleading charter or by-laws, 5, 94
 - Specially pleading defenses, 5, 93
 - Ultra vires*, 5, 95
 - Where charter gives another mode of relief, 5, 62

CORPORATIONS, *cont'd.*

- Plea or answer:
 - Answers in code pleading:
 - Allegations of status and capacity, 1, 796
 - Existence of a corporation, 1, 828
 - Answers in equity pleading, 1, 886
 - Answer of corporations as evidence, 1, 956
 - Exception, 1, 900
 - How made, 1, 886
 - Seals, 1, 886, 887
- Attorneys, 5, 54
- Denial of corporate existence, 5, 77
 - Answer, 5, 86
 - In general, 5, 77
 - Knowledge or information, 5, 87
 - Nul tiel* corporation, 5, 82
 - Particularity required of denial, 5, 88
 - Special pleas, 5, 80
 - Specially pleading defenses, 5, 93
 - Want of authority, 5, 93
- Production of documents, 6, 798
- Quo warranto*, see **QUO WARRANTO**.
- Railroads*, see **RAILROADS**.
- Receivers*, see **RECEIVERS**.
- Religious societies*, see **RELIGIOUS SOCIETIES**.
- Removal of causes*, see **REMOVAL OF CAUSES**.
- Reorganization, 22, 1297
- Returns*, see **RETURNS**.
- Right to sue and liability to be sued, 5, 54
- Scire facias*, see **SCIRE FACIAS**.
- Security for costs*, see **SECURITY FOR COSTS**.
- Sequestration*, see **SEQUESTRATION**.
- Service of process*, see **SERVICE OF PROCESS**.
- Stock and stockholders (see *infra*, **Parties to action**; and see **STOCK AND STOCKHOLDERS**):
 - Suits in name of stockholders, 5, 65
- Subscription:
 - Enforcement by corporation of subscriptions or calls*, see **STOCK AND STOCKHOLDERS**.
 - Substitution of parties*, see **SUBSTITUTION OF PARTIES**.
- Summons and process, 20, 1132, 1136
- Supplementary proceedings, 21, 100
- Taxation:
 - Mandamus, 21, 386
- Ultra vires* (see **STOCK AND STOCKHOLDERS**):
 - Pleading *ultra vires*, 5, 95

CORPORATIONS, *cont'd.*

Unincorporated societies, see UNINCORPORATED SOCIETIES.

United States courts, see UNITED STATES COURTS.

Venue, see VENUE.

Verification, 22, 1037

Warrant of attorney, 5, 55

Winding up corporations, see WINDING UP CORPORATIONS.

CORROBORATION OF WITNESSES, see IMPEACHMENT AND CORROBORATION OF WITNESSES.**COSTS**, 5, 100

Abandonment of suit, 5, 128

Abatement of action, 5, 130

Abiding the event, 1, 59

General rule as to costs, 1, 59

New trial, 1, 59

Statute, 1, 60

Test action, 1, 67

"With costs to abide the event," 5, 220

Accounts and accounting, 1, 102

Action for costs, 5, 256

Additional allowance of costs, see ADDITIONAL ALLOWANCES OF COSTS.

Admiralty (see ADMIRALTY):

Bill of costs, 1, 292

Libellant's stipulation for costs, 1, 257

Stipulation for costs, 1, 264

Taxation of costs, 1, 276

Affidavits, 5, 238

Affidavit to the bill of costs, 5, 242

Agreed case, 1, 400

Alimony, see ALIMONY.

Allowance of costs, see ADDITIONAL ALLOWANCES OF COSTS.

Amendments, 5, 222

Payment of costs as a condition precedent, 1, 507

Terms of amendment, 1, 605, 646

Amicable suits, 5, 189

Amount in controversy, 5, 157

Costs dependent on amount of demand, 5, 157

In general, 5, 157, 159

Payments not part of claim, 5, 158

Costs dependent on amount of recovery, 5, 159

Actions concerning realty, 5, 172

Actions for chattels and choses in action, 5, 169

Actions for damages, 5, 177

Actions for penalties, 5, 171

Actions in tort, 5, 168

Arbitration, 5, 168

Breach of warranty, 5, 169

COSTS, *cont'd.*

Amount in controversy, *cont'd.*

Costs dependent on amount of recovery, *cont'd.*

Claim reduced, 5, 181

Exclusive jurisdiction of upper court, 5, 164

In cases of appeal, 5, 163

Interest and costs not considered, 5, 160

Issue as to title, 5, 172

Judgment for defendant on appeal, 5, 164

Jurisdiction as affecting costs, 5, 164

Jurisdiction determined by amount recovered, 5, 165

Jurisdiction of justice, 5, 165

Libel and slander, 5, 170

Miscellaneous points, 5, 162

Nominal damages, 5, 161

No more costs than damages, 5, 178

One-quarter costs, 5, 181

Partial costs, 5, 167

Plaintiff recovering less on appeal, 5, 163

Reasonable expectation of greater recovery, 5, 161

Recovery below limited amount, 5, 166, 176

Removal from state to federal courts, 5, 163

Replevin, 5, 171

Reversal for plaintiff on appeal, 5, 163

Several defendants, 5, 164

Statutes, 5, 159

Title in issue, 5, 172

Title not in issue, 5, 175

Title of plaintiff admitted, 5, 176

Title successfully denied, 5, 176

Trespass, 5, 172, 176

Trespass *quare clausum fregit*, 5, 176

Trover, 5, 172

Unfounded demand for large sum, 5, 167

Usury, 5, 163

Another suit pending:

Payment of costs in first suit, 1, 756

Appeal bonds and undertakings (see APPEAL BONDS AND UNDERTAKINGS):

Amount of bonds, 1, 979

Appeals, 2, 369; 5, 192

Accounting, dissolution, and settlement, 15, 1112

Additional abstract, 5, 214

Affirmance, 5, 197

COSTS, *cont'd.***Appeals, *cont'd.***

- Amount in controversy, 5, 163
- Judgment for defendant, 5, 164
- Plaintiff recovering less, 5, 163
- Reversal for plaintiff, 5, 163
- Appeal from commissioners, 5, 208
- Appeal from magistrate, 5, 205
- Appeal from probate courts, 5, 208
- Appellant generally charged, 5, 198
- Appellant not obtaining more favorable judgment, 5, 195
- Attorney's fees, 5, 227
- Both parties successful, 5, 203
- Case on exception, 5, 195
- "Costs to abide event," 5, 220
- Cross appeals, 5, 203
- Decisions affecting costs, 2, 133
 - Extra allowance, 2, 135
 - Final orders, 2, 135
 - In general, 2, 133
 - Interlocutory orders, 2, 135
 - Temporary alimony, 2, 136
- Decree silent as to costs, 5, 220
- Default affecting costs, 5, 210
- Defective pleadings, 5, 211
- Discretion of court, 2, 412
- Discretion subject only to statutory limitations, 5, 192
- Dismissal for want of jurisdiction, 5, 200
- Dismissal of appeal, 2, 344, 354; 5, 199
- Dismissal operates as affirmance, 5, 199
- Doubtful cases, 5, 194
- Final judgments and decrees, 2, 63, 64; 5, 202
- General discretion, 5, 192
- Improper conduct, 5, 210
- Interpretation of decrees, 5, 219
- Justices of the peace, 5, 205
- Mistrial, 5, 200
- Motion for retaxation, 5, 249
- Negligence as affecting costs, 5, 210
- Neither party successful, 5, 203
- Omission to file papers, 5, 211
- Only necessary part of record taxable as costs, 5, 213
- Partial affirmance or reversal, 5, 202
- Payment as waiver of right of appeal, 2, 177, 182
- Point not made below, 5, 212
- Preliminary payment of fees, see APPEALS.*

COSTS, *cont'd.***Appeals, *cont'd.***

- Presumption in favor of costs allowed below, 5, 217
- Prevailing party, 5, 194
- Printing, 5, 233
- Prolix transcript, 5, 212
- Remittitur of amount, 5, 204
- Remittitur of record, 5, 205
- Reversal, 5, 200
- Reversal of reversal, 5, 220
- Review of taxation, 5, 251
 - Bill of exceptions necessary, 5, 252
 - From what appeal may be taken, 5, 251
 - Who may not appeal, 5, 253
- Revision of costs, 5, 216
- Revision of costs in equity, 5, 218
- Superfluous matter taxable to party in fault, 5, 214
- Where there is no jurisdiction below, 5, 120
- "With costs," 5, 219
- "With costs in both courts," 5, 220
- Withholding the costs, 5, 198
- Writs of error, 5, 196
- Appearances:**
 - Failure to appear, 5, 223
 - Moving a retaxation of costs, 2, 656
- Apportionment and division, 5, 142**
 - Demurrer, 5, 146
 - Issues of law and fact, 5, 146
 - Suits for the recovery of personal property, 5, 143
 - Suits upon claims composed of several items, 5, 142
 - Where success is divided, 5, 142
 - Where there are several counts, 5, 143
 - Where there are several issues, 5, 143
- Arbitration and award:**
 - Amount in controversy, 5, 168
 - Power of arbitrator, 5, 116
 - Prevailing party, 5, 123
- Arrest of judgment, 2, 822; 5, 131**
- Assignment:**
 - Assignor and assignee, 5, 150
- Assignment for benefit of creditors, 5, 151**
 - Accounting, 2, 918
 - Action by assignee to protect property, 2, 876
 - Action to set aside assignment, 2, 909
- Assistance, writ of, 2, 985**
- Attachment:**
 - Collection of costs, 5, 259

COSTS, *cont'd.*

- Attorneys, 5, 153
 - Attorney for party, 5, 155
 - Liability for, 5, 153
 - Liability of attorney for non-resident plaintiff, 5, 155
 - Liens, 5, 122
 - Scandalous pleadings, 5, 153
 - Several defendants appearing by the same or different attorney, 5, 138
 - Sheriff's and clerk's fees, 5, 154

Attorney's fees, see ATTORNEY'S FEES.

Bankruptcy, see BANKRUPTCY.

Bastardy, 3, 311

Bill of costs, see infra, Taxation of costs.

Bills of exceptions, 3, 394

Review of costs, 5, 252

Bills of review, 3, 597

Boundaries and fences, 3, 677

Certiorari, see CERTIORARI.

Change of venue, 4, 453, 470

Justices, 4, 479

Classes, 5, 107

Clerk of court:

Clerk's fees, 5, 230

Collection of fees of court officers, 5, 258

To whom payable, 5, 255

Cognovit, 4, 561

Collection of costs, see infra, Payment and collection.

Commissioners:

Appeals from commissioners, 5, 208

Compromise, 5, 146

Conditions precedent, 5, 261

Payment as a condition precedent of granting relief or favors, 5, 263

Payment as a condition precedent of prosecution of second suit, 5, 261

Consolidation of actions:

Several suits which might have been consolidated, 5, 141

Taxation of costs, 4, 699

Contempt, 4, 806

As the only punishment, 4, 806

Collection of costs, 5, 260

Criminal contempt, 4, 807

Extenuating circumstances, 4, 806

In general, 4, 806

Limitation of imprisonment for failure to pay costs, 4, 802

Contest of wills, see PROBATE AND CONTEST OF WILLS.

Continuances:

Failure to give security for costs, 4, 831

COSTS, *cont'd.*

Controversy, see infra, Amount in controversy.

Copyright, 5, 25

Coroner's inquests, 5, 40

Courts, see infra, Power to award costs.

Criminal cases, see FINES AND COSTS IN CRIMINAL CASES.

Cross-bill, 5, 192

Damages:

Damages to land, 5, 177

Nominal damages, 5, 161

No more cost than damages, 5, 178

Cases where general rule not applicable, 5, 179

General rule, 5, 178

Who liable for remaining costs, 5, 180

Prevailing party, 5, 124

Relation to damages, 5, 108

Death by wrongful act, 5, 888

Debt, 5, 899

Decrees:

Opening decrees *pro confesso*, 5, 1028

Default, 6, 219

Application for relief from defaults, 6, 165

Examples, 6, 219, 220

Excessive judgments, 6, 111

For costs only, 6, 136

Requiring payment before opening, 6, 219

Security for costs, 6, 219

Definition, 5, 106

Demurrer, 5, 131

Double costs, 5, 183

Execution, 5, 257

Issue of fact left to be determined upon trial, 5, 146

Payment of costs as a condition of pleading over, 6, 363

Whether interlocutory costs, 5, 223

Dependent on amount of demand, see infra, Amount in controversy.

Depositions:

Examples, 6, 635, 636

In equity and at law, 6, 436

In general, 6, 635

United States courts, 6, 633

Attendance of witness at trial, 6, 634

Bill of costs, 6, 635

Deposition in another suit, 6, 634

Of attorney, 6, 634

Of officer, 6, 633

Disbarment and suspension of attorneys:

Taxing costs against informant, 6, 717

COSTS, *cont'd.*

- Disbursements, 5, 221, 226
 - Costs distinguished from disbursements, 5, 107
- Disclaimer, 5, 132; 6, 726
- Discovery, 6, 780
 - Application for costs, 6, 781
 - Carelessness of attorney, 6, 781
 - Exceptions, 6, 780
 - General rule, 6, 780
 - Qualifications, 6, 780
- Discretion of court, 5, 111
- Dismissal, discontinuance, and nonsuit, 5, 126, 222; 6, 969
 - Against legal representative, 6, 974
 - Appeals, 5, 199
 - Apportionment of joint items, 6, 970
 - By court, 5, 129
 - By plaintiff, 5, 128
 - Costs cannot be offset, 6, 971
 - Costs on appeal, 6, 971
 - Costs on denial of motion, 6, 978
 - Defendant, 6, 975
 - Defendant's bankruptcy, 6, 973
 - Defendant usually entitled, 6, 969
 - Discontinuance, 5, 135, 139; 6, 974
 - Dismissal before appearance, 6, 973
 - Dismissal for want of jurisdiction, 6, 974
 - Effect of nonpayment of costs, 6, 977
 - Equity, 5, 189
 - Failure to file security for costs, 6, 919
 - Infant plaintiff, 6, 974
 - In general, 6, 969
 - Nonsuit, 6, 977
 - Quashing writ, 5, 129
 - Stay of proceedings, 6, 978
 - To what defendant, 6, 970
 - Unauthorized bill, 6, 974
 - Want of prosecution, 6, 915
 - What costs are included, 6, 970
 - Where plaintiff relieved of costs, 6, 971
- Distringas, writ of, 7, 36
- Division*, see *infra*, Apportionment and division.
- Divorce:
 - Effect of death on orders for temporary alimony and costs, 7, 123
- Documentary evidence, 5, 234
- Double and treble costs, 5, 182
 - Demurrer, 5, 183
 - Frivolous exceptions, 5, 182
 - Mode of computation, 5, 184
 - Nonfeasance, 5, 183
- Index Pl. & Pr. — 13

COSTS, *cont'd.*

- Double and treble costs, *cont'd.*
 - Replevin, 5, 182
 - Right to, 5, 183
 - What statute governs, 5, 183
 - When allowable, 5, 182
- Doubtful questions, 5, 147
- Dower, 7, 171
 - Equity, 7, 185
- Drainage, 7, 218
- Eminent domain, 7, 666
 - Allowance in addition to costs, 7, 671
- Appeals, 7, 668
 - Apportionment of costs, 7, 669
 - Company's appeal, 7, 669
 - In general, 7, 668
 - Interest, 7, 669
 - Owner's appeal, 7, 669
 - Where owner fails to secure increased award, 7, 669
 - Compelling allowances, 7, 670
 - Compelling payment, 7, 670
 - Counsel fees, 7, 672
 - Discretionary powers of court, 7, 667
 - Effect of tender or offer of judgment, 7, 668
 - Expenses, 7, 672
 - Fees, 7, 672
 - Jurors' fees, 7, 672
 - Landowner's right to costs, 7, 666
 - Necessity of a statute, 7, 666
 - When the owner's default is opened, 7, 667
 - Witnesses' fees, 7, 672
- Equitable assignments:
 - Assignment *pendente lite*, 7, 772
- Equitable plaintiff, 5, 150
- Equity, 5, 184
 - Amicable suits, 5, 189
 - Cross-bill, 5, 192
 - Dismissal, 5, 189
 - Exceptions to answer, 5, 190
 - Exceptions to master's report, 5, 187
 - Executors and administrators, 5, 185
 - Express award, 5, 186
 - General principles, 5, 184
 - Parties, 5, 191
 - Pleadings, 5, 190
 - Prevailing party, 5, 186
 - Revision of costs by appellate court, 5, 218
 - Time of awarding costs, 5, 186
 - Various classes of actions, 5, 185
 - When costs will be apportioned or not awarded, 5, 187
- Error, writ of, 5, 196
 - Discontinuance, 7, 907

COSTS, *cont'd.*

- Exceptions and objections, 8, 294
 - Motion for relaxation of costs, 8, 295
 - On appeal, 8, 294
 - Specifically erroneous items, 8, 295
 - Stating reasons for objections, 8, 295
 - Taxation of costs, 8, 294

Executions, 8, 432

- Collection by execution, 5, 256
 - Appeals, 5, 257
 - Collection of fees of court officers, 5, 258
 - Demurrer, 5, 257
 - Execution irregularly issued, 5, 258
 - In general, 5, 256
 - Interlocutory costs, 5, 257
 - Mandamus for issuance of execution, 5, 257
 - What the execution should show, 5, 258

Executors and administrators (see SETTLEMENT OF DECEDENTS' ESTATES), 5, 156; 8, 728

- Plene administravit* found for defendant, 8, 730
- Statutory regulations, 8, 731
- Suits in equity, 8, 733
- When subjected to costs, 8, 730
- When they are defendants at law, 8, 730
- When they are plaintiffs, 8, 728

Extradition, 8, 825

- In general, 8, 825
- International extradition, 8, 825
- Interstate extradition, 8, 826

Fees (see *infra*, What is taxable):

- Fees distinguished from costs, 5, 107

Filing pleadings and papers, 8, 930**Final, 5, 107****Final hearing, 5, 227****Final judgments and decrees, 2, 63, 64; 5, 202****Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.****Forma pauperis (see FORMA PAUPERIS), 5, 157****Fund, 5, 156****Funds and deposits in court:**

- Effect as to costs, 9, 731
- In general, 9, 731
- Payment out of court of equity, 9, 758
- Payment to plaintiff, 9, 733
- Where defendant proceeds, 9, 731

Garnishment (see GARNISHMENT), 5, 156**Governments, 5, 151****COSTS, *cont'd.*****Guardian *ad litem*, 5, 155**

- Taxing allowance as costs, 10, 686

Guardians, 5, 155; 9, 948

- When guardian chargeable, 9, 948
- When guardian not chargeable, 9, 949

Habeas corpus, 9, 1068**Security, 9, 1069****State courts, 9, 1069****United States courts, 9, 1068****Where respondent dies, 9, 1069****Heirs and devisees, 10, 36****History, 5, 108****Infants, 5, 155; 10, 700****Insane persons:**

- Proceedings to supersede the commission on restoration to mental soundness, 10, 1212

Traverse, 10, 1205**Interests:**

- Interest and costs not considered in determining amount in controversy, 5, 160

Interlocutory costs, 5, 107, 221**Amendments, 5, 222****Court granting less than is asked for, 5, 222****Demurrer, 5, 223****Dismissal, 5, 222****Execution, 5, 257****Failure to appear, 5, 223****Favor of court, 5, 222****Inequitable conduct, 5, 222****In general, 5, 221****Necessary motion, 5, 221****Notice of motion, 5, 222****Prevailing party, 5, 221****Interpleader, 5, 157**

- Bills in the nature of interpleader, 11, 480

Costs on sustaining bill of interpleader, 11, 475**Counsel fees and expenses, 11, 476****Obtained on motion or at the hearing, 11, 477****Plaintiff guilty of bad faith, 11, 476****Plaintiff proceeding in good faith, 11, 475****On dismissal of bill of interpleader, 11, 477****Interveners, 5, 157****Intervention:****Liability for costs, 11, 511****Issues to the jury, 11, 735****Action directed instead of issue, 11, 755****Application for new trial, 11, 737****Discretion of court, 11, 736**

COSTS, *cont'd.*Issues to the jury, *cont'd.*

- Each party successful on some issues, 11, 736
- Generally follow event and for successful party, 11, 736
- How awarded, 11, 736
- Issue directed on interlocutory application, 11, 735
- Issues taken *pro confesso*, 11, 678
- Neither party entirely successful, 11, 736
- New trial granted for misdirection, 11, 736
- Of former trial where new one applied for, 11, 735
- Of the entire case, 11, 737
- Of the new trial, 11, 737
- Of tried issues, 11, 735
- Of withdrawn or untried issues, 11, 735

Joint defendants, see infra, Several defendants.

Judgments:

- Actions on judgments, 11, 1167
- Correcting error in taxation of costs on appeal, 11, 1069
- Costs arising after judgment, 5, 225
- Description of judgment in declaration and complaint in actions on judgments, 11, 1127
- Medium of payment, 11, 947
- Relation of costs to judgment, 5, 109

Jurisdiction:

- As affecting costs, 5, 164
 - Amount in controversy, 5, 164
 - Exclusive jurisdiction of upper court, 5, 164
 - Jurisdiction determined by amount of recovery, 5, 165
 - Partial costs, 5, 167
 - Recovery of less than fixed amount, 5, 166
 - Unfounded demand for large sum, 5, 167
 - When jurisdiction concurrent, 5, 165
 - Within jurisdiction of the justice of the peace, 5, 165
- Cases remanded from federal to state courts, 5, 120
- Courts of special jurisdiction, 5, 224
- Lack of jurisdiction arising from repeal of statute, 5, 119
- On appeal where there is no jurisdiction below, 5, 120
- Where lack of jurisdiction is not apparent, 5, 119

COSTS, *cont'd.*Jurisdiction, *cont'd.*

- Where there is lack of jurisdiction in general, 5, 117

Jury:

- Costs of former action, 5, 115
- Power of jury to award, 5, 115

Justices of the peace:

- Amount in controversy, 5, 165
- Appeals from magistrates, 5, 205
 - Discretionary, 5, 205
 - General custom of appellate court, 5, 206
 - In general, 5, 205
 - Unsuccessful party liable for costs, 5, 206
 - Whether reviewable, 5, 205

Landlord and tenant:

- Summary proceedings under statutes, 12, 895

Liability for costs, see infra, Right to and liability for costs.

Libel and slander, 13, 113

- Amount in controversy, 5, 170

Liens:

- Attachment, 13, 134
- Lien for costs, 5, 260

Mandamus, 13, 568, 816

- Action for false return, 13, 818
- Amount, 13, 821
- Appeal, 13, 828
- Contempt proceedings, 13, 819
- Costs in discretion of court, 13, 817

- Judgment for costs alone, 13, 818

Judicial officers, 13, 819

Mandamus for issuance of execution, 5, 257

Matters affecting public rights, 13, 821

Ministerial officers, 13, 820

Punitive costs, 13, 819

Real party in interest, 13, 821

Recovery of damages necessary, 13, 817

Refusal of peremptory writ, 13, 817

Retaxation, 5, 247

Right to costs follows judgment, 13, 816

Security for costs, 13, 822

Strangers, 13, 820

Sundry items of costs, 13, 822

Taxation, 13, 568, 821

To enter judgment for costs, 13, 569

To require security, 13, 568

To vacate allowance of costs, 13, 569

Who liable for costs, 13, 819

Mandate:

- Payment of costs, 13, 829

COSTS, *cont'd.*

Married women, 5, 156

Master in chancery:

Exceptions to master's reports,
5, 187*Mechanics' liens*, see **MECHANICS'**
LIENS.

Mills and milldams, 14, 13

Miscellaneous items, 5, 238

Motions, see *infra*, Interlocutory
costs; Taxation of costs.

Municipal corporations, 5, 151

Nature, 5, 108

Negligence, see *infra*, Appeals.*New trial*, see **NEW TRIAL.***Next friend*, see **NEXT FRIEND.**

Nominal damages:

Amount in controversy, 5, 161

Nominal party, 5, 149

Nonsuit, 5, 125

Notice of retaxation, 5, 250

Notice of taxation, 5, 243

Failure to appear and object, 5,
244

Failure to give, 5, 243

Novel question, 4, 147

Offer of judgment:

Acceptance of offer, 15, 48

Actions in justices' courts, 15, 53

Costs accruing prior to offer, 15,
50Costs accruing subsequently to
offer, 15, 50

Effect of acceptance, 15, 48

Effect of refusal of offer as to
costs, 15, 49Reduction of judgment on ap-
peal, 15, 52What is more favorable judg-
ment, 15, 54Where counterclaim or set-off is
pleaded, 15, 56Where recovery less favorable
than offer, 15, 50Whether interest included, 15,
58

Official bonds, 15, 163

One-quarter costs, 5, 181

Opening, amending, and vacating
judgments:

Judgment for costs, 15, 213

Ordinances, 15, 439

Attorney's fees, 15, 440

Costs dependent upon statute,
15, 439

Examples, 15, 440

Whether taxed against munici-
pality, 15, 439

Orphans' courts, 5, 224

Ownership, 5, 122

Parties to actions (see *infra*, Prevail-
ing party; Several defendants;
Several suits), 5, 148**COSTS, *cont'd.***Parties to actions, *cont'd.*Costs between party and party,
5, 108, 224

Equitable plaintiff, 5, 150

In general, 5, 148

Nominal party, 5, 149

Persons unnecessarily made par-
ties in equity cases, 5, 191Plaintiff suing *en autre droit*, 5,
150

Partnership, 15, 971

Accounting, dissolution, and set-
tlement, 15, 1110

Division of costs, 15, 1111

Patents:

Disclaimer entered after suit,
16, 63Payment and collection (see *infra*,
Amount in controversy), 5, 253;
16, 221

Action for costs, 5, 256

Attachment, 5, 259

Collections of fees of court offi-
cers, 5, 258

Contempt, 5, 260

Costs accruing before payment
into court, 16, 226Costs accruing subsequently to
payment into court, 16, 228

Execution, 5, 256

Execution irregularly issued, 5,
258From whom to be collected, 5,
253

In general, 16, 221

In what payable, 5, 255

Lien for costs, 5, 260

Mandamus for issuance of exe-
cution, 5, 257

Miscellaneous remedies, 5, 260

Payment as a condition, 5, 261

Payment as a condition of grant-
ing relief or favors, 5, 263Payment as a condition of prose-
cution of second suit, 5, 261

Payment into court, 16, 226

Payment of clerk, 5, 255

Payment of sheriff, 5, 255

Prevailing party, 5, 256

Puis darrein continuance, 16, 221Reduction of debt by payment
below jurisdictional limit, 16,
222

Remedies for collection, 5, 256

Set-off of costs, 5, 264

Time of payment, 5, 254

To whom payable, 5, 255

What the execution should show,
5, 258

Payment by the defendant, 5, 147

Penalties and penal actions, 16, 307

Amount in controversy, 5, 171

COSTS, *cont'd.*Penalties and penal actions, *cont'd.*

At common law, 16, 307

By statute, 16, 308

Pending suit:

Where statute applies to, 5, 113

Perpetuation of testimony, 16, 364

Petitions, see PETITIONS.

Poor and poor laws, 16, 672

Procedure against kindred of pauper, 16, 663

Power to award costs, 5, 110

Arbitrator's right to award, 5, 116

Cases remanded from federal to state court, 5, 120

Construction of statutes, 5, 111

Court's right to award, 5, 114

Dependent upon statute, 5, 110

In equity, 5, 114

Jury's right to award costs of former action, 5, 115

On appeal where no jurisdiction below, 5, 120

Statutes, 5, 111

Stipulation by parties, 5, 111

Time of awarding, 5, 120

What statutes govern, 5, 111

In point of place, 5, 113

In point of time, 5, 111

Where lack of jurisdiction arising from repeal of statute, 5, 119

Where lack of jurisdiction is not apparent, 5, 119

Where there is lack of jurisdiction, 5, 117

Whether statutes apply to pending suits, 5, 113

Who may award, 5, 114

Prevailing party, 5, 122

Appellate court, 5, 194

Damages, 5, 124

Equity, 5, 186

General rule as applicable to costs, 5, 122

Interlocutory costs, 5, 221

References, 5, 123

Set-off, 5, 124

Some relief, 5, 124

Statutes, 5, 124

Suits for possession of property, 5, 124

To whom payable, 5, 256

Who is prevailing party, 5, 123

Previous suit, 5, 237

Printing, 5, 233

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.*Probate court*, see *infra*, Surrogates.

Prohibition, 16, 1142

Judge of inferior court, 16, 1143

Plaintiff usually taxed, 16, 1142

COSTS, *cont'a.*Prohibition, *cont'd.*

Where petition is dismissed or rule discharged, 16, 1143

Where plaintiff below abandons or submits, 16, 1143

Property, 5, 122

Prosecuting attorneys, see PROSECUTING ATTORNEYS.*Public officers*, see PUBLIC OFFICERS.*Puis darrein continuance*, 5, 132; 17, 273*Quieting title*, see QUIETING TITLE.*Quo warranto*, 17, 491*Railroads*, see RAILROADS.*Real property*, see *infra*, Title to real property.

Receivers (see RECEIVERS), 5, 156

Records, see *infra*, Appeals.*Recovery*, see *infra*, Amount in controversy.*Redemption*, see REDEMPTION.

References, 5, 238; 17, 1089

Discretion of referee, 17, 1090

Power of referee, 5, 116

Prevailing party, 5, 123

Statutory provisions, 17, 1089

Rehearing, see REHEARING.

Remittitur, 5, 204

Amount, 5, 204

Costs charged to party entering remittitur, 5, 204

Improper or excessive recovery of costs, 18, 143

Record, 5, 205

Removal of causes (see REMOVAL OF CAUSES):

Amount in controversy, 5, 163

Repleader, 5, 133; 18, 493

Replevin, see REPLEVIN.*Relaxation*, see *infra*, Taxation of costs.

Review, 18, 1047

Review as of favor, 18, 1020

Review of right, 18, 1047

Costs of original trial, 18, 1049

In general, 18, 1047

Liability of indorsers and recognizers, 18, 1049

Reduction of amount of recovery, 18, 1048

Review of taxation, see *infra*, Taxation of costs.

Right of property, trial of, 18, 1193

Right to and liability for costs, 5, 121

Abandonment, 5, 128

Abatement of action, 5, 130

Apportionment and division, see *infra*, Apportionment and division.

Arrest of judgment, 5, 131

Assignor and assignee, 5, 150

COSTS, *cont'd.*Right to and liability for costs, *cont'd.*

- Attorneys, 5, 153
- Attorney's lien, 5, 122
- By payment by defendant, 5, 147
- Compromise, 5, 146
- Demurrer, 5, 131
- Disclaimer, 5, 132
- Discontinuances, 5, 126
- Dismissal, 5, 128, 129
- Doubtful questions, 5, 147
- Estate, 5, 156
- Executors and administrators, 5, 156
- Forma pauperis*, 5, 157
- Funds, 5, 156
- Garnishee, 5, 156
- General assignee for benefit of creditors, 5, 151
- Governments, 5, 151
- Guardians, 5, 155
- Infants, 5, 155
- Interveners, 5, 157
- Married women, 5, 156
- Municipalities, 5, 151
- Next friend, 5, 155
- Nonsuit, 5, 125
- Novel and doubtful questions, 5, 147
- Ownership, 5, 122
- Parties to the suit, 5, 148
- Plea puis darrein continuance*, 5, 132
- Prevailing party*, see *infra*, *Prevailing party*.
- Public officers, 5, 152
- Receivers, 5, 156
- Repleader, 5, 133
- Stockholders, 5, 156
- Trustees, 5, 156
- Upon various pleading, 5, 131
- Various classes of parties, 5, 148
- Various termination of suits, 5, 125
- When right vests, 5, 121
- Where the case is settled out of court, 5, 146
- Where there are several defendants*, see *infra*, *Several defendants*.
- Where there are several suits*, see *infra*, *Several suits*.
- Satisfaction and discharge of judgments, 19, 137
- Vacating satisfaction, 19, 146
- Waiver of right of appeal, 19, 178
- Scandal and impertinence*, see SCANDAL AND IMPERTINENCE.
- Schools*, see SCHOOLS.
- Scire facias*, see SCIRE FACIAS.
- Security for costs*, see SECURITY FOR COSTS.

COSTS, *cont'd.*

- Set-off, recoupment, and counterclaim*, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.
- Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.
- Settlement out of court, 5, 146
- Several defendants, 5, 133, 164
 - Appearance by the same or different attorney, 5, 138
 - Discontinuance as to defendant answering, 5, 135
 - Discontinuance as to one or more, 5, 139
 - General rule, 5, 133
 - Joint contracts, 5, 137
 - Joint defendants, 5, 134
 - Joint or several bills of costs where the defendants do not sever, 5, 135
 - Joint or several bills of costs where the defendants sever, 5, 136
 - Judgment for plaintiff, 5, 133
 - Plaintiff prevailing, 5, 133, 137
 - Recovery by some defendants only, 5, 133
 - Separate answers, 5, 134
 - Severance for oppression, 5, 136
 - What costs successful defendant entitled to, 5, 134
 - Where one defendant suffers default and the other defends, 5, 135
- Several suits, 5, 139
 - Against different parties to the same note, 5, 140
 - Against joint tortfeasors, 140
 - Failure to set off claim afterwards sued on, 5, 142
 - General rule as to costs, 5, 139
 - Stipulations, 5, 139
 - Upon the same cause of action, 5, 140
 - Where several suits are or might be consolidated, 5, 141
- Sham and frivolous pleadings (see SHAM AND FRIVOLOUS PLEADINGS), 20, 87
- Sheriffs and constables, 20, 179
- Special and struck juries, 20, 295
- Special proceedings, 5, 224
- Specific performance*, see SPECIFIC PERFORMANCE.
- States, 5, 151
- Statutes:
 - Construction of statute, 5, 111
 - Lack of jurisdiction arising from repeal of statute, 5, 119
 - Legislative changes, 5, 113
 - Power to award dependent upon statute, 5, 110

COSTS, *cont'd.***Statutes, *cont'd.***

- Time of verdict, not judgment, controls, 5, 112
- What statutes govern in point of place, 5, 113
- What statutes govern in point of time, 5, 111
- Where statute applies to pending suit, 5, 113

Stenographer's fees, 5, 231

Stipulations, 5, 111; 20, 634

Motion for relief, 20, 668

Several suits, 5, 139

Stock and stockholders (see STOCK AND STOCKHOLDERS), 5, 156

Sum in controversy, see *infra*, Amount in controversy.

Supersedeas and stay of proceedings, see SUPERSEDEAS AND STAY OF PROCEEDINGS.

Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.

Surrogates:

Appeals from surrogate, 5, 209

Examples, 5, 208, 210

In general, 5, 208

Unsuccessful appellant, 5, 208

Orphans' courts, 5, 224

Taxation, see TAXATION.

Taxation of costs (see *infra*, What is taxable):

Affidavit to the bill of costs, 5, 242

Attorney making out itemized statement, 5, 241

By whom costs are to be taxed, 5, 239

Failure to appear and object, 5, 244

Failure to give notice of taxation, 5, 243

Notice of taxation, 5, 243

Procedure, 5, 239

Review, 5, 346

Action of the court, 5, 251

Costs of motion, 5, 248

In lower court, 5, 246

Mandamus, 5, 247

Moving for retaxation after appeal, 5, 249

Notice of retaxation, 5, 250

Proper procedure, 5, 246

Specification of items, 5, 250

Time of moving for retaxation, 5, 248

Upon appeal, 5, 251

What the motion for retaxation should show, 5, 250

Time of taxation, 5, 245

Who entitled to notice of taxation, 5, 243

COSTS, *cont'd.*

Tender, see TENDER.

Time of awarding, 5, 120

Time of payment, 5, 254

Time of taxation, 5, 245

Title to real property, 5, 172

Amount in controversy, 5, 172

Issue as to title, 5, 172

Raising the issue, 5, 173

Trespass, 5, 176

When plaintiff's title admitted, 5, 176

When plaintiff's title is successfully denied, 5, 176

When title not in issue, 5, 175

Tolls, 21, 750

Trade-marks and trade names, 21, 772

Treble costs, see *infra*, Double and treble costs.

Trespass (see TRESPASS), 5, 176

Trespass to try title, 21, 951

Trover and conversion, 5, 172; 21, 1131

Trusts and trustees (see TRUSTS AND TRUSTEES), 5, 156

United States, 5, 151

United States courts (see UNITED STATES COURTS), 22, 305

Usury:

Amount in controversy, 5, 163

Suits in equity for affirmative relief or discovery, 22, 477

Vendor's liens, 22, 749

Warranty:

Amount in controversy, 5, 169

Waste, 22, 1101, 1111

Waters and watercourses, 22, 1165, 1176

What is taxable, 5, 224

Accountant's fees, 5, 231

Affidavits, 5, 238

Appearance or docket fee, 5, 226

Argument fees, 5, 237

Attorney's fees, 5, 226

Attorney's fees in various proceedings, 5, 229

Auditor's fees, 5, 230

Between attorney and client, 5, 225

Between party and party, 5, 224

Clerk's fees, 5, 230

Constable's fees, 5, 231

Costs arising after judgment, 5, 225

Disbursements, 5, 226

Documentary evidence, 5, 234

Fees for a copy of minutes, 5, 232

Fees of various officers, 5, 230

Final hearing, 5, 227

In general, 5, 224

Master's fees, 5, 231

Previous suit, 5, 237

COSTS, *cont'd.*What is taxable, *cont'd.*

- Printing, 5, 233
- Printing briefs on appeal, 5, 235
- Printing record on appeal, 5, 235
- Reasonable attorney's fees, 5, 228
- Statutes allowing attorney's fees, 5, 228
- Stenographer's fees, 5, 231
- Surveyor's fees, 5, 233
- Term fees, 5, 235
- Transcribing, 5, 233
- Trial fees, 5, 236

Wills, see PROBATE AND CONTEST OF WILLS; WILLS.

Winding up corporations, 22, 1292

"With costs," 5, 219

"With costs in both courts," 5, 220

COUNSEL (see ATTORNEY):

Appearances, 2, 620

Arguments of counsel, see ARGUMENTS OF COUNSEL.

Criminal procedure:

Right to counsel, 2, 767

Examination of witnesses, see EXAMINATION OF WITNESSES.

COUNSEL FEES (see ATTORNEY'S FEES):

Trusts and trustees, see TRUSTS AND TRUSTEES.

COUNTERCLAIM, see SET-OFF, RECEIPTMENT, AND COUNTERCLAIM.**COUNTERFEITING, 5, 266**

Aiders and abettors, 5, 292

Banknotes, see *infra*, Description of counterfeit instrument; Having counterfeit banknotes in possession; Passing counterfeit banknotes.

Banks:

Existence and incorporation of bank, 5, 290

Coins, 5, 269

Allegations of intent, 5, 270

Allegations of similitude, 5, 269

Form of indictment, 5, 269

Currency of coin, 5, 271, 274

Description of coin, 5, 274

In general, 5, 274

Inscription and date, 5, 275

Material, 5, 275

Description of counterfeit instrument, 5, 286

Allegations and proof, 5, 289

In general, 5, 286

Mode of setting out instrument, 5, 288

Promissory note, 5, 289

Unnecessary descriptions, 5, 288

Existence of bank, 5, 290

Following language of statute, 5, 284

Elements of offense, 5, 285

In general, 5, 284

COUNTERFEITING, *cont'd.*

Having counterfeit banknotes in possession, 5, 279

Indictment, 5, 279

In general, 5, 279

Intent to defraud, 5, 279

Intent to pass, 5, 280

Needless allegations, 5, 281

Notice to produce, 5, 279

Scienter, 5, 281

Where the offense consists in the number of bills, 5, 281

Having counterfeit coin in possession, 5, 273

Current coin, 5, 274

Form of indictment, 5, 273

Intent to defraud, 5, 274

Needless allegations, 5, 274

Scienter, 5, 274

Specific allegations, 5, 274

Having tools in possession, 5, 282

Description of tools, 5, 283

Form of indictment generally, 5, 282

Needless allegations, 5, 284

Purpose, 5, 284

Sufficiency and certainty, 5, 283

Incorporation of bank, 5, 290

Indictments:

Following language of statute, 5, 284

Intent to defraud, 5, 273

Having counterfeit banknotes in possession, 5, 279

Having counterfeit coin in possession, 5, 274

Passing counterfeit coins, 5, 273, 276

Intent to pass, 5, 280

Joinder of counts and offenses, 5, 292

Joint indictment, 5, 268

Joint offenders, 5, 268

Jurisdiction, 5, 267

Name of bank, 5, 291

Passing counterfeit bank notes, 5, 275

In general, 5, 275

Intent to defraud, 5, 276

Needless allegations, 5, 277

Persons to be defrauded, 5, 277

Scienter, 5, 276

Passing counterfeit coins, 5, 270

Currency of the coin, 5, 271

Indictment generally, 5, 270

Intent to defraud, 5, 273

Name of person to whom uttered, 5, 272

Positiveness, 5, 272

Scienter, 5, 273

Similitude, 5, 271

Specific allegations, 5, 272

Uttering counterfeit coin, having other in possession, 5, 273

COUNTERFEITING, *cont'd.*

Possession, see *infra*, Having counterfeit banknotes in possession; Having counterfeit coin in possession; Having tools in possession.

Scienter, 5, 273, 274

Having counterfeit banknotes in possession, 5, 281

Passing counterfeit banknotes, 5, 276

Selling counterfeit money, 5, 278

By statute, 5, 278

In general, 5, 278

Similitude, 5, 271

Statutes, see *infra*, Following language of statute.

Tools, see *infra*, Having tools in possession.

Uttering, see *infra*, Passing counterfeit coins.

Verdict, 5, 293

COUNTIES, 5, 294

See CHANGE OF VENUE; MUNICIPAL CORPORATIONS; VENUE.

Actions against counties, 5, 294

Declaration and complaint, see *infra*, Declaration and complaint.

Jurisdiction, 5, 294

Parties, 5, 295

Plea or answer, 5, 299

Remedies for enforcing claims, 5, 294

Statement of facts constituting cause of action, 5, 301

Actions by counties, 5, 300

Allegations, 5, 300

Capacity to sue, 5, 300

Parties, 5, 300

Actions on county warrants, see MUNICIPAL SECURITIES.

Answers:

Answer in action against county, 5, 299

Bridges:

Action against county, 5, 298

Burglary:

Averment of ownership, 3, 759

Change of venue:

County as party, 4, 418

Conditions precedent:

Notice of injuries and statement of claim, 4, 659

Presentation and disallowance of claim, 4, 658

Declaration and complaint, 5, 296

Allegation of presentment of claim, 5, 296

Allegations, 5, 298

In general, 5, 296

Injuries caused by defective bridge, 5, 298

Itemization, 5, 297

Verification, 5, 297

COUNTIES, *cont'd.*

Executions:

Against county, 5, 299

Judgment:

Method of enforcing judgment, 5, 299

Mandamus:

Enforcing judgment, 5, 299

Parties to action, 5, 295, 300

Plea in action against county, 5, 299

Presentation of claim (see *infra*, Declaration and complaint):

Remedies for enforcing claims, 5, 294

Venue, 22, 808

Verification:

Verification of claim, 5, 297

COUNTS (see ASSUMPSIT; COMMON COUNTS; JOINDER OF COUNTS AND CAUSES):

Negotiable instruments, see NEGOTIABLE INSTRUMENTS

COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS, 5, 302

Accounting:

Separate counts, 5, 315

Adding counts, 5, 341

Assignments:

Separate counts, 5, 306

Cancellation of instrument:

Separate counts, 5, 316

Completeness of each count, 5, 320

Damages:

Separate counts, 5, 318

Declaration or complaint, 4, 611

Declaration synonymous with, 5, 303

Definition, 5, 203

Demurrers:

Demurrer to several paragraphs in same answer, 6, 305

Demurrer to whole count when matter divisible, 6, 303

One count for several causes of action, 5, 335

One good count, 5, 338, 339

Several counts for one cause of action, 5, 335

Double aspect, see *infra*, Several counts for one cause of action.

Malicious prosecution, 13, 423

Method of separating, 5, 319

At common law, 5, 319

Under the codes, 5, 320

Money counts, see MONEY COUNTS.

Negligence:

Separate counts, 5, 306

One count for several causes of action, 5, 334

At common law, 5, 334

Demurrer, 5, 335

Motion to state and number separately, 5, 336

- COUNTS, PARAGRAPHS, ETC.,**
cont'd.
 One count for several causes of action, *cont'd.*
 Right of defendant to treat the several causes as separated, 5, 337
 Under the codes, 5, 335
 Waiver, 5, 336
 Paragraphs under the code, 5, 303
 Procedure where there are several counts, 5, 337
 At common law, 5, 339
 Demurrer, 5, 338, 339
 General verdict where one count is bad, 5, 338
 Under the codes, 5, 337
 Quieting title:
 Several counts, 5, 318
 Quo warranto:
 Separate counts, 5, 313
 Reformation of instruments:
 Separate counts, 5, 317
 Separate counts, 5, 305
 Accounting, 5, 315
 Assigned causes of action, 5, 306
 Cancellation, 5, 316
 Consistency, 5, 319
 Contracts, 5, 308
 Conversion, 5, 306
 Damages, 5, 318
 Enforcement of contract, 5, 317
 Equity, 5, 306
 Full relief, 5, 315
 Law, 5, 306
 Negligence, 5, 306
 New facts, 5, 314
 Quieting title to several tracts, 5, 318
 Quo warranto, 5, 313
 Recovery of penalty, 5, 313
 Reformation of contract, 5, 317
 Sales, 5, 309
 Separate relief, 5, 314
 Setting aside conveyance, 5, 312, 317
 Several fraudulent acts, 5, 311
 Several grounds, 5, 309
 Torts, 5, 306
 Trespass, 5, 308
 Two causes of action and one relief, 5, 315
 What requires separate counts in general, 5, 305
 Separate statement of several causes of action in code pleading, 4, 619
 Completeness of count, 4, 620
 Express reference, 4, 622
 Introductory, 4, 619
 Matter of substance, 4, 621
 Matters on inducement, 4, 620
- COUNTS, PARAGRAPHS, ETC.,**
cont'd.
 Separate statement of several causes of action in code pleading, *con.*
 Mode of separation, 4, 619
 Prayer, 4, 623
 Several counts for one cause of action, 5, 321
 At common law, 5, 330
 Authorities denying the right to use several counts for a single cause of action, 5, 326
 Bill with double aspect, 5, 322
 Demurrer, 5, 330
 Description of tort with double aspect, 5, 325
 Election of count, 5, 329
 English practice, 5, 331
 Express and implied contracts under the codes, 5, 324
 Motion to strike out, 5, 330
 Plaintiff suing in representative capacity, 5, 326
 Setting aside complaint, 5, 330
 To prevent variance, 5, 325
 Under the codes, 5, 321
 Several counts treated as one, 5, 304
 Striking out counts, 5, 341
 Trespass:
 Separate counts, 5, 308
 Trover and conversion, 21, 1034
 Separate counts, 5, 306
 Verdict, 5, 340
 Work and labor, 22, 1364
- COUNTY SEAT:**
 Mandamus:
 Return or answer, 13, 739
- COUPONS, see MUNICIPAL SECURITIES.**
- COURTS (see JURISDICTION; JURY):**
Adjournment, see ADJOURNMENT.
Admiralty, see ADMIRALTY.
Amendments, see AMENDMENTS.
Amicus curia, see FRIEND OF THE COURT.
Amount in controversy, see AMOUNT IN CONTROVERSY.
 Appeals (see APPEALS):
 Presumption as to organization of courts, 2, 458
Appearances, see APPEARANCES.
Appellate courts, see APPEALS.
 Arguments of counsel:
 Interruption by court, 2, 750
 Attorneys:
 Control over appointment and conduct of attorneys, 21, 992
 Powers and duties as to appointment of attorneys, 21, 992
 Power to restrain and punish offensive conduct, 21, 993

COURTS, *cont'd.*

Bail and recognizance, 3, 196

Briefs, see BRIEFS.

Calendars, see CALENDARS AND TRIAL DOCKETS.

Certifying cases and questions to a higher court, see CERTIFIED CASES.

Certiorari, see CERTIORARI.

Chambers and vacation, see CHAMBERS AND VACATION.

Change of venue, see CHANGE OF VENUE.

Consolidation of actions, see CONSOLIDATION OF ACTIONS.

Contempt, see CONTEMPT.

Continuances, see CONTINUANCES.

Coram nobis and coram vobis:

In what courts cognizable, 5, 33

Coroner's courts, see CORONER'S INQUESTS.

Costs, see COSTS.

Court of record, 12, 161

Decisions, see DECISIONS.

Defaults, see DEFAULTS.

Directing verdict, see DIRECTING VERDICT.

Disbarment of attorney, see DISBARMENT AND SUSPENSION OF ATTORNEY.

Discretion of courts, see APPEALS.

Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.

Divorce, see DIVORCE.

Dockets, see CALENDARS AND TRIAL DOCKETS.

Duty to refrain from prejudicial remarks or conduct, see TRIAL.

Equity, see EQUITY PLEADING AND PRACTICE.

Error, writ of, see ERROR, WRIT OF.

Examination of witnesses, see EXAMINATION OF WITNESSES.

Executions, see EXECUTIONS.

Findings of court, see FINDINGS OF COURT.

Funds and deposits in court, see FUNDS AND DEPOSITS IN COURT.

General jurisdiction, see JURISDICTION.

Indictments, see INDICTMENTS.

Infants, see COURTS.

Inferior jurisdiction, see JURISDICTION.

Injunctions, see INJUNCTIONS.

Inquests and inquiries, see INQUESTS AND INQUIRIES.

Instructions, see INSTRUCTIONS.

Issues to the jury, see ISSUES TO THE JURY.

Judges, see JUDGES.

Judgments, see JUDGMENTS.

Judicial sales, see JUDICIAL SALES.

Jurisdiction, see JURISDICTION.

Jury (see JURY; VERDICT):

Issues to the jury, see ISSUES TO THE JURY.

COURTS, *cont'd.*

Justices of the peace, see JUSTICES OF THE PEACE.

Leave of court, see LEAVE OF COURT.

Mandamus, see MANDAMUS.

Mandate, see MANDATE.

Mines and mining, see MINES AND MINING.

Minutes, see MINUTES.

Motions, see MOTIONS.

New trial, see NEW TRIAL.

Nolle prosequi, see NOLLE PROSEQUI.

Opinions of courts, see OPINIONS OF COURTS.

Order of proof, see ORDER OF PROOF.

Orders, see ORDERS.

Patents, see PATENTS.

Payment into court, see FUNDS AND DEPOSITS IN COURT.

Petitions, see PETITIONS.

Probate courts, see SURROGATES.

Prohibition, see PROHIBITION.

Records, see RECORDS.

References, see REFERENCES.

Rules of court, see RULES OF COURT.

Sequestration, see SEQUESTRATION.

Sessions, see TERMS AND SESSIONS OF COURT.

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

Striking out, see STRIKING OUT.

Terms, see TERMS AND SESSIONS OF COURT.

Trial, see TRIAL.

United States courts, see UNITED STATES COURTS.

Vacation, see CHAMBERS AND VACATION.

View by jury, see VIEW BY JURY.

COURTS-MARTIAL:

Certiorari, 4, 40

COVENANT, 5, 342

See CONDITIONS PRECEDENT.

Agents, 5, 369

Amendments:

Declaration, 5, 375

Assignees, 5, 355, 361

Assumpsit, 2, 989

Averments, 5, 366

Awards, 3, 131

Bonds, 3, 637

Penal bonds, 5, 352

Breach, see *infra*, Declaration.

Commencement, 5, 362

Complaint, see *infra*, Declaration.

Conditions precedent:

Performance of, 5, 368

Consideration, 5, 365

Damages:

Declaration, 5, 375

Debts distinguished from, 5, 344

COVENANT, *cont'd.*

- Declaration, 5, 362
 - Averments, 5, 366
 - Breach, 5, 369
 - Breach of covenant of warranty and for quiet enjoyment, 5, 371
 - Commencement, 5, 362
 - Consideration, 5, 365
 - Covenant against incumbrances, 5, 374
 - Covenant of seizin, 5, 374
 - Damages, 5, 375
 - Deed signed in wrong name, 5, 363
 - Eviction, 5, 371
 - Exceptions in covenant, 5, 368
 - Form of action, 5, 363
 - Husband and wife, 5, 368
 - Inducement, 5, 363
 - Joinder of causes of action, 5, 368
 - Names of parties, 5, 362
 - Oyer, 5, 364
 - Payment of incumbrance, 5, 373
 - Performance of conditions precedent, 5, 368
 - Profert, 5, 364
 - Promise, 5, 365
 - Several breaches, 5, 371
 - Venue, 5, 362
- Demurrer, 5, 376
 - Grounds for demurrer, 5, 376
 - In general, 5, 376
 - One of several breaches sufficient, 5, 372
 - Plea, 5, 385
 - Plea and demurrer, 5, 377
- Departure, 6, 468
- Devises, 5, 355
- Executors and administrators, 5, 355, 361
- Form of action, 5, 363
- Fraud
 - Plea, 5, 384
- General issue, 5, 377
- Heirs, 5, 355, 361
- Husband and wife, 5, 361
- Incumbrances (see *infra*, Declaration; Who may be sued; Who may sue), 5, 349
 - Declaration, 5, 374
- Inducement, 5, 363
- Instalments, 5, 348
- Issues to the jury, 11, 651
- Joinder of counts and causes, 5, 368
 - Covenants and assumpsit, 1, 169
- Judgment, 5, 387
- Landlord and tenant*, see LANDLORD AND TENANT.
- Names, 5, 362
 - Deed signed in wrong name, 5, 363
 - Names of parties, 5, 362

COVENANT, *cont'd.*

- Nature of the action, 5, 343
- Negotiable instruments, 14, 372
- Nil habuit in tenementis*, 5, 384
- Non damnificatus*, 5, 383
- Non est factum*, 5, 378
- Non infregit conventionem*, 5, 383
- Not guilty, 5, 383
- Oyer, 5, 364
- Parol modification, 5, 351
- Parties to action*, see *infra*, Who may be sued; Who may sue.
- Penal bonds, 5, 352
- Performance, 5, 351
 - Plea of, 5, 380
- Plea, 5, 377
 - Decelt, 5, 384
 - Demurrer to plea, 5, 385
 - Effect of plea of covenant performed, 5, 381
 - Excuse for nonperformance, 5, 381
 - Fraud, 5, 384
 - General issue, 5, 377
 - Nil habuit in tenementis*, 5, 384
 - Non damnificatus*, 5, 383
 - Non est factum*, 5, 378
 - Non infregit conventionem*, 5, 383
 - Not guilty, 5, 383
 - Performance, 5, 380
 - Pleas in bar, 5, 384
 - Set-off, 5, 385
 - Special pleas, 5, 379
 - Tender, 5, 380
 - Variance, 5, 378
 - Verification, 5, 378
 - When *non est factum* necessary, 5, 378
- Privy (see *infra*, Who may be sued; Who may sue), 5, 350
- Profert and oyer, 5, 364
- Promise, 5, 365
- Quiet enjoyment*, see *infra*, Declaration.
- Rejoinder, 5, 386
- Replication, 5, 386
- Seal*, see SEAL.
- Seizin (see *infra*, Who may be sued; Who may sue), 5, 347
 - Declaration, 5, 374
- Set-off and counterclaim
 - Plea, 5, 385
- Special pleas, 5, 379
- Specialties, 5, 344
 - Words importing a sealed instrument, 5, 366
- Tender
 - Plea of, 5, 382, 383
- Vendor and purchaser
 - Vendor's remedies, 22, 659
- Venue, 5, 362; 12, 857; 22, 783
- Verification
 - Plea of *non est factum*, 5, 378

COVENANT, *cont'd.*

Warranty (see *infra*, Who may be sued; Who may sue), 5, 348

When the action will lie, 5, 345

Action for instalment, 5, 348

Eviction, 5, 348

Examples, 5, 346, 347

Illustrations, 5, 346

Incumbrances, 5, 349

In general, 5, 345

Negative restriction of personal rights, 5, 345

Seizin, 5, 347

Warranty, 5, 348

When the action will not lie, 5, 350

Certificate of sale, 5, 351

Covenant modified by parol, 5, 351

Covenant on penal bonds, 5, 352

In general, 5, 350

Liability created by law, 5, 352

Nonperformance in manner stipulated, 5, 351

Nonperformance within the time, 5, 351

Privty, 5, 350

Who may be sued, 5, 358

Agents, 5, 359

Assignees, 5, 361

Covenantors generally, 5, 358

Descriptio persona, 5, 359

Heirs, 5, 361

Husband and wife, 5, 361

Jointly or severally, 5, 360

Personal representatives, 5, 61

Privty of contract, 5, 358

Representatives, 5, 359

Who may sue, 5, 352

Assignees, 5, 355

Beneficiaries, 5, 357

Covenantee generally, 5, 352

Covenant moving to third person, 5, 352

Covenant to pay rent, 5, 356

Devisees, 5, 355

Heirs, 5, 355

Interest of covenantees, 5, 353

Jointly, 3, 352

Partners, 5, 353

Personal covenants, 5, 356

Personal representatives, 5, 354

Remote grantees, 5, 355

Severally, 5, 352

Third persons, 5, 357

Work and labor, see **WORK AND LABOR**.

COVERTURE (see **HUSBAND AND WIFE**):

Divorce, see **DIVORCE**.

COVERTURE, PLEA OF, 1, 9

CREDITORS (see **APPEALS**; **ASSIGNMENT FOR BENEFIT OF CREDITORS**; **BANKRUPTCY**):

CREDITORS, *cont'd.*

Appeals:

Aggrieved person, 2, 168

Insolvency, see **BANKRUPTCY**; **INSOLVENCY**.

Officers of private corporations, see **OFFICERS OF PRIVATE CORPORATIONS**.

Poor debtor acts, see **POOR DEBTOR ACTS**.

CREDITORS' BILLS, 5, 388

See **GARNISHMENT**.

Abatement of action, 5, 554

Affidavits:

Receivers, 5, 598

After-acquired property, 5, 460

Alimony, 5, 489

Amendments, 1, 466, 469; 5, 576

Answer, 5, 579

Discovery, 5, 587

Assets, see *infra*, **Equitable assets**.

Attachment:

Equitable attachment, 5, 394

Exhaustion of ordinary legal remedies, 5, 525

Ouster of equitable jurisdiction, 5, 430

Bill of discovery, 5, 394

Bill or complaint, 5, 556

Amendment, 5, 576

Description of indebtedness, 5, 557

Executions:

Suits to subject property not reachable by execution, 5, 574

Exhaustion of ordinary legal remedies, 5, 562

Executions, 5, 563

In general, 5, 562

Judgment, 5, 562

Return, 5, 564

Fishing bills, 5, 585

Fraudulent conveyances, 5, 569

Averment of fraud, 5, 570

Circumstances, 5, 572

Description of fraudulent instrument, 5, 570

Description of property, 5, 569

Facts, 5, 572

Participation of grantee in debtor's fraud, 5, 572

Relation of debtor and creditor, 5, 569

Suits to reach property fraudulently purchased in name of volunteer, 5, 573

Suits to set aside fraudulent conveyances, 5, 569

In general, 5, 556

CREDITORS' BILLS, *cont'd.*

- Bill or complaint, *cont'd.*
 - Insolvency of debtor, 5, 565
 - As an excuse for not exhausting legal remedies, 5, 567
 - Essential averments, 5, 567
 - In general, 5, 565
 - In suits to set aside fraudulent conveyances, 5, 565
 - Invitation to other creditors, 5, 558
 - Jurisdictional facts, 5, 557
 - Multifariousness, 5, 559
 - Negation of collusion with the debtor, 5, 558
 - Suits by creditors of decedents, 5, 574
 - Description of property, 5, 575
 - Insufficiency of personal assets, 5, 574
 - Supplemental bill, 5, 576
 - Vacation of fraudulent conveyances and subjection of property not reachable by execution, 5, 560
- Classification of creditors' bills, 5, 392
- Collateral securities:
 - Duty of creditor to resort first to collateral securities, 5, 530
- Complaint*, see *infra*, Bill or complaint.
- Consolidation, 5, 614
- Constitutional law:
 - Right to trial by jury, 5, 466
- Constructive trusts, 5, 451
- Corporations:
 - Suits by creditors of corporations, 5, 395
- Death of parties, 5, 554
- Complainant, 5, 554
- Debtor, 5, 555
- Defendant, 5, 835
- Debts of decedents:
 - Bill or complaint:
 - In suits by creditors of decedents, 5, 574
 - Description of property, 5, 575
 - Insufficiency of personal assets, 5, 574
 - Decree in suits by creditors of decedents, 5, 604
 - Distribution of fund among creditors, 5, 609
 - Equitable jurisdiction of suits by creditors of decedents, 5, 419
 - Administration of assets in general, 5, 419
 - Fraudulent conveyances by decedents, 5, 428
 - In the United States, 5, 420

CREDITORS' BILLS, *cont'd.*

- Debts of decedents, *cont'd.*
 - Fraudulent conveyances:
 - Necessity of issuance of execution, 5, 510
 - Necessity of issuance of execution, 5, 509
 - Necessity of judgment at law in suits by creditors of decedents, 5, 479
 - Administration suits generally, 5, 479
 - Fraudulent conveyances by decedents, 5, 480
 - Parties in suits by creditors of decedents, 5, 535
 - Suits by creditors of decedents (see *infra*, Parties), 5, 394
- Decedent*, see *infra*, Debts of decedents.
- Decrees, 5, 598
 - Distribution of fund among creditors, 5, 605
 - Distribution of proceeds in suits by creditors of decedents, 5, 609
 - Distribution of proceeds in suits to subject property not reachable by execution, 5, 607
 - Equitable levy, 5, 608
 - Forms of decrees, 5, 600
 - In general, 5, 598
 - Interruption of other suits, 5, 613
 - Interruption of suits by creditors of decedents, 5, 614
 - Necessity of judgment at law, 5, 489
 - Payment of debts according to dignity, 5, 612
 - Personal judgment against fraudulent donee, 5, 601
 - Priority by owner of junior judgment, 5, 608
 - Rents and profits, 5, 602
 - Sale of premises fraudulently conveyed, 5, 600
 - Service of process, 5, 609
 - Suits by creditors of decedents, 5, 604
 - Suits to set aside fraudulent conveyances, 5, 599
 - Suits to subject property not reachable by execution, 5, 603
 - Surplus of proceeds, 5, 606
- Definition, 5, 391
- Demurrer, 5, 578
 - Discovery, 5, 587
- Discovery, 5, 583
 - Answer, 5, 587
 - Demurrer, 5, 587
 - Fishing bills, 5, 585
 - Fraud, 5, 586
 - In general, 5, 583

CREDITORS' BILLS, *cont'd.*

- Discovery, *cont'd.*
 - Insufficient answers, 5, 588
 - Parties, 5, 584
 - The bill, 5, 585
- Discovery as essential to confer jurisdiction, 5, 402
- Distribution of fund among creditors, 5, 609
- Distributive share, 5, 450
- Dower, 5, 541
- Duty of creditor to resort first to collateral securities, 5, 530
- Election of remedies:
 - Attachment and garnishment, 5, 431
- Equitable assets, 5, 447
 - Constructive trusts, 5, 451
 - Distributive share, 5, 450
 - Dower, 5, 451
 - Equities of redemption, 5, 451
 - Examples, 5, 449
 - Express trusts, 5, 454
 - Improvement made by a debtor, 5, 452
 - In general, 5, 447
 - Legacies, 5, 450
 - Property fraudulently conveyed by debtor, 5, 452
 - Redemption from execution sale, 5, 451
 - Resulting trusts, 5, 451
 - Spendthrift trusts, 5, 455
 - Trusts, 5, 454
 - Trusts created by third persons under statutes, 5, 454
 - Whether reachable by creditors, 5, 448
- Equities of redemption, 5, 451
- Equity jurisdiction, *see infra*, Jurisdiction of equity.
- Executions (*see infra*, Exhaustion of ordinary legal remedies; Returns):
 - Bill or complaint, 5, 563
 - Decree in suits to subject property not reachable by execution, 5, 603
 - Effect of remedy by sale of property under execution or sale of equity, 5, 402
 - Equitable jurisdiction of suits to subject property not reachable by execution, 5, 409
 - Determined in England, 5, 409
 - In the absence of statute, 5, 409
 - In the United States, 5, 411
 - Retroactive effect of statutes, 5, 418
 - Statute abolishing the writ of ca. sa., 5, 410

CREDITORS' BILLS, *cont'd.*

- Executions, *cont'd.*
 - Equitable jurisdiction of suits to subject property not reachable by execution, *cont'd.*
 - Statutes authorizing the sale of equitable interests, 5, 419
 - Statutes conferring jurisdiction, 5, 415
 - Pendency of creditor's bill, 8, 312
 - Property subject to execution not reachable by creditors' bills, 5, 459
 - Requisites and sufficiency of execution, 5, 511
 - Effect of *alias* execution, 5, 514
 - Judgments rendered by justice of the peace, 5, 513
 - Presumption as to regularity of execution, 5, 511
 - Requisites and sufficiency of return, 5, 514
 - Time of issuance, 5, 511
 - To what county should be issued, 5, 512
- Suits to subject property not reachable by execution (*see infra*, Parties), 5, 393
 - Bill or complaint, 5, 574
 - Multifariousness, 5, 560
 - Necessity of issuance of execution at law, 5, 506
 - Necessity of judgment at law, 5, 477
 - In general, 5, 477
 - Reasons for requiring judgment, 5, 478
 - Under statutes, 5, 478
- Execution sale:
 - Suits by purchasers at execution sale to have fraudulent conveyance set aside, 5, 405
- Executors and administrators, *see infra*, Debts of decedents.
- Exemptions, 5, 441
- Exhaustion of ordinary legal remedies, 5, 460
 - Bill or complaint, 5, 562
 - Executions, 5, 563
 - In general, 5, 562
 - Insolvency as excuse for not exhausting legal remedies, 5, 567
 - Judgment, 5, 562
 - Return, 5, 564
- Blending of law and equity in one jurisdiction, 5, 465
- Demands primarily enforceable in equity, 5, 463
- Equitable lien against wife's separate estate, 5, 464

CREDITORS' BILLS, *cont'd.*Exhaustion of ordinary legal remedies, *cont'd.*

In general, 5, 460

Insolvency of debtor as excuse for not exhausting legal remedies, 5, 518

Advisability of issuing execution and procuring return of *nulla bona*, 5, 522Issuance of execution and return of *nulla bona*, 5, 521

Recovery of judgment, 5, 518

Issuance of execution and return of *nulla bona*, 5, 493*Alias* execution, 5, 495

Assignee of judgment, 5, 494

Circumstances excusing issuance of execution, 5, 493

Decrees in chancery, 5, 494

Fraudulent conveyances of land, 5, 504

Fraudulent conveyances of personal property, 5, 503

In general, 5, 493

Insolvency of debtor as excuse, 5, 521

Levy of execution, 5, 506

Requisites and sufficiency of execution, 5, 511

Requisites and sufficiency of return, 5, 514

Statutes authorizing suits by creditors at large to set aside fraudulent conveyances, 5, 502

Suits by creditors of decedents, 5, 509

Suits to set aside fraudulent conveyances, 5, 499

Suits to set aside fraudulent conveyances by decedents, 5, 510

Suits to subject property not reachable by execution, 5, 506

Where there is more than one debtor, 5, 495

Joint debtors, 5, 463

Necessity of recovering judgment at law, 5, 465

Bill or complaint, 5, 562

Decree for alimony, 5, 489

Decrees in equity, 5, 489

Dormancy of judgment, 5, 488

Foreign judgments, 5, 490

In general, 5, 465

Insolvency of debtor as excuse for not recovering judgment, 5, 518

Judgment by justice of the peace, 5, 486

CREDITORS' BILLS, *cont'd.*Exhaustion of ordinary legal remedies, *cont'd.*Necessity of recovering judgment at law, *cont'd.*

Judgment from which appeal has been taken, 5, 488

Judgments of United States courts, 5, 490, 492

Regularity of judgment, 5, 487

Requisites and sufficiency of judgment, 5, 485

Right to trial by jury, 5, 466

Service of process, 5, 487

State statutes, 5, 467

Subrogation of party paying judgment, 5, 467

Suits by creditors of decedents, 5, 479

Administration suits generally, 5, 479

Fraudulent conveyances of decedents, 5, 480

Suits by creditors of partnerships, 5, 482

Suits to subject property not reachable by execution, 5, 477

In general, 5, 477

Reasons for requiring judgment, 5, 478

Under statutes, 5, 478

Vacation of judgment pending creditors' bill, 5, 488

Nonresidence of debtor as excuse for not exhausting legal remedies, 5, 523

Replication, 5, 582

Requisites and sufficiency of execution, 5, 511

Effect of *alias* execution, 5, 514

Judgment rendered by justice of the peace, 5, 513

Presumption as to regularity of execution, 5, 511

Requisites and sufficiency of return, 5, 514

Time of issuance, 5, 511

To what county should be issued, 5, 512

Statutes, 5, 463

Suits for attaching creditors, 5, 525

Suits to set aside fraudulent conveyances, 5, 468

As prerequisite to obtaining injunction, 5, 473

Construction of statutes authorizing suits by creditors at large, 5, 476

In general, 5, 468

CREDITORS' BILLS, *cont'd.*

Exhaustion of ordinary legal remedies, *cont'd.*

Suits to set aside fraudulent conveyances, *cont'd.*

Statutes authorizing suits by creditors at large, 5, 475

Suits to reach property fraudulently purchased in name of volunteer, 5, 474

United States courts, 5, 477

Why judgment is necessary, 5, 470

Trusts, 5, 464

United States courts, 5, 462

Fishing bills, 5, 585

Foreign judgments, 5, 490

Forthcoming and delivery bonds, 5, 459

Fraud:

Equity jurisdiction, 5, 401

Fraudulent conveyances (see *infra*, Parties):

Bill or complaint, 5, 569

Averment of fraud, 5, 570

Circumstances, 5, 572

Description of fraudulent instrument, 5, 570

Description of property, 5, 569

Facts, 5, 572

Insolvency of debtor, 5, 565

Participation of grantee in debtor's fraud, 5, 572

Relation of debtor and creditor, 5, 569

Suits to reach property fraudulently purchased in name of volunteer, 5, 573

Suits to set aside fraudulent conveyances, 5, 569

Decree in suits to set aside fraudulent conveyances, 5, 599

Distribution of fund among creditors, 5, 605

Equitable interests subject to creditors' bills, 5, 452

Equity jurisdiction, 5, 397

Discovery as essential to jurisdiction, 5, 402

Fraud, 5, 401

Fraudulent conveyances of decedents, 5, 428

Fraudulent judgments, 5, 404

Grounds for assuming jurisdiction, 5, 400

Inadequacy of remedy at law, 5, 402

In aid of judgment liens, 5, 402

Incumbrances, 5, 404

Index Pl. & Pr. — 14

CREDITORS' BILLS, *cont'd.*

Fraudulent conveyances, *cont'd.*

Equity jurisdiction, *cont'd.*

In general, 5, 397

Liens, 5, 404

Object of setting aside, 5, 402

Personal property, 5, 403

Property fraudulently purchased in name of volunteer, 5, 406, 407

Remedy by sale of property under execution, 5, 402

Statutes conferring jurisdiction, 5, 404

Suits by purchasers at execution sales, 5, 405

Insolvency of debtor:

Bill or complaint, 5, 565

Multifariousness, 5, 560

Necessity of issuance of execution, 5, 496, 510

Conflict of opinion, 5, 496, 498

Fraudulent conveyances of personal property, 5, 503

In general, 5, 496

Levy of execution, 5, 506

Suits to reach land fraudulently purchased in name of volunteer, 5, 504

Necessity of judgment at law, 5, 468

As prerequisite to obtaining injunction, 5, 473

Construction of statutes authorizing suits by creditors at large, 5, 476

Fraudulent conveyances by decedents, 5, 480

In general, 5, 468

Statutes authorizing suits by creditors at large, 5, 475

Suits to reach property fraudulently purchased in name of volunteer, 5, 474

United States courts, 5, 477

Why judgment is necessary, 5, 470

Proceeds of sale of property, 5, 458

Property fraudulently conveyed and its avails not reachable by creditors' bills, 5, 457

Rents and profits, 5, 459

Suits to set aside fraudulent conveyances, 5, 392

Garnishment, 5, 394

Ouster of equitable jurisdiction, 5, 430

General creditors' bills, 5, 396

Homesteads and exemptions, 5, 441; 10, 91

CREDITORS' BILLS, *cont'd.*

Improvements made by debtor on land, 5, 452

Inadequacy of remedy at law:

Equitable jurisdiction, 5, 402

Injunctions, 5, 588

Examples, 5, 538

In general, 5, 588

Judgment at law as prerequisite to obtaining injunction, 5, 473

Notice, 5, 591

Order of court, 5, 592

Violation of injunction, 5, 592

Insolvency (see *infra*, Exhaustion of ordinary legal remedies):

Bill or complaint, 5, 565

As excuse for not exhausting legal remedies, 5, 567

Essential averments, 5, 567

In general, 5, 565

In suits to set aside fraudulent conveyances, 5, 565

Creditor himself insolvent, 5, 533

Insurance:

Policies of insurance, 5, 444

Intervention, 5, 553

Invitation to other creditors, 5, 558

Joinder, see *infra*, Parties.

Judgment:

Fraudulent judgment, 5, 404

Judgment at law:

As to the necessity of judgment at law, see *infra*, Exhaustion of ordinary legal remedies.

Jurisdiction of equity, 5, 397

Abolition of distinction between law and equity, 5, 397

Attachment, 5, 430

In general, 5, 397

Ouster of jurisdiction by special statutory proceedings, 5, 430

Suits by creditors of decedent, see *infra*, Debts of decedents.

Suits to set aside fraudulent conveyances, see *infra*, Fraudulent conveyances.

Suits to subject property not reachable by execution, see *infra*, Executions.

Supplementary proceedings, 5, 433

Jurisdiction of particular courts, 5, 435

In general, 5, 435

Jurisdictional amount, 5, 436

Justices of the peace, 5, 435

United States courts, 5, 435

Jury:

Right to trial by jury, 5, 466

Justices of the peace, 5, 435

Necessity of judgment at law, 5, 486

Requisites and sufficiency of execution, 5, 513

CREDITORS' BILLS, *cont'd.*

Legacies, 5, 450

Legal remedies, see *infra*, Exhaustion of ordinary legal remedies.

Liens:

In aid of judgment liens, 5, 402

Limitations, 13, 191

Multitairiousness, 5, 559, 579

Municipal corporations, 5, 540

Necessity of issuance of execution, 5, 509

Necessity of judgment at law in suits by creditors of decedents, 5, 479

Administration suits generally, 5, 479

Fraudulent conveyances by decedents, 5, 480

Nonresidence of debtor as excuse for not exhausting legal remedies, 5, 523

Nulla bona, see *infra*, Exhaustion of ordinary legal remedies.

Parties, 5, 531

Assignee of judgment, 5, 532

Complainant, 5, 531

Complainant's control over the suit, 5, 555

Creditor or personal representative as party complainant, 5, 536

Death of complainant, 5, 554

Death of debtor, 5, 555

Death of parties, 5, 554

Defendant in general, 5, 539

Defendant in suits by creditors of decedents, 5, 549

Defendant in suits to set aside fraudulent conveyances, 5, 542

Defendant in suits to subject property not reachable by execution, 5, 548

Devises, 5, 552

Discovery, 5, 584

Doctrine of representation, 15, 646

Drawer and indorser of note, 5, 541

Fraudulent conveyances by decedents, 5, 550

Fraudulent debtor as defendant, 5, 542

Fraudulent grantee as defendant, 5, 543

Fraudulent grantee who has conveyed to others, 5, 543

Fraudulent purchase of property in name of volunteer, 5, 547

Heirs, 5, 552

Insolvency of creditor, 5, 533

In suits by creditors of decedents, 5, 535

Intervention, 5, 553

CREDITORS' BILLS, *cont'd.***Parties, *cont'd.***

- Invitation to other creditors, 5, 558
- Joinder of creditors, 5, 534, 535, 536
- Joinder of several grantees, 5, 547
- Joinder of two or more grantees 5, 546
- Legatees, 5, 552
- Mortgagees of property fraudulently conveyed, 5, 545
- Municipal corporation as defendant, 5, 540
- Participants of fraud, 4, 544
- Personal representatives, 5, 549
- Suits by creditors of decedents, 5, 535
- Suits *inter vivos*, 5, 534
- Suits to reach equitable interests, 5, 539
- When bill must be filed in behalf of all creditors, 5, 534

Partnership:

- Necessity of judgment at law, 5, 482
- Who may maintain action for accounting, dissolution, and settlement, 15, 1074

Patent cases, 5, 443**Pending action, 5, 613****Prayer for relief, 5, 568****Priority, see *infra*, Decrees.****Property subject to, see *infra*, What property reachable.****Public officers:**

- Salary of public officers, 5, 447

Receivers, 5, 593; 17, 695**Bond, 5, 597****Discretion of court, 5, 594****Effect of answer, 5, 597****In general, 5, 593****Notice, 5, 596****Property in the hands of trustee, 5, 595****Suits by creditors of decedents, 5, 595****Suits to set aside fraudulent conveyances, 5, 594****Time, 5, 596****Two or more suits, 5, 598****Want of equity 5, 597****Remedy at law, see *infra*, Exhaustion of ordinary legal remedies.****Removal of causes, 18, 221****Replication, 5, 581****Resulting trusts, 5, 451****Returns:**

- Bill or complaint, 5, 564
- Requisites and sufficiency of return, 5, 514
- Collusive returns, 5, 515

CREDITORS' BILLS, *cont'd.***Returns, *cont'd.*****Requisites and sufficiency of return, *cont'd.*****In general, 5, 514****Presumption as to regularity of return, 5, 515****Return of *alias* execution, 5, 517****Time of making return, 5, 516****Two or more joint debtors, 5, 518****Salary, 5, 446****Separate property of married women, 5, 439****Exhaustion of ordinary legal remedies, 5, 464****Service of process:****Commencement of suit, 5, 609****Necessity of judgment at law, 5, 487****Situs of property, 5, 440****Spendthrift trusts, 5, 455****Splitting causes of action, 1, 160****Stock and stockholders:****Corporate stock, 5, 443****Unpaid stock subscriptions, 5, 444****Stock exchanges:****Whether seat in stock exchange is subject to, 5, 440****Subrogation:****Party paying judgment, 5, 467****Suits by creditors of decedents, 5, 394****Supplemental bills, 5, 576****Supplementary proceedings:****Ouster of equitable jurisdiction, 5, 433****Supplementary proceedings substitute for creditors' bills, 21, 90****Trusts, 5, 454****Constructive trusts, 5, 541****Enforcement of trusts, 5, 464****Resulting trusts, 5, 451****Spendthrift trusts, 5, 455****Trusts created by third persons under statutes, 5, 454****Whether property in trust is reachable by creditors' bills, 5, 454****United States courts:****Exhaustion of ordinary legal remedies, 5, 462****Judgment at law, 5, 477****Judgments of United States courts, 5, 490****Jurisdiction, 5, 435****Supplementary proceedings, 5, 434****Venue, 5, 438****In general, 5, 438**

CREDITORS' BILLS' *cont'd.*Venue, *cont'd.*

Suits affecting title to real estate,
5, 438

What property reachable, 5, 439

After-acquired property, 5, 460

Choses in action, 5, 445

Equitable assets, see *infra*, *Equitable assets*.

Exemptions, 5, 441

Homestead, 5, 441

In general, 5, 439

Insurance policies, 5, 444

Patents for inventions, 5, 443

Property fraudulently conveyed
and its avails, 5, 457

Property subject to execution,
5, 459

Seats in stock exchanges, 5,
440

Separate property of a wife, 5,
439

Situs of property, 5, 440

Stocks, 5, 443

Unpaid stock subscriptions, 5,
444

Winding up corporations, 22, 1243

Building and loan associations,
22, 1246

Doctrine that assets of dissolved
corporation constitute trust
fund, 22, 1244

Equitable jurisdiction after dis-
solution of corporation, 22,
1244

Equitable jurisdiction after sus-
pension of business, 22, 1245

Equitable jurisdiction notwith-
standing statute providing for
posthumous existence, 22, 1247

Foreign corporations, 22, 1246,
1248

Jurisdiction conferred by statute,
22, 1247

Jurisdiction of equity to enter-
tain creditors' bills, 22, 1243

Jurisdiction of equity to set
aside fraudulent conveyances,
22, 1243

Statutory trustees, 22, 1246

CREDITORS' MEETINGS:

Bankruptcy:

Qualifications of voters, 22, 363

CRIMINAL CONSPIRACY, see *CONSPIRACY*.**CRIMINAL CONVERSATION**, 5,
616

See *ADULTERY*; *DIVORCE*; *LEWDNESS*;
SEDUCTION.

Abatement, 5, 617

Answers, see *infra*, *Plea or answer*.

Appeals, see *APPEALS*.

Bills of particulars, 3, 554

CRIMINAL CONVERSATION, *con.*

Declaration and complaint, 5, 617

Essential elements, 5, 617

In general, 5, 617

Time and place, 5, 617, 618

What may be pleaded, 5, 617

What need not be averred, 5, 617

Executions against the body and
arrest in civil cases:

Moving papers, 8, 601

Form of action, 5, 616

Nature of action, 5, 616

Plea or answer, 5, 618

Collusion or connivance of the
plaintiff, 5, 619

Condonation, 5, 620

Consent or resistance to the se-
duction, 5, 620

Decree of divorce, 5, 620

General issue, 5, 618

Misconduct of the plaintiff other
than collusion or connivance,
5, 620

Pleas in bar of the action, 5, 618

Special pleas, 5, 619

Validity of marriage, 5, 619

Survival of actions, 21, 349

CRIMINAL PROCEDURE (see *ESCAPE*; *FINES AND COSTS IN CRIMINAL CASES*; *INDICTMENTS*; *PROSECUTING ATTORNEYS*; *TRIAL*):

Abduction, see *ABDUCTION*.

Abiding the event, 1, 57

Abortion, see *ABORTION*.

Accessories, see *ACCESSORIES AND THE LIKE*.

Adultery, see *ADULTERY*.

Affirmation, 1, 378

Affray, see *AFFRAY*.

Amendments, 1, 688

Appeal bonds and undertakings:

Description of offense in criminal
appeal, 1, 982

Appeals (see *APPEALS*):

Beneficial error, 2, 531

Escape as waiver of right of ap-
peal, 2, 182

Preliminary payment of fees, 2,
320

Presence of prisoner, 2, 498

Presumption, 2, 497

Presumption in favor of juris-
diction, 2, 458

Questions of law, 2, 400

Transcript on appeal, 2, 262

Upholding convictions, 2, 497

Verdict, 2, 495

Arguments of counsel:

Comment on failure of the ac-
cused to testify in the case, 2,
718

Limiting time, 2, 702

Opening arguments, 2, 706

CRIMINAL PROCEDURE, *cont'd.*Arguments of counsel, *cont'd.*

Prosecuting attorney's expression of personal belief, 2, 726

Reading or arguing law to the jury, 2, 711

Right to be heard by counsel, 2, 699

Arraignment and plea, see **ARRAIGNMENT AND PLEA**.*Arrest of judgment*, see **ARREST OF JUDGMENT**.*Arson*, see **ARSON**.*Assault and battery*, see **ASSAULT AND BATTERY**.

Assignment of errors:

Necessity of assignment, 2, 929

Precision, 2, 944

Presence of accused, 2, 932

Attempts, see **ATTEMPTS**.

Attorneys:

Right of counsel, 2, 767

Bail and recognizance, see **BAIL AND RECOGNIZANCE**.

Banks and banking, 3, 256

Embezzlement, 3, 257

False entry, 3, 256

Illegal banking, 3, 259

Illegal certification of checks, 3, 259

Receiving deposits during insolvency, 3, 259

Barratry, 3, 264

Bastardy, 3, 320

Requisites of indictment, 3, 320

Whether bastardy proceedings are civil or criminal, 3, 267, 295

Bigamy, 3, 322

Bills *de bene esse*, 3, 330

Bills of exceptions, 3, 379

Common law, 3, 379

When allowable in criminal cases, 3, 379

Bills of particulars, 3, 554

Boundaries and fences, 3, 677

Boycotts, see **STRIKES AND BOYCOTTS**.*Breach of the peace*, see **BREACH OF THE PEACE**.*Bribery*, see **BRIBERY**.

Bridges, 3, 707

Form and requisites of indictments, 3, 708

Who may be indicted, 3, 707

Briefs:

Effect of failure to file briefs, 3, 728

Burglary, see **BURGLARY**.*Carrying weapons*, see **CARRYING WEAPONS**.*Cemeteries*, see **CEMETERIES**.*Certificate of doubt*, see **CERTIFICATE OF DOUBT**.**CRIMINAL PROCEDURE, *cont'd.***

Certified cases:

United States courts, 3, 921

Certiorari (see **CERTIORARI**):

District attorney as relator, 4, 165

Supreme court of the United States, 4, 14

Champerty and maintenance, 4, 372

Change of venue, see **CHANGE OF VENUE**.

Chattel mortgages:

Offenses and indictments, 4, 534

Civil rights acts, 4, 552

Cohabitation, see **LEWDNESS**.*Commitments*, see **COMMITMENTS**.

Common scold, 4, 585

Compounding felony, 7, 253

Concealment of birth or death, 4, 624

Conspiracy, see **CONSPIRACY**.

Constitutional law:

Presence of accused, 21, 971

Contempt, see **CONTEMPT**.*Continuances*, see **CONTINUANCES**.

Convicts, 5, 15

Coroner's inquests, see **CORONER'S INQUESTS**.*Costs*, see **FINES AND COSTS IN CRIMINAL CASES**.

Counsel:

Right to counsel, 2, 767

Counterfeiting, see **COUNTERFEITING**.*Criminal conversation*, see **CRIMINAL CONVERSATION**.*Cruelty to animals and children*, see **CRUELTY TO ANIMALS AND CHILDREN**.

Death by wrongful act:

Remedy by indictment, 5, 891

Defaults, see **DEFAULTS**.

Demurrers to evidence, 6, 456

Depositions, 6, 609

By what authority, 6, 609

Constitutional law, 6, 609

Constitution of the United States, 6, 609

On behalf of accused, 6, 611

On behalf of the state, 6, 609

Strict conformity with statute, 6, 610

Waiver of objections, 6, 611

Directing verdict, 6, 689

Acquittal, 6, 690

Conviction, 6, 689

Disbarment and suspension of attorneys, see **DISBARMENT AND SUSPENSION OF ATTORNEYS**.

Dismissal, discontinuance, and non-suit:

Construction of discontinuances liberal, 6, 927

Entry of order, 6, 874

Jeopardy, 6, 990

CRIMINAL PROCEDURE, *cont'd.*

Dismissal, discontinuance, and non-suit, *cont'd.*

Operating as acquittal, 6, 984

Several defendants, 6, 865

Disorderly conduct, see DISORDERLY CONDUCT.

Disorderly houses, see DISORDERLY HOUSES.

Disturbing meetings, see DISTURBING MEETINGS.

Divorce:

Conviction of crime, 7, 81

Drunkenness, 7, 229

Duelling, see DUELLING.

Elections, see ELECTIONS.

Embezzlement, see EMBEZZLEMENT.

Error, writ of, 7, 840, 884

Allowance of the writ, 7, 884

Exclusiveness of remedy, 7, 853

Final judgment, 7, 840

Statutes authorizing appeal, 7, 863

What judgment may be reviewed on writ, 7, 840, 842

Who entitled to writ, 7, 858

Bastardy proceedings, 7, 859

Defendant, 7, 860

Jeopardy, 7, 858

State, 7, 858

Statutory changes, 7, 859

Writ of right, 7, 827

Estrays, 8, 16

Identification of offense, 8, 16

In general, 8, 16

Evidence:

Pleadings as evidence, 8, 31

Examination of witnesses, 8, 147

California, 8, 150

Complete waiver of privilege, 8, 151

Constitutional privilege, 8, 147

Cross-examination of accused, 8, 147

Cross-examination of witness as to commission of crime, 8, 117

Defendant's account of his doings, 8, 148

Direct examination, 8, 147

Disclosure of confidential communications, 8, 152

Discretion of court, 8, 148

Examination by the court, 8, 73

Extent of privilege, 8, 147

Harmless error, 8, 150

Point not touched upon direct examination, 8, 149

Questions tending to discredit the witness, 8, 116

Self-crimination, 8, 147

Subject opened by direct examination, 8, 149

CRIMINAL PROCEDURE, *cont'd.*

Examination of witnesses, *cont'd.*

Testing reliability of witness, 8, 113

Unimportant matter, 8, 150

Waiver of privilege, 8, 147

Witness criminating himself, 8, 147

Exceptions and objections:

Indictment, information, and complaint, 8, 201

Objections not taken below, 8, 161

Extortion, see EXTORTION.

Extradition, see EXTRADITION.

Failure to pursue statutory definition of offense, 8, 17

False imprisonment, 8, 853

False personation, see FALSE PERSONATION.

False pretenses, see FALSE PRETENSES.

Falsifying records, 8, 917

Fines, see FINES AND COSTS IN CRIMINAL CASES.

Fish and fisheries, 9, 10

Examples, 9, 10, 13

Exceptions in other statutes, 9, 11

Indictment, information, or complaint, 9, 10

Joinder of defendants, 9, 13

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

Forgery, see FORGERY.

Forma pauperis, 16, 684

Affidavit on appeal, 16, 696

Former conviction, see FORMER CONVICTION OR ACQUITTAL.

Fornication, see FORNICATION.

Fraud:

Particularity required in alleging, 9, 691

Game and game laws, see GAME AND GAME LAWS.

Gaming, see GAMING.

General issue, 9, 882

Habeas corpus, see HABEAS CORPUS.

Hawkers and peddlers, 10, 2

Health regulations, 10, 4

Highways, see STREETS AND HIGHWAYS.

Homesteads and exemptions, 10, 104

Homicide, see HOMICIDE.

Horse racing, 10, 190

Husband and wife:

Joinder of parties, 10, 254

Incest, see INCEST.

Indecent exposure, 10, 339

Indians, 10, 341

Indictments, see INDICTMENTS.

Injunctions:

Disobedience of injunction, 10, 1110

CRIMINAL PROCEDURE, *cont'd.*

- Insanity as a defense, 10, 1218
 - Continuance and new trial, 10, 1223
 - Determination by court or without jury, 10, 1220
 - Determination from evidence, 10, 1222
 - Duty of court to have preliminary trial, 10, 1219
 - Where doubt exists, 10, 1219
 - Where no doubt exists, 10, 1220
- Insanity at or after time of trial, 10, 1218
- Insanity considered at time of commission of crime, 10, 1222
- Instructions to jury, 10, 1223
- Jury, 10, 1222
- Method of determination, 10, 1220
- Special jury, 10, 1221
- Verdict, 10, 1221

Instructions:

- Assumption of controverted facts, 11, 124
- Assumption of fact in proof, 11, 128
- As to lower grades of offense, 11, 211
 - Applications of the rule, 11, 211
 - Confining attention of jury to offense actually involved, 11, 211
 - How made, 11, 212
 - When necessary, 11, 211
- As to power or right of juries to judge the law, see *infra*, Province of court and jury.
- As to punishment, 11, 208
 - As to lower grades of offense, 11, 211
 - Consequences of verdict, 11, 208
 - Effect of misstating punishment, 11, 210
 - How charge framed, 11, 209
 - Overstating minimum penalty, 11, 210
 - When assessed by the court, 11, 208
 - When assessed by the jury, 11, 208
- Character, 11, 346
 - Effect of good character where crime was atrocious, 11, 347
 - Good character creating reasonable doubt, 11, 346
 - Mere proof of good character not ground for acquittal, 11, 348

CRIMINAL PROCEDURE, *cont'd.***Instructions, *cont'd.***

- Character, *cont'd.*
 - Necessity of instructions, 11, 349
 - Presumption of innocence, 11, 349
- Defining offense charged, 11, 205
- Failure of accused to testify, 11, 350
 - Adverse comments as to failure to testify, 11, 350
 - What instructions proper or necessary, 11, 351
- Limiting instructions to pleadings, 11, 167
- Necessity of requesting instructions, 11, 216
 - Rule in California, 11, 228
 - Rule in Missouri and Texas, 11, 228
 - Rule in Tennessee, Kentucky, and Oregon, 11, 238
 - Rule that court must give instructions substantially covering the case whether requested or not, 11, 231
 - Rule that court must not give any instruction unless requested, 11, 231
 - Rule that court need not instruct at all unless requested, 11, 230
- Self-defense, 11, 230
- Presumption of innocence, 11, 453
 - Duty to instruct on when requested, 11, 354
 - Whether necessary to instruct on in absence of request, 11, 356
- Internal revenue:
 - Indictment for violation, 11, 441
 - Charging different offenses, 11, 442
 - Essential averments of indictment, 11, 441
 - Joinder of defendants, 11, 442
 - Necessity for indictment, 11, 441
- Interstate commerce, 11, 493
 - Generally, 11, 493
 - Indictment of agents, 11, 493
 - When indictment will lie, 11, 493
- Intoxicating liquors*, see INTOXICATING LIQUORS.
- Jeopardy*, see FORMER CONVICTION OR ACQUITTAL.
- Judges:
 - Indictment, 11, 781
 - Judgment by default*, see DEFAULTS.

CRIMINAL PROCEDURE, *cont'd.*

Judgments (see SENTENCE):

As to opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Equitable relief against criminal prosecutions, 11, 1208

Juries, see JURIES.

Justices of the peace, 12, 690

Criminal prosecutions against justices, 12, 820

Examples, 12, 821, 828

In general, 12, 820

Kidnapping, see KIDNAPPING.*Larceny*, see LARCENY*Lewdness*, see LEWDNESS.*Libel and slander*, see LIBEL AND SLANDER.*Licenses*, see LICENSES.**Liens:**

Interference with property, 13, 174

Limitations, 13, 279

Allegations of indictment, 13, 279

Arrest of judgment, 13, 280

How time should be laid, 13, 279

Necessity for special plea, 13, 281

Necessity to aver matters of avoidance or exceptions, 13, 280

Quashing indictment, 13, 280

Special plea, 13, 281

Logs and lumber, 13, 347

Indictment for cutting and carrying away, 13, 348

Indictment for destroying log brands, 13, 347

Indictment for unlawful branding, 13, 348

Lotteries, see LOTTERIES.*Mails*, see POST OFFICES.*Malicious prosecution*, see MALICIOUS PROSECUTION.*Malpractice*, see MALPRACTICE.**Mandamus** (see MANDAMUS), 13, 593

Certifying recognizance, 13, 597

Control of discretion, 13, 593

Depositions, 13, 594

Discretion of court to admit to bail, 13, 597

Quashing an indictment, 13, 595

Setting aside proceedings on bail bond, 13, 597

Testimony, 13, 594

To admit to bail, 13, 596

To discharge prisoner, 13, 595

To issue warrant, 13, 593

To make arrest, 13, 594

To sentence prisoner, 13, 956

To take jurisdiction and hear case, 13, 595

CRIMINAL PROCEDURE, *cont'd.*

Master and servant

Enticing away, harboring, and intimidating servants, 13, 919

Indictment for working employees overtime, 13, 924

Mayhem, see MAYHEM.

Mills and milldams, 14, 15

Miscegenation, 14, 31

Monopolies, see MONOPOLIES.*Murder*, see HOMICIDE.**Names:**

Fictitious name when real name unknown, 14, 279

Naturalization, 14, 316

Alleging fraud, 14, 316

False swearing, 14, 316

In general, 14, 316

New trial, see NEW TRIAL.*Nuisances*, see NUISANCES.*Obscenity*, see OBSCENITY.*Obstructing justice*, see OBSTRUCTING JUSTICE.**Open and close**, 15, 185

Assistant counsel, 15, 186

Rights of state, 15, 185

Order of proof, 15, 380

Ordinances, see ORDINANCES.*Pardons*, see PARDONS.*Penalties and penal actions*, see PENALTIES AND PENAL ACTIONS.*Perjury*, see PERJURY.

Physicians and surgeons (see PHYSICIANS AND SURGEONS):

Malpractice, see MALPRACTICE.

Piracy, 16, 537

Plea or answer:

Mitigation of damages, 5, 621

Pointing firearms, 16, 653

Polygamy, 16, 655

Poor and poor laws:

Procedure against poor officers, 16, 665

Post offices, see POST OFFICES.*Præcipe*, 16, 771*Preliminary examination*, see PRELIMINARY EXAMINATION.

Presence of accused, 2, 767, 792; 21, 971

Assignment of errors, 2, 932

Records, 2, 498

Verdict, see VERDICT.

View by jury, 22, 1059

Prison breaking, 7, 919

Prize fighting, 16, 990

Profane swearing, 16, 1079

Prohibition:

Proceedings summary and quasi-criminal, 16, 1129

Public lands, 17, 136

Public officers (see PUBLIC OFFICERS):

Refusal to accept office, 17, 144

CRIMINAL PROCEDURE, *cont'd.*

Public officers, *cont'd.*
 Surrender or delivery of official property, 17, 161
Qui tam actions, see PENALTIES AND PENAL ACTIONS.
Quo warranto, see QUO WARRANTO.
 Railroads, see RAILROADS.
 Rape, see RAPE.
 Receiving stolen goods, see RECEIVING STOLEN GOODS.
 Recognizance (see BAIL AND RECOGNIZANCE):
On forfeited recognizances in criminal cases, see SCIRE FACIAS.
 Records, see RECORDS.
 Records, falsifying, 8, 917
 Removal of causes, see REMOVAL OF CAUSES.
 Repeal of ordinance pending prosecution, 15, 420
 Replications and replies, 18, 698
 Report and case made, 18, 735
 Repugnancy, 18, 742
 Rescue, 7, 920
 Reward, see REWARD.
 Riot, see RIOT.
 Robbery, see ROBBERY.
Scilicet or *videlicet*, 19, 255
 Search warrants, see SEARCH WARRANTS.
 Seduction, see SEDUCTION.
 Self-crimination, see DISCOVERY.
 Separate trials, see SEPARATE TRIALS.
 Service of process:
 Copy of indictment, 2, 764
 Sheriffs and constables, 20, 157
 Similiter, 20, 265
 Sodomy, see SODOMY.
 Special and struck juries, 20, 380
 Special interrogatories to juries, 20, 314
 Statutes, see STATUTES.
 Stipulations, 20, 649
 Streets and highways, see STREETS AND HIGHWAYS.
 Strikes and boycotts, see STRIKES AND BOYCOTTS.
 Subpoena:
 Witnesses, 22, 1330
Summary proceedings, see SUMMARY PROCEEDINGS.
 Sundays and holidays, 20, 1196, 1197
Prosecutions for violation of Sunday laws, see SUNDAYS AND HOLIDAYS.
Supersedeas and stay of proceedings, see SUPERSDEAS AND STAY OF PROCEEDINGS.
 Taxation, 21, 497
 Telegraphs and telephones, 21, 506
 Theatres and shows, 21, 646

CRIMINAL PROCEDURE, *cont'd.*

Threats and threatening letters, see THREATS AND THREATENING LETTERS.
 Trade-marks and trade names, 21, 774
 Treason, see TREASON.
 Trespass, see TRESPASS.
 Trial (see TRIAL):
 Necessity of presence of judge, 21, 978
 Statement by accused to jury, 21, 973
Trusts and trade combinations, see MONOPOLIES.
 Turnpikes and tollroads, see TURNPIKES AND TOLLROADS.
 United States courts, 22, 312
 State decisions, 22, 336
 Unlawful assembly, 22, 404
 Usury, see USURY.
 Variance, see VARIANCE.
 Allegations and proof, 22, 532
Venue (see VENUE), 8, 18
 Verdict, see VERDICT.
Videlicet, 19, 255
View by jury, see VIEW BY JURY.
 Warehousemen, 22, 1069
 Manner of prosecution, 22, 1069
 Requisites of indictment, 22, 1069
 Warrants, see WARRANTS.
 Waters and watercourses:
 Pollution, 22, 1173
 Ways, 22, 1187
 Weights and measures, 22, 1188
 Witnesses, see WITNESSES.
CROPS:
 Executions:
 Description of growing crops, 8, 535
 Growing crops, 8, 535
 Unripe crops, 8, 535
 Larceny, 12, 978
 Liens, see LIENS.
 Railroads, 17, 628
 Actions for injury to crops, 17, 628
 Joining and splitting causes of action, 17, 628
 Parties, 17, 628
 Pleadings, 17, 628
CROSS-ACTIONS:
 Consolidation of actions, 4, 696
CROSS-BILLS, 5, 624
 See CROSS-COMPLAINTS.
 Accounting, 5, 635
 Affirmative relief, 5, 632
 Amendment, 5, 667
 Answer:
 Defenses available by answer, 5, 639

CROSS-BILLS, *cont'd.*

- Answer as cross-bill, 5, 626
 - Federal courts, 5, 627
 - Independently of statutes, 5, 626
 - Right to file cross-bill not taken away by statute, 5, 626
 - Rules governing answers filed as cross-bills, 5, 628
 - Under statutes, 5, 626
- Answer to cross-bill, 5, 659
 - Duty of defendant to require answer, 5, 661
 - Effect of failure to answer, 5, 661
 - Evidence, 5, 669
 - Nature, 5, 659
 - Right of complainant to answer, 5, 661
 - Right to priority, 5, 660
- Appeals:
 - Assignment of errors, 5, 671
 - How causes brought up, 5, 671
 - Review, 5, 671
 - What decrees or orders appealable, 5, 669
- Assignment of errors, 5, 671
- Bills of exceptions, 3, 386
- Chattel mortgages, 4, 526
- Definition, 5, 625
- Demurrer, 5, 639
 - To cross-bill, 5, 662
- Depositions, 5, 667
- Discovery, 5, 630, 651
- Discretion of court as to time of filing, 5, 654
- Dismissal of, 5, 667
- Dismissal of original bill, effect of, 5, 662
 - Cross-bill between codefendants, 5, 664
 - Cross-bill for defense, 5, 663
 - Cross-bill for relief, 5, 663
 - Cross-bill without equity, 5, 664
 - In general, 5, 662
- Divorce*, see **DIVORCE**.
- Evidence, 5, 667
 - Answer as evidence, 5, 669
 - Cross-bill as evidence, 5, 668
- Filing of cross-bill, 5, 652
 - Discretion of court as to time of filing, 5, 654
 - Filing cross-bill before answer, 5, 656
 - Leave to file, 5, 656
 - Time of filing, 5, 653
 - Where filed, 5, 652
- Foreclosure of mortgages, 5, 643; 9, 393
 - Formal sufficiency of cross-pleading, 9, 395
 - In general, 9, 393
 - Matters proper for cross-bill, 9, 394

CROSS-BILLS, *cont'd.*

- Frame of cross-bill, 5, 650
 - Allegations, 5, 650
 - Discovery, 5, 651
 - Facts showing title to equitable relief, 5, 650
 - Grounds for relief, 5, 651
 - Prayer, 5, 652
 - Prayer for process, 5, 652
 - Prayer for relief, 5, 652
 - Signature, 5, 652
 - Statement of original bill, 5, 650
- Hearing, 5, 664
 - Amendment of cross-bill, 5, 667
 - Answer to cross-bill as evidence, 5, 669
 - Causes ordinarily heard together, 5, 664
 - Cross-bill as evidence, 5, 668
 - Cross-bill not necessarily a stay, 5, 665
 - Depositions of evidence, 5, 667
 - Dismissal of cross-bill, 5, 667
 - Evidence, 5, 667
- Interpleader, 11, 470
- Jurisdiction:
 - Whether defect of jurisdiction under original bill is cured by cross-bill, 5, 657
- Leave to file, 5, 656
- Liens:
 - Bill to enforce liens, 5, 643
- Marriage (annulment), 13, 881
- Marshaling assets, 5, 637; 13, 889
- Mechanics' liens, 13, 999
- Nature and object of, 5, 620
 - Accounting, 5, 635
 - Affirmative relief, 5, 632
 - Codefendants, 5, 637
 - Discovery, 5, 630
 - Equitable set-off, 5, 631
 - Interfering patents, 5, 636
 - Marshaling assets, 5, 637
 - Partition, 5, 636
 - Relief to infant defendants, 5, 637
 - Specific performance, 5, 634
 - To set up matters arising after issue, 5, 630
 - Usual functions, 5, 628
 - Waiver, 5, 634
- Necessity of cross-bill where affirmative relief is asked, 1, 871
- Original bill:
 - Effect of dismissal of, 5, 662
 - Parties, 5, 647
 - Relevancy to, 5, 640
 - Statements of, 5, 650
 - Whether defect of jurisdiction under original bill is cured by cross-bill, 5, 657
- Parties to, 5, 646
 - Adding new parties, 5, 646

CROSS-BILLS, *cont'd.*

- Parties to, *cont'd.*
 - Codefendants, 5, 648
 - Complainant, 5, 648
 - Dismissal, 5, 650
 - Interest of added party, 5, 650
 - Necessity for parties defendant, 5, 648
 - Parties complainant in general, 5, 646
 - Parties defendant, 5, 648
 - Parties to the original bill, 5, 647
 - Persons not parties to the original bill, 5, 647
- Partition, 5, 636; 15, 807
- Patents, 5, 644; 16, 28, 104
 - Bills for infringement of patent, 5, 644
 - Interfering patents, 5, 636
- Pleas in equity, 16, 602
- Pleas to, 5, 661
 - Plea of another suit pending, 5, 662
 - Pleas in bar, 5, 661
 - Pleas to the jurisdiction, 5, 661
- Prayer for relief, 5, 652
- Process, 5, 658
 - Necessity, 5, 658
 - On whom served, 5, 658
 - Prayer, 5, 652
- Redemption, 17, 969
- Relevancy to original bill, 5, 640
 - Application of the general rule, 5, 641
 - Bills for infringement of patents, 5, 644
 - Bills for settlement and distribution of funds, 5, 642
 - Bills to cancel deeds, 5, 641
 - Bill to enforce liens, 5, 643
 - Bill to enjoin execution of judgment, 5, 641
 - Bill to establish title, 5, 642
 - Bill to foreclose mortgage, 5, 643
 - In general, 5, 640
 - Not restricted to precise issues of original cause, 5, 645
 - Specific performance, 5, 643
- Requisites of cross-bill, 5, 639
 - Consistency with answer, 5, 645
 - Defenses available by answer, 5, 639
 - Nature of relief, 5, 645
 - Relevancy to original bill, 5, 640
- Rescission, cancellation, and reformation of contracts, 18, 843
- Restitution, 18, 893
- Review, 5, 671
- Revivor, 5, 664
- Service of process, 5, 658
 - Improvident order of service set aside, 5, 659
 - Necessity for, 5, 658
 - On whom served, 5, 658

CROSS-BILLS, *cont'd.*

- Service of process, *cont'd.*
 - Service by publication improper, 5, 659
 - Set-off and counterclaims:
 - Equitable set-off, 5, 631
 - Signature, 5, 652
 - Specific performance, 5, 634, 643; 20, 464
 - Supersedeas and stay of proceedings, 5, 666; 20, 1260
 - Supplemental pleadings, 21, 50
 - Time of filing, 5, 653
 - United States courts:
 - Answer as cross-bill, 5, 627
 - Usury, 22, 428
 - Waiver:
 - Affirmative relief, 5, 634
 - Wills, 22, 1207
 - Winding up corporations, 22, 1275
- CROSS-COMPLAINTS, 5, 673**
- See CROSS-BILLS.
- Affirmative relief, 5, 677
 - Against whom relief may be obtained, 5, 674
 - Against codefendants, 5, 675
 - Against new parties, 5, 675
 - Against plaintiff, 5, 676
 - Against plaintiff and codefendants, 5, 676
 - Against plaintiff and new parties, 5, 676
 - By plaintiff against a coplaintiff, 5, 677
 - In general, 5, 674
 - Allegations, 5, 680
 - In general, 5, 680
 - Matters set up nominally as a defense, 5, 681
 - Prayer for relief, 5, 682
 - Reference to original complaint, 5, 681
 - Single paragraph, 5, 682
 - Answer, 5, 684
 - Appeals, 5, 686
 - Cross-bills:
 - Similarity to, 5, 674
 - Defenses, 5, 680
 - Dismissal, 5, 679
 - Dismissal of complaint, 5, 684
 - Evidence, 5, 686
 - Filing, 5, 682
 - Foreclosure of mortgages, 5, 679
 - Hearing, 5, 685
 - Causes ordinarily heard together, 5, 685
 - Evidence, 5, 686
 - Stay of proceedings, 5, 685
 - Issues to the jury, 11, 622
 - Jurisdiction:
 - Whether defect of jurisdiction on original complaint cured by cross-complaint, 5, 683

CROSS-COMPLAINTS, *cont'd.*

- Matters proper as defense not to be set up by cross-complaint, 5, 680
- Nature, 5, 674
- Necessity of cross-complaint for affirmative relief, 5, 677
- Object of cross-complaint, 5, 674
- Parties (see *infra*, Against whom relief may be obtained), 5, 680
 - Adding new parties, 5, 680
 - Complainants, 5, 680
 - Defect of parties, 5, 680
 - Defendants, 5, 680
- Prayer for relief, 5, 682
- Process, 5, 683
- Quieting title*, see **QUIETING TITLE**.
- Relation of cross-complaint to original complaint, 5, 678
 - Application of the rule, 5, 678
 - Dismissal, 5, 679
 - Rule stated, 5, 678
- Rescission, cancellation, and reformation of contracts, 18, 843
- Service of process, 5, 683
- Superseas and stay of proceedings, 5, 685

CROSS-EXAMINATION, see EXAMINATION OF WITNESSES.**CROSSINGS, 5, 688**

- Allegations, 5, 692
- Allegations of negligence, 5, 689
 - In construction of crossing, 5, 690
 - In giving signals, 5, 689
 - In leaving cars on track, 5, 690
 - In speed of trains, 5, 689
 - Particular acts of negligence, 5, 690
 - Proximate cause, 5, 691
- Certiorari:
 - High way crossing railroads, 4, 110
- Contributory negligence, 5, 691, 694
- Crossing of two railroads, 5, 691; 17, 501, 502
 - Defective crossing, 5, 693
 - Description of crossing, 5, 691
 - Extent of crossing, 5, 693
 - Failure to give warning, 5, 693
 - Instructions, 5, 693
 - Parties, 5, 689
 - Proof, 5, 692
 - Qui tam* action, 5, 689, 691

Railroads:

- Crossing of two railroads, 5, 691; 17, 501, 502
 - Averting effort to agree, 17, 506
 - Award of commissioners, 17, 509
 - Complaint, 17, 503
 - Costs, 17, 510
 - Courts of equity, 17, 504

CROSSINGS, *cont'd.***Railroads, *cont'd.*****Crossing of two railroads, *cont'd.***

- Designating place and manner of crossing, 17, 506
- Determining damages or compensation, 17, 509
- Determining manner of crossing, 17, 508
- Equitable interposition and control, 17, 512
- Equitable interposition to enforce rights, 17, 513
- Grade crossings, 17, 513
- In general, 17, 502
- Injunctions, 17, 512
- Petition, 17, 505
- Powers and duties of court and appointment of commissioners, 17, 507
- Proceedings and award of commissioners, 17, 508
- Proceedings by county or railroad commissioners, 17, 510
- Proceedings by court, 17, 503
- Proceedings by court and commissioners, 17, 505
- Restraining and controlling condemnation proceedings, 17, 513
- Review of proceedings, 17, 511
- Statement of purpose of condemnation and lands sought therefor, 17, 506
- Stay of proceedings and operations pending appeal, 17, 512
- Street railways, 17, 513
- Verdict and judgment, 17, 504
- Penalties for obstructing crossings, 17, 536
- Rebutting contributory negligence, 5, 691
- Street railways*, see **STREET RAILWAYS**.

CROSS-LIBEL, 1, 272**CRUELTY:**

- Divorce, 7, 77
 - Acts of cruelty, 7, 79
 - Alleging facts with certainty, 7, 78
 - Defenses, 7, 95
 - Ecclesiastical practice, 7, 77
 - General allegation, 7, 77
 - General allegation under codes, 7, 78
 - Remedy for indefiniteness, 7, 78
 - Time and place, 7, 79

CRUELTY TO ANIMALS AND DAMAGES, *cont'd.*

- CHILDREN**, 5, 695
 - Indictment, 5, 695
 - Instructions, 5, 697
- CUMULATIVE EVIDENCE**:
 - Appeals, 2, 557
 - Continuances, 4, 852
 - Affidavit, 4, 881
 - Evidence, 15, 393, 394
 - New trial*, see **NEW TRIAL**.
 - Order of proof, 15, 378
- CURTESY**, 5, 698
 - Curtsey Initiate, 5, 699
 - Ejectment:
 - Ejectment by tenants by curtesy, 7, 299
 - Partition:
 - Tenants by curtesy as parties plaintiff, 15, 790
 - Stranger in possession, 5, 699
 - Tenant as defendant, 5, 699
 - Tenant as plaintiff, 5, 698
- CUSTODIA LEGIS**:
 - Larceny, 12, 972
- CUSTOM DUTIES**, see **TAXATION**.
- CUSTOMS**, see **USAGES AND CUSTOMS**.
- DAMAGE ACTS**, see **CIVIL DAMAGE ACTS**.
- DAMAGES**, 5, 700
 - See **ATTACHMENT**; **CARRIERS**; **INQUESTS AND INQUIRIES**; **JUDGMENT**; **VERDICT**.
 - Actions for personal injuries*, see *infra*, **Personal injuries**.
 - Ad damnum* clause, 5, 706
 - Amendments, 5, 716
 - At common law, 5, 706
 - Code practice, 5, 707
 - Allegation of damage not traversable, 5, 708
 - Averment of special damage, 5, 709
 - Denial of precise amount alleged, 5, 709
 - In general, 5, 707
 - Judgment by default, 5, 709
 - In general, 5, 706
 - Itemizing damages, 5, 711
 - Omission to lay damages at common law, 5, 706
 - Prayer for judgment, 5, 710
 - Admiralty:
 - Prize, 1, 303
 - Where damages are divided between two vessels, 1, 277
 - Aggravation of damage, 5, 705
 - Carriers, 5, 763
 - Matters of aggravation, 5, 705
 - Necessary allegation, 5, 705
 - Setting out particular circumstances of aggravation, 5, 705
 - Whether traversable, 5, 706
 - Allegation of general damage, 5, 717
 - Allegation of special damage, 5, 719
 - Allegations must show damage, 5, 703
 - In general, 5, 703
 - Injury to feelings, 5, 704
 - Nominal damages, 5, 704
 - Physical pain resulting from personal injuries, 5, 704
 - Resulting facts, 5, 704
 - Amendments (see **AMENDMENTS**):
 - Ad damnum* clause, 5, 716
 - Answers:
 - Mitigation of damages, 5, 774
 - Answers in code pleading:
 - Allegations admitted by failure to deny, 1, 792
 - Appeals, 2, 406
 - Items of damage, 2, 494
 - Appearances:
 - Assessment of damages, 2, 604
 - Arrest of judgment:
 - Damages assessed entire, 2, 804
 - Assault and battery*, see **ASSAULT AND BATTERY**.
 - Assessment of damages (see **INQUESTS AND INQUIRIES**), 5, 781
 - Breach of contract, 5, 737
 - Breach of contract to marry*, see *infra*, **Breach of promise of marriage**.
 - Breach of warranty, 5, 742
 - Conditions, 5, 743
 - Evidence of special damages excluded at the trial, 5, 742
 - Expense, 5, 740
 - General damages, 5, 739
 - In general, 5, 737
 - Insufficient allegation of special damage, 5, 742
 - Liquidated damages, 5, 739
 - Loss of profits, 5, 740
 - Loss of time, 5, 742
 - Nominal damages, 5, 738
 - Penalties, 5, 743
 - Present damages, 5, 739
 - Prospective damages, 5, 739
 - Remote and speculative damages, 5, 744
 - Special damages, 5, 741
 - Special damages in equity, 5, 744
 - Special damages not required to be shown, 5, 739
 - Breach of promise of marriage, 5, 744
 - Damages considered under general issue, 3, 688
 - Exemplary damages, 3, 689; 5, 745
 - General damages, 5, 744
 - Seduction, 3, 688
 - Seduction under promise of marriage, 5, 745
 - Special damages, 3, 689; 5, 744

DAMAGES, *cont'd.*

Bridges, 3, 706

Carriers:

Actions against carriers, 5, 761

General damages, 5, 761

Loss of time, 5, 762

Matters of aggravation, 5, 763

Special damages, 5, 761

Written claim for damages, 5, 762

*Code practice, see infra, Ad damnum clause.**Contracts, see infra, Breach of contract.*

Costs:

Damages to land, 5, 177

Nominal damages, 5, 161

No more costs than damages, 5, 178

Cases where general rule not applicable, 5, 179

General rule, 5, 178

Who liable for remaining costs, 5, 180

Prevailing party, 5, 124

Relation to damages, 5, 108

Counts, paragraphs, and separate statements:

Separate counts, 5, 318

Covenant:

Declaration, 5, 375

Death by wrongful act, 5, 760

Allegations and proof of damages, 5, 879

Allegations of damages, 5, 874

Funeral expenses, 5, 875

In general, 5, 874

Loss of services, 5, 876

Particulars constituting loss, 5, 875

Appeal, 5, 889

Apportionment of damages, 5, 887

Instructions, 5, 886

Debt, see DEBT.

Declaration or complaint, 4, 618

Defaults:

Appeals, 6, 226

Defective pleading of damages, 5, 776

No cause of action stated, 5, 776

Remedies of defendant, 5, 777

Time when objection must be made, 5, 779

Uncertain statement in general, 5, 777

Uncertain statement of cause of action, 5, 777

Demurrers, 6, 370

Demurrers to evidence.

Assessment of damages, 6, 451

In general, 6, 451

Liquidated damages, 6, 451

Submission to jury that heard evidence, 6, 452

DAMAGES, *cont'd.*

Detinue:

Verdict assessing damages, 6, 658

Double and treble damages, 5, 726

Amount in controversy, 1, 715

Count upon statute, 5, 728

Demand for damages, 5, 729

How damage found, 5, 730

In general, 5, 726

Judgment for actual damage, 5, 729

Object of reference to the statute, 5, 729

Reference to statute, 5, 727

Verdict, 22, 917

Waiving claim, 5, 728

Dower, see DOWER.

Earnings:

Loss of, 5, 753

Personal injuries, 5, 754

Easements:

Allegations of damage, 7, 258

Elections:

Actions for damages, 7, 396

Eminent domain, see EMINENT DOMAIN.

Exemplary damages, 5, 723

Attachment, 5, 624

In general, 5, 723

Malice, 5, 624

Necessity for distinctive claim, 5, 724

Where both actual and exemplary damages are claimed, 5, 725

Where claimed, 5, 725

False imprisonment, 5, 760

Special damages, 8, 848

General issue:

Mitigation of damages, 5, 776

Infants:

Actions for injuries to infants, 5, 759

Injury to property, 5, 731

Expenses, 5, 735

Failure to allege damage, 5, 736

General allegation of damage, 5, 731

In general, 5, 731

Loss of rent, 5, 735

Pleading circumstances of special damages, 5, 734

Recoverable under general allegation, 5, 732

Special damages generally, 5, 733

Inquests and inquiries, see INQUESTS AND INQUIRIES.

Instructions, 5, 780

Pleadings and evidence, 5, 780

Interstate commerce:

Actions to recover damages, 11, 492

DAMAGES, *cont'd.*

- Issues to the jury, 11, 644
- Itemizing damages, 5, 711
- Joinder of counts and causes, 5, 773
- Judgments*, see JUDGMENTS.
- Jurisdiction, 5, 702
- Landlord and tenant*, see LANDLORD AND TENANT.
- Libel and slander, 5, 763
 - Failure to allege special damage, 5, 771
 - General allegation of damage, 5, 763
 - How special damages alleged, 5, 767
 - In general, 5, 763
 - Loss of customers, 5, 768
 - Mental suffering, 5, 765
 - Mitigation of damages, 5, 776
 - Pecuniary damages, 5, 767
 - Slander of title, 5, 772
 - Special damage, 5, 766
 - Words actionable *per se*, 5, 764
 - Words imputing want of chastity, 5, 766
 - Words not actionable *per se*, 5, 766
- Liquidated damages*, see LIQUIDATED DAMAGES.
- Loss of time:
 - Actions against carriers, 5, 762
 - Personal injuries, 5, 758
- Malicious prosecution*, see MALICIOUS PROSECUTION.
- Mandamus, 13, 814
 - Amount of damages, 13, 816
 - Appraisement of damages, 13, 605
 - Appointment of appraisers, 13, 605
 - To compel assessment, 13, 606
- Assessing damages, 13, 816
- Damages follow judgment, 13, 814
- Damages in original action as to false return, 13, 815
- False return, 13, 815
- Interest, 13, 816
- Right to damages, 13, 814, 815
- Married women:
 - Personal injuries, 5, 757
- Master and servant:
 - Injuries to infants, 5, 759
- Medical attendance, 5, 751
- Medical expenses, 5, 781
- Mental suffering:
 - Libel and slander, 5, 765
 - Personal injuries, 5, 758; 16, 388
- Mills and milldams*, see MILLS AND MILLDAMS.
- Mitigation of damages, 5, 773
 - General issue, 5, 776

DAMAGES, *cont'd.*

- Mitigation of damages, *cont'd.*
 - In general, 5, 773
 - Matter in mitigation not material, 5, 776
 - Matter tending to prove truth of charge, 5, 775
 - Personal injuries, 5, 776
 - Set up in answer, 5, 774
- New trial:
 - Excessive or inadequate damages as a ground for new trial, 14, 755
- Nominal damages:
 - Allegations, 5, 704
 - Damages for breach of contract, 5, 738
 - Recovery limited by demand, 5, 713
 - Verdict, 22, 917
- Nuisances (see NUISANCES), 5, 745
- Nursing, 5, 751
- Open and close:
 - Action for liquidated damages, 15, 192
- Opinions of courts:
 - Relation of opinion to judgment, 15, 309
- Parent and child:
 - Injuries to infants, 5, 759
- Patents*, see PATENTS.
- Payment*, see PAYMENT.
- Penalties and penal actions, 16, 235
 - Civil or criminal action, 16, 235
 - Double or treble damages for acts of trespass, 16, 238
 - Sum given by statute called damages, 16, 235
- Personal injuries (see PERSONAL INJURIES), 5, 746
 - Mitigation of damages, 5, 776
- Pleas at law:
 - Plea to damages, 16, 566
- Prayer for judgment, 5, 710
- Property*, see *infra*, Injury to property.
- Railroads*, see RAILROADS.
- Recovery limited by demand, 5, 711
 - Actions sounding in damages, 5, 712
 - Amendment of *ad damnum* clause, 5, 716
 - Damages accrued since suit brought, 5, 714
 - In general, 5, 711
 - Remitting damages, 5, 715
 - Where damages claimed are merely nominal, 5, 713
- Remittitur:
 - Recovery limited by demand, 5, 715
- Remote damages, 5, 744

DAMAGES, *cont'd.*

- Replevin:
 - Declaration and complaint, 18, 543
- Right of property, trial of:
 - Damages for detention of property, 18, 1184
- Scire facias*, see *SCIRE FACIAS*.
- Seduction (see *SEDUCTION*), 5, 745
- Slander of title, 5, 772
- Special damages:
 - Actions against carriers, 5, 761
 - Allegation of special damage, 5, 709, 719
 - Allegation of special damage not traversable, 5, 723
 - Breach of contract, 5, 739, 741
 - Conditions and penalties, 5, 743
 - Equity, 5, 744
 - Evidence of special damages excluded at the trial, 5, 742
 - In general, 5, 741
 - Breach of contract to marry, 5, 744
 - Facts inferred from facts given, 5, 722
 - Injury to property, 5, 733
 - Expenses, 5, 735
 - Failure to allege damage, 5, 736
 - In general, 5, 733
 - Loss of rent, 5, 735
 - Necessity of special pleading, 5, 733
 - Pleading circumstances, 5, 734
 - Libel and slander, 5, 766
 - Personal injuries, 5, 750
 - In general, 5, 750
 - Loss of earnings, 5, 753
 - Loss of time, 5, 758
 - Medical attendance, 5, 751
 - Mental agony, 5, 758
 - Speculative damages, 5, 744
 - Stipulations, 20, 633
 - Streets and highways, 20, 962
 - Survival of actions:
 - Measure of damages in actions which survive, 21, 342
 - Telegraphs and telephones*, see *TELEGRAPHS AND TELEPHONES*.
 - Trespass*, see *TRESPASS*.
 - Trespass to try title*, see *TRESPASS TO TRY TITLE*.
 - Trover and conversion*, see *TROVER AND CONVERSION*.
 - Variance, 22, 580
 - Vendor and purchaser*, see *VENDOR AND PURCHASER*.
 - Verdict*, see *VERDICT*.

DAMS, see *MILLS AND MILLDAMS*.

DATE:

- Affidavits, 1, 320
- Amendments:
 - Attachment, 1, 687
 - Indictments, 1, 691
- Attachment, 3, 38
- Bonds, 3, 645
- Executions*, see *EXECUTIONS*.
- Indictments, 10, 419
 - Arabic figures, 10, 419
- Judgments, 11, 956
 - Declaration and complaint in actions on judgments, 11, 1126
 - In general, 11, 956
 - Omission of date, 11, 956
 - Presumption as to date, 11, 956
- Summons and process*, see *SUMMONS AND PROCESS*.
- Terms and sessions of court*, see *TERMS AND SESSIONS OF COURT*.
- Verdict, 22, 898
- Warrants, 22, 1088
- DEAD BODY**, see *CEMETERIES; CORONER'S INQUESTS*.
- DEAF AND DUMB:**
 - Examination of witnesses, 8, 96
- DEATH** (see *ABATEMENT; REVIVAL OF JUDGMENTS; REVIVOR OF SUITS AND ACTIONS; SURVIVAL OF ACTIONS. DEATH BY WRONGFUL ACT*):
 - Assignment for benefit of creditors:
 - Appointment of receiver, 2, 915
 - Bankruptcy:
 - Effect of death of bankrupt, 22, 260
 - Concealment of birth or death, 4, 624
 - Confession of judgment, 11, 1012
 - Continuances*, see *CONTINUANCES*.
 - Coroner's inquests*, see *CORONER'S INQUESTS*.
 - Dismissal, discontinuance, and non-suit:
 - Death of defendant, 6, 924
 - Time when motion must be made, 6, 882
 - Divorce*, see *DIVORCE*.
 - Executions*, 22, 664, 645
 - Death of defendant, 8, 329
 - Against whom *scire facias* is issued, 8, 336
 - Alias* executions, 8, 335
 - Death of one or more defendants, 8, 422
 - Death of one or more defendants leaving survivors, 8, 334
 - Execution against real estate of survivors, 8, 334
 - In general, 8, 329
 - Issuance of writ on dormant judgment, 8, 340
 - Leave of court to revive, 8, 336

DEATH, *cont'd.*Executions, *cont'd.*Death of defendant, *cont'd.*

Levy after death, 8, 500

Levy of attachment in debtor's lifetime, 8, 331

Revivor by scire facias, 8, 336

Revivor in appellate court pending appeal, 8, 331

Scire facias if issued must be against survivors, 8, 335

Statute making judgment a lien, 8, 331

Statute regulating teste of writ, 8, 333

Statute respecting distribution of decedent's assets, 8, 332

Statute staying execution, 8, 335

Statutory provisions, 8, 337, 340

Validity of writ irregularly issued without revivor, 8, 340

Why such executions are considered void, 8, 341

Writ tested after death of plaintiff, 8, 329

Writ tested before defendant's death, 8, 332

Death of plaintiff, 8, 325

Death of one of several plaintiffs, 8, 327

Death of one or more plaintiffs, 8, 414

In general, 8, 325

Levy after death, 8, 499

Statutory provisions, 8, 327

Validity of writ irregularly issued without revivor, 8, 328

Writ tested before plaintiff's death, 8, 326

Death of plaintiff pending execution, 5, 802

Motion to quash where writ has been issued after death of parties without revivor, 8, 465

Guardians:

Death of ward, 9, 950

Insane persons:

Costs, 10, 1210

Proceedings to supersede the commission, 10, 1212

Traverse, 10, 1205

Joinder of parties:

Death of joint contractor, 15, 551

Death of joint obligee, 15, 531

Executors and administrators, 15, 552

Several contracts, 15, 553

Index Pl. & Pr. — 15

DEATH, *cont'd.*

Judges:

Rehearing, 18, 50

Judgment:

Confession of judgment, 11, 1010

Death before final judgment, 5, 797

Death of defendant after final judgment, 5, 822

Death of defendant before final judgment, 5, 821

Death of plaintiff after final judgment, 5, 800

For or against a deceased party, 11, 843

Collateral attack, 11, 846

Erroneous and voidable, 11, 845

How error corrected, 11, 847

In general, 11, 843

Valid until reversed, 11, 846

Whether void, 11, 843, 844

Judgment or decree after death, 5, 846

On appeal, 11, 1058

On awards, 11, 1052

Judicial sales:

Effect of death of defendant on sales of personalty, 12, 46

Effect of death of defendant on sales of realty, 12, 45

Effect of death of plaintiff, 12, 46

Partnership, see PARTNERSHIP.

Publication:

Effect of death pending publication, 17, 125

Rehearing:

Death of a party to action, 18, 50

Judge, 18, 50

Rendition and entry of judgments, 18, 448

Nunc pro tunc, 18, 461*Revivor*, see REVIVOR OF SUITS AND ACTIONS.

Sequestration, 19, 547

Service of process:

Death of defendant before service of summons, 5, 821

Severance, 19, 1115

Specific performance, 20, 433

Stipulations, 20, 616; 5, 846

Survival, see SURVIVAL OF ACTIONS.*Taxation*, see TAXATION.

Venditioni exponas, 22, 644, 645

DEATH BY WRONGFUL ACT, 5, 848

Abatement, 5, 889

Death of beneficiaries, 5, 890

Death of defendant, 5, 890

Death of plaintiff, 5, 889

Admiralty, 5, 893

Actions founded on state statutes, 5, 893

DEATH BY WRONGFUL ACT, DEATH BY WRONGFUL ACT,
*cont'd.***Admiralty, *cont'd.***

Actions not on state statutes, 5, 893

Conflict of loss, 1, 289

Form of proceedings, 5, 893

Allegations, 5, 861

Action for death of employee, 5, 864

Acts not *per se* negligence, 5, 865

Allegations and proof, 5, 877

General allegation of negligence, 5, 877

Of damages, 5, 879

Of existence and names of beneficiaries, 5, 879

Of negligence, 5, 877

Of particular facts, 5, 879

Proof under allegation of a definite act of negligence, 5, 877

Special circumstances of negligence, 5, 878

Allegations of damages, 5, 874

Allegation that deceased was killed within the state, 5, 866

Alleging domestic statute, 5, 866

Alleging foreign statute, 5, 866

Appointment as administrator, 5, 868

Deceased employee, 5, 866

Dependence on deceased, 5, 868

Existence of beneficiaries, 5, 868

General allegation of negligence, 5, 862

Immaterial allegations, 5, 873

Knowledge on the part of defendant, 5, 868

Loss of service, 5, 876

Names of beneficiaries, 5, 870

Necessary allegations, 5, 865

Particulars constituting loss, 5, 875

Parties having prior right to sue, 5, 865

Rebutting contributory negligence, 5, 870

Relationship of plaintiff and deceased, 5, 866

Statutory provisions, 5, 871

Surplusage, 5, 873

Under peculiar statutory provisions, 5, 871

What particularity required, 5, 861

Wilful negligence, 5, 863, 864, 867

Amendments, 1, 561; 5, 879

Adding new parties, 5, 880

Alleging foreign statutes, 5, 882

Alleging loss of services, 5, 883

Amendments, *cont'd.*

Failure to show cause of action, 5, 880

Giving further particulars, 5, 882

In general, 5, 879

Legal existence of beneficiaries, 5, 881

Legal plaintiff omitted, 5, 881

Answer, 5, 884

Appeals:

Objections raised for the first time, 5, 888

Beneficiaries (see *infra*, Parties):

Allegation of existence of beneficiaries, 5, 868

Allegations and proof of existence and names of beneficiaries, 5, 879

Amendment, 5, 881

Death of, 5, 890

Dependence on deceased, 5, 868

Names of, 5, 870

Remedy by indictment, 5, 891

Bill of particulars, 5, 883

Contributory negligence:

Rebutting contributory negligence, 5, 870

Costs, 5, 888

Criminal law:

Previous criminal prosecution, 5, 973

Remedy by indictment, 5, 891

Damages, 5, 760

Allegations and proof of damages, 5, 879

Allegations of damages, 5, 874

Funeral expenses, 5, 875

In general, 5, 874

Loss of services, 5, 876

Particulars constituting loss, 5, 875

Appeal, 5, 889

Apportionment of damages, 5, 887

Instructions, 5, 886

Death:

Abatement of action, 5, 889

Declaration and complaint, see *infra*, Allegations.

Definiteness and certainty in pleadings, 5, 892

Evidence, see *infra*, Allegations.

Executors and administrators, 5, 852, 868

Appointment as administrator, 5, 868

Foreign executors and administrators, 5, 854

Form of action, 5, 847

DEATH BY WRONGFUL ACT, DEATH BY WRONGFUL ACT,

cont'd.

Indictment:

- Remedy by indictment, 5, 891
- Administration, 5, 891
- Duplicity, 5, 893
- Essential elements, 5, 891
- Existence of beneficiaries, 5, 891
- Gross negligence, 5, 892
- In general, 5, 891
- Particularity, 5, 892

Instructions, 5, 884

- As to damages, 5, 886
- As to negligence, 5, 885
- In general, 5, 884

Introductory, 5, 849

Joinder of actions, 5, 850

Joinder of counts and causes, 5, 850, 851

Joinder of parties, 5, 857

- Parties defendant, 5, 860

Jurisdiction, 5, 860

Knowledge on part of defendant, 5, 868

Limitation of actions, 5, 881, 882, 884

Loss of services:

- Amendment, 5, 883

Master and servant:

- Negligence of defendant and his servants, 5, 850

Objections on appeal, 5, 888

Parent and child:

- Joinder of parents, 5, 859
- Parents of deceased, 5, 857
- Suit by parent, 5, 850

Parties, 5, 851

- Allegations of existence of beneficiaries, 5, 868

Executors and administrators, 5, 852

Foreign administrators, 5, 854

Heirs of deceased, 5, 856

Joinder of parties, 5, 857, 859

Minor children, 5, 857

Parents of deceased, 5, 857

Parties defendant, 5, 860

Parties having prior right to sue, 5, 865

Personal representatives, 5, 852

Relationship of plaintiff to deceased, 5, 866

Resident administrator suing for injuries received in another state, 5, 854

Who are necessary parties, 5, 859

Who may sue, 5, 851

Widow of deceased, 5, 856

Pecuniary advantage to wrongdoer 5, 790

Personal injuries:

- Joinder, 16, 375

cont'd.

Personal representatives, 5, 852

Plea, 5, 884

Proof, see *infra*, Allegations.

Removal of causes

- Indictment for causing death by wrongful act, 18, 171

Statutory provisions:

- Allegations under peculiar statutory provisions, 5, 871

Surplusage, 5, 873

Survival of actions, 21, 345

- Death of beneficiary, 21, 345

- Death of wrongdoer, 21, 346

- Personal injuries resulting in death, 21, 342

Venue, 5, 860

Verdict, 5, 887

- Apportionment of damages, 5, 887

- Inconsistent findings, 5, 888

- Special findings, 5, 887

Widow of deceased, 5, 856

Wilful negligence, 5, 863, 864, 867

DE BENE ESSE, see BILLS DE BENE ESSE.

DE BONIS NON, 8, 654

DEBT, 5, 894

Abolition of debt, 5, 896

Allmony, 5, 910

Arbitration and award:

- Debt on award, 5, 906

Assumpsit, 2, 989

Awards, 3, 130

- Action for money award before date fixed for payment, 3, 131

- Action of debt on award, 3, 130

- Action of debt on bond, 3, 130

Bail and recognizance, 3, 181, 240

Banknotes, 5, 910

Bills and notes, 5, 899

Bonds, 3, 637; 5, 904

Book debt, 5, 900

- Actual delivery, 5, 902

- Auditing in book debt, 5, 930

- Character of articles, 5, 901

- Charging articles when delivered, 5, 902

- Concurrent with assumpsit, 5, 903

- Declaration, 5, 929

- Defective pleas, 5, 930

- In general, 5, 900

- Limitation of the action, 5, 903

- Money paid, 5, 901

- Money received, 5, 901

- Nil debet*, 5, 929

- Offset, 5, 930

- Origin, 5, 901

- Pleadings in book debt, 5, 929

- Pleas, 5, 929

- Privity of contract, 5, 901

DEBT, *cont'd.***Book debt, *cont'd.***

- Right to charge the gist of the action, 5, 902
- Satisfaction, release, or discharge, 5, 930
- Special agreements, 5, 901
- Tender, 5, 930
- When the action does not lie, 5, 912

Character of action, 5, 907

Common counts, 5, 914

Conditional contracts, 5, 910

Consideration:

Declaration, 5, 914

Plea to action on simple contracts, 5, 923

Contracts, 5, 898

Bonds, 5, 904

Book debt, 5, 800

Concurrent with assumpsit, 5, 899

Conditional contracts, 5, 910

In general, 5, 898

Money unlawfully paid, 5, 898

No contractual obligation, 5, 910

Parol renewals of specialties, 5, 899

Pleas, 5, 922

Privy of contract, 5, 898

Promissory notes and bills of exchange, 5, 899

Quantum meruit, 5, 899

Rents, 5, 900

Simple contracts, 5, 898

Specialties, 5, 903

When the action will not lie, 5, 910

Whether the action lies, 5, 898

Costs, 5, 899

Covenant distinguished from, 5, 344

Creditors' bills, see CREDITORS' BILLS.

Criminal action, 5, 907

Damages:

Declaration, 5, 921

Judgment, 5, 932

Damages uncertain, 5, 896, 909

Death of defendant, 5, 827

Declaration, 5, 913

Actions on leases, 5, 917

Against personal representatives, 5, 918

Allegations of time, 5, 920

Book debt, 5, 929

Breach, 5, 918

Certainty of amount, 5, 915

Certainty of description, 5, 916

Character of consideration, 5, 914

Common counts, 5, 914

Consideration, 5, 914

Consideration implied, 5, 915

DEBT, *cont'd.***Declaration, *cont'd.***

Consideration of sealed instruments, 5, 915

Contra formam statuti, 5, 917

Damages, 5, 921

Debet, 5, 918

Defects supplied by writ, 5, 914

Demand, 5, 919

Detinet, 5, 918

Disclosing right of action, 5, 917

In general, 5, 913

Interest, 5, 916

Joinder of counts, 5, 921

Jurisdictional facts, 5, 920

Necessity of consideration, 5, 914

Prerequisite statutory conditions, 5, 919

Reference to statute, 5, 916

Special averments, 5, 919

The debt, 5, 915

Under the statute, 5, 916

Variance between caption and counts, 5, 915

Variance between declaration and writ, 5, 913, 914

Demand, 5, 919

Detinet, 5, 918

Double or treble damages for acts of trespass, 16, 238

Eminent domain:

Action on awards and judgments, 7, 627

Escape, 7, 929

Executions, 8, 548

Executors and administrators, 5, 918

Fees, 5, 899

Final judgment, 5, 934

Foreign judgments, 5, 905

Guaranty:

Action to enforce contract of guarantyship, 16, 940

Illegal contracts, 5, 898

Insolvency, see INSOLVENCY.

Instalments, money payable in, 5, 897

Interest, 5, 916

Interest as damages, 5, 933

Introduction, 5, 895

Joinder of counts and causes, 1, 167; 5, 921

Debt and assumpsit, 1, 168

Debt and detinue, 1, 168

Judgment:

Actions on judgments, 11, 1113

In the action, 5, 932

Definite sum, 5, 934

Distinguishing debt from damages, 5, 932

Finality, 5, 934

In damages only, 5, 932

In general, 5, 932

Interest as to damages, 5, 933

DEBT, *cont'd.***Judgment, *cont'd.*****In the action, *cont'd.***

Judgment corresponding to claim, 5, 933

Writ of inquiry unnecessary, 5, 933

Plea of *nil debet*, 5, 925

Plea of *nul tiel* record, 5, 925

Void judgments, 5, 911

Landlord and tenant, 12, 859

Assignee or lessee, 12, 860

Assignment of lease, 12, 860

By whom and against whom maintainable, 12, 860

Declaration, 12, 861

Pleas, 12, 862

Venue, 12, 861

When action lies, 12, 859

Leases, 5, 900

Legacies, 5, 909

Limitations, 13, 187

Plea in action on statutes, 5, 928

Plea to action on simple contracts, 5, 923

Money unlawfully paid, 5, 898

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

***Nil debet*:**

Action on statutes, 5, 928

Book debt, 5, 929

Plea to action on record, 5, 925

Plea to action on simple contracts, 5, 922

Plea to action on specialties, 5, 924

***Non est factum*:**

Plea to action on specialties, 5, 923

Nul tiel record, 5, 925

Oath to plea, 5, 922

Ordinances, 15, 416

Payments:

Plea to actions on simple contracts, 5, 923

Pecuniary certainty, 5, 897, 909

Penalties and penal actions, 5, 907; 16, 238

Character of the action, 5, 907

"Damages," 5, 908

"Fine," 5, 908

Infringement of municipal ordinances, 5, 908

In general, 5, 907

Penal remedies strictly pursued, 5, 907

Qui tam actions, 5, 909

Statutory damages computable by verdict, 5, 908

Pleas, 5, 922

Book debt, 5, 929

Limitations, 5, 923, 928

Nil debet, 5, 924, 925, 928

DEBT, *cont'd.***Pleas, *cont'd.***

No consideration, 5, 923

Non est factum, 5, 923

Not guilty, 5, 928

Nul tiel record, 5, 925

Nunquam indebitatus, 5, 922

Oath to plea, 5, 922

On simple contracts, 5, 922

Payment, 5, 923, 926

Records, 5, 925

Specialties, 5, 923

Statutes, 5, 928

Want of jurisdiction, 5, 927

Privy, 5, 898, 912

Book debt, 5, 901

Profert and oyer, 5, 921

Public officers, 17, 175

Quantum meruit, 5, 899

Rent, 5, 900

Replication, 5, 928

Reward:

Assumpsit or debt, 18, 1151

Specialties, 5, 903

Bonds, 5, 904

In general, 5, 903

Parol renewals of specialties, 5, 899

Pleas, 5, 923

Statutes, 5, 907

"Damages," 5, 908

Duties, 5, 909

"Fine," 5, 908

Penalties, 5, 907

Pleas, 5, 928

Qui tam actions, 5, 909

Taxes, 5, 908

Statutory abolition of debt, 5, 896

Statutory remedy, 5, 911

Stock and stockholders:

Enforcement of stockholders' liability, 20, 699

Sums rendered, 5, 896

Taxes, 5, 908

Duties, 5, 909

Tender:

Book debt, 5, 930

Trespass:

Joinder, 21, 802

Uncertainty of sums, 5, 896, 887, 909

Declaration, 5, 915

Judgment, 5, 934

Writ, 5, 913

Vendor and purchaser:

Vendor's remedies, 22, 659

Venue, 22, 783

Landlord and tenant, 12, 861

Verification:

Oath to plea, 5, 922

When the action does not lie, 5, 909

Banknotes, 5, 910

Book debt, 5, 912

DEBT, *cont'd.*

When the action does not lie, *cont'd.*

Collateral and conditional contracts, 5, 910

Damages only ascertainable by proof, 5, 909

Defeasances in contracts, 5, 912

No contractual obligation, 5, 910

Rentals without privity, 5, 912

Specific statutory remedy, 5, 911

Void judgment, 5, 911

When the action lies, 5, 896

Alternative contracts, 5, 897

Escape, 5, 909

In general, 5, 896

Money or property, 5, 897

Money payable in instalments, 5, 897

On contracts, see infra, Contracts.

On judgments, see infra, Judgment.

On legacies, 5, 909

On statutes, see infra, Statutes.

Pecuniary certainty, 5, 897

Sums certain, 5, 896

Sums rendered certain by computation, 5, 896

Uncertainty of denomination of sums, 5, 897

Work and labor, see WORK AND LABOR.

Writ, 5, 913

Certain sums, 5, 913

Variance between declaration and writ, 5, 913, 914

DEBTORS (see ASSIGNMENT FOR BENEFIT OF CREDITORS):

Poor debtor acts, see POOR DEBTOR ACTS.

DEBTS OF DECEDENTS, see SETTLEMENT OF DECEDENTS' ESTATES.**DECEDENTS' ESTATES, see SETTLEMENT OF DECEDENTS' ESTATES.****DECEIT, see FALSE REPRESENTATIONS AND DECEIT.****DECISIONS, 5, 936**

See FINDINGS OF COURTS; JUDGMENTS; OPINIONS OF COURTS.

Decrees, 5, 1032

Definition, 5, 936

Duty of court to decide, 5, 937

Effect of decision, 5, 943

Filing the decision, 5, 942

Findings of court, see FINDINGS OF COURT.

How decision should be rendered, 5, 941

Judgments, 11, 809

Decisions distinguished from judgments, 11, 828

Opinions distinguished from, 5, 937

DECISIONS, *cont'd.*

Opinions of courts (see OPINIONS OF COURTS):

Relation of opinion to decision, 15, 309

Taking case under advisement, 5, 939

Time of rendering decision, 5, 939

What must be decided, 5, 938

DECLARATION AND COMPLAINT, 10, 353

See BILLS IN EQUITY; INDICTMENTS; JOINDER OF COUNTS AND CAUSES; PETITIONS; PRELIMINARY EXAMINATION.

Accounts and accounting, 1, 85, 90, 97

Account stated, 1, 88

Impeaching account, 1, 107

Pleas, 1, 86

Admiralty, see ADMIRALTY.

Agency, see AGENCY.

Alternative averments, 4, 602

Amendments:

Attachment, 1, 676

Complaint of grand juries, 1, 699

Failure to state cause of action, 1, 510

Original complaint superseded, 1, 625

Supplemental complaints, 1, 576

Amount in controversy:

Whether the amount need be in declaration, 1, 704

Animals, see TRESPASSING, VICIOUS, AND DISEASED ANIMALS.

Appeals, 2, 35

Error in complaint, 2, 543

Presumption in favor of, 2, 469

Arbitration and award, see AWARDS.

Arrest of judgment:

Defective counts in declaration, 2, 800

Defects, 2, 796

Assignment, 4, 598

Assignment for benefit of creditors, 4, 597

Action by assignee to recover assigned property, 2, 875

Actions to enforce assignment, 2, 885

Removal of assignee and appointment of receiver, 2, 916

Sufficiency of complaint, 2, 964

Assumpsit, see ASSUMPSIT.

Awards, see AWARDS.

Banks and banking, 3, 254

Bastardy, see BASTARDY.

Bills and notes, see NEGOTIABLE INSTRUMENTS.

Bonds, 3, 645

Allegation of nonpayment, 3, 647

Assignee, 3, 647

DECLARATION AND COMPLAINT, *cont'd.*
Bonds, *cont'd.*
 Attachment bonds, 3, 651
 Conditions, 3, 649
 Consideration, 3, 646
 Dates, 3, 645
 Delivery, 3, 645
 Demand, 3, 647
 Execution, 3, 645
 Forthcoming bonds, 3, 652
 Indemnity bonds, 3, 648
In hac verba, 3, 645
 Legal effect, 3, 645
 Lost bonds, 3, 649
 Mutilated or defective bonds, 3, 648
 Name of obligee, 6, 646
 Boundaries and fences, 3, 674
Breach, 4, 937
 Aider by verdict, 4, 938, 942
 Breach assigned not broader than covenant, 4, 940
 Breach assigned not narrower than covenant, 4, 941
 Contract for payment of money, 4, 942
 Effect of failure to state or of defective statement, 4, 938
 How to state breach, 4, 939
 Necessity of averment, 4, 937
 Negating words of covenant insufficient, 4, 939
 Setting out covenant, 4, 940
 Several breaches, 4, 941
Breach of promise of marriage, see BREACH OF PROMISE OF MARRIAGE.
 Bridges, 3, 702
Carriers, see CARRIERS.
Certiorari, see CERTIORARI.
Civil damage acts, see CIVIL DAMAGE ACTS.
 Code pleading, 4, 587, 600
 Complaint must be drawn upon definite theory, 1, 194
 Common counts, 4, 611
 Complaints and petitions in code pleading, 1, 194; 4, 587, 600
 Contents, 4, 588
 Introductory, 4, 588
 Manner of stating cause of action, 4, 600
 Aider and pleading over, 4, 607
 Alternative averments, 4, 602
 Anticipating defense, 4, 614
 Certainty and definiteness, 4, 600
 Character of action, 4, 601
 Common counts, 4, 611
 Conditions precedent, 4, 611
 Contracts, 4, 611

DECLARATION AND COMPLAINT, *cont'd.*
 Complaints and petitions in code pleading, *cont'd.*
 Manner of stating cause of action, *cont'd.*
 Counts, paragraphs, and separate statements, 4, 611
 Damages, 4, 618
 Demand, 4, 612
 Demurrer, 4, 614
 Evidence, 4, 612
 Exhibits, 4, 610
 Facts sufficient to sustain judgment, 4, 603
 Fraud, 4, 618
 Inducement, 4, 606
 Introductory, 4, 600
 Legal conclusions, 4, 612
 Material allegations, 4, 600
 Matters of essential description, 4, 610
 Notice, 4, 615
 Ownership, 4, 616
 Payment, 4, 615
 Positiveness, 4, 605
 Possession, 4, 616
 Relates to what time, 4, 605
 Relief follows facts pleaded, 4, 604
 Reply, 4, 607
 Scier, 4, 615
 Stating cause of action, 4, 601
 Statute of frauds, 4, 615
 Statute of limitations, 4, 615
 Surplusage, 4, 607
 Theory of complaint, 4, 601
 Time, 4, 618
 Tort or contract, 4, 604
 Value, 4, 618
 Waiver of defects, 4, 609
 When alternative pleading allowed, 4, 603
Titles, 4, 589
 Assignees, 4, 597
 Christian names, 4, 593
 Corporations, 4, 599
 Designation of court, 4, 590
 Executors and administrators, 4, 597
 Fictitious names, 4, 593
Idem sonans, 4, 593
 Infants, 4, 599
 Middle name, 4, 594
 Name of county, 4, 592
 Name of pleading, 4, 595
 Necessity of title, 4, 589
 Partners, 4, 600
 Public officers, 4, 599
 Receivers, 4, 598
 Remedy for mistake in name, 4, 594

DECLARATION AND COMPLAINT, *cont'd.*

Complaints and petitions in code pleading, *cont'd.*

Titles, *cont'd.*

Repeating names in body of complaint, 4, 593

Representative parties, 4, 595

Specifying names of the parties, 4, 592

Trustees, 4, 599

Whether allegations control title, 4, 590

Consideration, 4, 928

Concurrent consideration, 4, 931

Consideration partly frivolous, void, or illegal, 4, 931

Executed consideration, 4, 931

Executory consideration, 4, 930

How pleaded, 4, 930

Necessity for pleading, 4, 928

Remedies for defective statement, 4, 930

Remedies for failure to state, 4, 929

Statutes, 4, 929

Sufficiency, 4, 930

Sufficient consideration, 4, 929

Whole consideration, 4, 930

Constables, see **SHERIFFS AND CONSTABLES**.

Contempt, see **CONTEMPT**.

Contracts, 4, 916

Ambiguous contract, 4, 918

Bills of exchange and promissory notes, 4, 926

Breach, 4, 937

Effect of variance, 4, 917

Executions, 4, 943

General and special clauses, 4, 921

How much of contract to be stated, 4, 919

How to state contract, 4, 916

In hac verba or according to legal effect, 4, 916

Performance, 4, 932

Pleading and proof, 4, 927

Recitals, 4, 918

Rules as to correctness and certainty, 4, 918

Specific agreement corresponding to legal obligations, 4, 926

Statement of alternative contract, 4, 920

Statement of conditional contract, 4, 920

Statement of exceptions and provisos, 4, 920

Statement of legal effect, 4, 918

Statement of modified contract, 4, 921

DECLARATION AND COMPLAINT, *cont'd.*

Contracts, *cont'd.*

The consideration, 4, 928

The promise, 4, 927

Variance, 4, 919

Where contract is at an end, 4, 926

Where special contract is imperfect, 4, 927

Contributory negligence, see **CONTRIBUTORY NEGLIGENCE**.

Conversion, see **TROVER AND CONVERSION**.

Copyright:

Necessary allegations, 5, 18

Authorship, 5, 19

Compliance with conditions precedent, 5, 19

Infringement in part, 5, 19

In general, 5, 18

Knowledge, 5, 19

Corporations, 4, 599

Counties, 5, 296

Allegation, 5, 298

Allegation of presentiment of claim, 5, 296

In general, 5, 296

Injuries caused by defective bridge, 5, 298

Itemization, 5, 297

Verification, 5, 297

Counts, paragraphs, and separate statements (see **COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS**), 4, 611

Courts:

Designation of court, 4, 590

Covenant, see **COVENANT**.

Criminal conversation, 5, 617

Essential elements, 5, 617

In general, 5, 617

Time and place, 5, 617, 618

What need not be averred, 5, 617

Cross-complaints, see **CROSS-COMPLAINTS**.

Damages, 4, 618

Death by wrongful act, see **DEATH BY WRONGFUL ACT**.

Debt, see **DEBT**.

Defaults:

Amendment, 6, 51

Amendment after default taken, 6, 53

Amendment after record lost, 6, 54

Amendment, immaterial, 6, 52

Amendment, material, 6, 51

Amendment prior to entry of default, 6, 52

Copy of complaint, 6, 51

Declaration necessary, 6, 48

DECLARATION AND COMPLAINT, *cont'd.*

- Defaults, *cont'd.*
 - Effect of amendment on judgment, 6, 53
 - Failure to state allegation essential to constitute cause of action, 6, 45
 - Filing, 6, 49
 - Filing after default taken, 6, 49
 - Filing at time summons issues, 6, 50
 - Filing auxiliary instrument, 6, 50
 - Filing before return day, 6, 50
 - General requisites, 6, 45
 - Necessity of declaration, 6, 49
 - Replication, 6, 51
 - Scire facias, 6, 51
 - Several counts, 6, 47
 - Supplemental complaint, 6, 52
 - Verification, 6, 46
- Definiteness and certainty in pleadings, 6, 249
 - Clerical mistake, 6, 251
 - Evidence, 6, 250
 - In general, 6, 249
 - Precise nature of claim, 6, 250
 - Prescribed forms, 6, 251
 - Probative matter, 6, 250

Demurrer, see DEMURRER.

Departure, see DEPARTURE.

Detinue, see DETINUE.

Devises, see HEIRS AND DEVISEES.

Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.

- Disorderly conduct, 7, 2
 - Abusive and offensive language, 7, 3
 - Complainant, 7, 2
 - Essentials, 7, 2
- Disorderly houses, 7, 9

Divorce, see DIVORCE.

Dogs, see TRESPASSING, VICIOUS, AND DISEASED ANIMALS.

Dower, see DOWER.

Druggists, 7, 227

Duplicity, see DUPLICITY.

Ejectment, see EJECTMENT.

Elections, 7, 378, 380

Eminent domain, see EMINENT DOMAIN.

Entry, writ of, 7, 726

Equitable assignments, see EQUITABLE ASSIGNMENTS.

- Escape, 7, 933
 - Arrest and custody, 7, 934
 - Escape from custody, 7, 934
 - Sufficiency, 7, 933
 - Variance, 7, 935

Escheat, see ESCHATE.

Evidence, 4, 612

As evidence, 8, 20, 31

DECLARATION AND COMPLAINT, *cont'd.*

- Exceptions and objections, 8, 194
 - Ambiguity, 8, 199
 - Appeal, 8, 194
 - Criminal procedure, 8, 201
 - Defective statement of a cause of action, 8, 196
 - Duplicity, 8, 201
 - Exceptions to rule, 8, 197
 - Failure to lay sufficient foundation for admission of evidence, 8, 234
 - Failure to state cause of action, 8, 162, 197
 - Good after verdict, 8, 195
 - Inconsistency, 8, 199
 - Indefiniteness, 8, 199
 - In general, 8, 194
 - Misjoinder, 8, 201
 - Multifariousness, 8, 201
 - Necessity for exceptions, 8, 197
 - One good paragraph, 8, 199
 - Rule stated, 8, 194
 - Statement by way of recital, 8, 200
 - Supplemental complaint, 8, 197
 - Technical or formal defects, 8, 196
 - Uncertainty, 8, 195
 - Want of jurisdiction, 8, 199
 - What objection must show, 8, 197
- Ex contractu or ex delicto*, 4, 604
- Executors and administrators, 4, 597
 - Actions against executor *de son tort*, 8, 679
- Administration bonds, 8, 723
 - Assignment of breaches, 8, 723
 - Negating covenant, 8, 724
 - Requisite averments, 8, 723
- Extortion, 8, 795
- Extradition, 8, 804
- Factors and brokers, 8, 831, 832
 - Actions against, 8, 838, 839
- False imprisonment, 8, 845
 - Actions against public officers, 8, 848
 - Allegation of special damages, 8, 848
 - Amendments, 8, 849
 - Averment of defendant's acts, 8, 848
 - Essential averments, 8, 845
 - Malice, 8, 845
 - Particular instrumentality, 8, 846
 - Probable cause, 8, 845
 - Sufficient allegations, 8, 847
 - Unlawfulness, 8, 846
- Fires*, see FIRES.
- Fish and fisheries, 9, 14
- Fixtures, 9, 17

DECLARATION AND COMPLAINT, cont'd.

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Forthcoming and delivery bonds:

Action on bond, 9, 667

Alleging breach, 9, 668

Alleging order of sale, 9, 669

In general, 9, 667

Fraud, 4, 618

Frauds, statute of, 4, 615; 9, 699

Guaranty, see GUARANTY.

Guardians, see GUARDIANS.

Habeas corpus, see HABEAS CORPUS.

Hawkers and peddlers, 10, 1

Health regulations, 10, 4

Heirs and devisees, see HEIRS AND DEVISEES.

Husband and wife, see HUSBAND AND WIFE.

Indictments, see INDICTMENTS.

Inducement, 4, 606

Infants, 4, 599

Informations, see INFORMATIONS.

Insurance, see INSURANCE.

Interstate commerce, 11, 485

Intervention, 11, 506

Intoxicating liquors (see INTOXICATING LIQUORS), 11, 578

Certainty in declaration and

complaint, 11, 578

Complaint by overseer of the

poor, 11, 528

Description of place in complaint

and warrant, 11, 582

Irrigation, 11, 593

Insufficient averments, 11, 594

Sufficient averments, 11, 593

Judgments, 11, 861

As to actions on judgments, see JUDGMENTS.

Confession of judgment, 11, 976

Necessity, 11, 861

Sufficiency, 11, 862

Waiver of loss of right to object,

11, 862

What record must show on ap-

peal, 11, 863

Where the complaint contains

several counts, 11, 863

Justices of the peace (see JUSTICES OF THE PEACE), 10, 353

Landlord and tenant:

Covenant, 12, 858

Debt, 12, 861

Under the codes, 12, 865

Use and occupation, 12, 852

Land patents:

Cancellation of patent, 12, 942

Legatees and distributees, 13, 7, 15

DECLARATION AND COMPLAINT, cont'd.

Libel and slander, see LIBEL AND SLANDER.

Licenses, see LICENSES.

Limitations, see LIMITATIONS.

Limited partnerships, see LIMITED PARTNERSHIPS.

Local improvements, see LOCAL IMPROVEMENTS.

Logs and lumber, 13, 335

Actions for preventing passage

of logs, 13, 347

Actions for unlawful cutting, 13,

347

Enforcement of lien, 13, 344

Lost instruments and records:

Re-execution and restoration of

lost instruments, 13, 353

Malicious prosecution, see MALICIOUS

PROSECUTION.

Malpractice, see MALPRACTICE.

Marriage (annulment), see MARRIAGE (ANNULMENT).

Master and servant, see MASTER AND

SERVANT.

Mechanics' liens, see MECHANICS' LIENS.

Mines and mining, see MINES AND MINING.

Money counts, see MONEY COUNTS.

Motions, see MOTIONS.

Multifariousness, 14, 202

Multiplicity of suits, 14, 219

Municipal corporations, see MUNICIPAL CORPORATIONS.

Municipal securities, see MUNICIPAL SECURITIES.

Negligence, see NEGLIGENCE.

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Notice, see NOTICE.

Nuisances, see NUISANCES.

Officers of private corporations, see OFFICERS OF PRIVATE CORPORATIONS.

Official bonds, see OFFICIAL BONDS.

Ordinances, see ORDINANCES.

Ownership, 4, 616

Paragraphs, see COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS.

Parent and child, 15, 453

Partnership, see PARTNERSHIP.

Patents, see PATENTS.

Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.

Performance, 4, 932

Conditions concurrent, 4, 932

How independent covenant de-

termined, 4, 934

Independent covenant, 4, 933

Personal injuries, see PERSONAL INJURIES.

DECLARATION AND COMPLAINT, cont'd.*Petitions*, see PETITIONS.*Pleas at law*, see PLEAS AT LAW.

Poor and poor laws:

Action by one poor district against another, 16, 659

Procedure against kindred of pauper, 16, 662

Removal of pauper, 16, 666

Violation of poor laws, 16, 664

Possession, 4, 616

Post offices:

Actions against postmasters, for negligence, misconduct, etc., 16, 767

Prayers for relief (see PRAYERS FOR RELIEF), 4, 623

Preliminary examination, see PRELIMINARY EXAMINATION.*Premature suits*, see PREMATURE SUITS.

Production of documents:

To aid in framing pleadings, 6, 788

Publication of notice, see PUBLICATION.

Public lands, 17, 133

Public officers, see PUBLIC OFFICERS.*Quieting title*, see QUIETING TITLE.*Qui tam actions*, see PENALTIES AND PENAL ACTIONS.*Quo warranto*, see QUO WARRANTO.*Railroads*, see RAILROADS.

Receivers, 4, 598; 17, 825

Redemption, see REDEMPTION.*Removal of cloud*, see QUIETING TITLE.*Replevin*, see REPLEVIN.

Repugnancy, 18, 739

Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.*Reward*, see REWARD.*Sales*, see SALES.

Scienter, 4, 615

Scire facias, 19, 268

Necessity for declaration, 19, 274

Seduction, see SEDUCTION.*Separate statement*, see COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS.

Service of process, 19, 575

Sham and frivolous pleadings, 20, 44

Sheriffs, see SHERIFFS AND CONSTABLES*Statement of claim*, see STATEMENT OF CLAIM.

States, 20, 591

Stock and stockholders, see STOCK AND STOCKHOLDERS.*Street railways*, see STREET RAILWAYS.*Streets and highways*, see STREETS AND HIGHWAYS.*Subscriptions*, see SUBSCRIPTIONS.**DECLARATION AND COMPLAINT, cont'd.***Summary proceedings*, see SUMMARY PROCEEDINGS.

Summons and process, 20, 1102

Declaration as process, 20, 1104

Supplemental pleadings, see SUPPLEMENTAL PLEADINGS.*Suretyship*, see SURETYSHIP.*Surplusage, irrelevant or redundant matter*, see SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER.*Taxation*, see TAXATION.*Telegraphs and telephones*, see TELEGRAPHS AND TELEPHONES.*Title*, see *infra*, Complaints and petitions in code pleading.

Title, ownership, and possession, 4, 616

Tolls, 21, 746, 747

Trade-marks and trade names, 21, 758

Trespass, see TRESPASS.*Trespassing, vicious, and diseased animals*, see TRESPASSING, VICIOUS, AND DISEASED ANIMALS.*Trespass on the case*, see TRESPASS ON THE CASE.*Trespass to try title*, see TRESPASS TO TRY TITLE.*Trover and conversion*, see TROVER AND CONVERSION.

Trusts and trustees, 4, 599

Unincorporated societies, see UNINCORPORATED SOCIETIES.*Usury*, see USURY.*Variance*, see VARIANCE.*Vendor and purchaser*, see VENDOR AND PURCHASER.

Venue:

Naming county, 4, 592

Waiver of defects, 4, 609

Warehousemen, 22, 1067

Waste, see WASTE.*Waters and watercourses*, see WATERS AND WATERCOURSES.

Ways, 22, 1185

Witnesses:

Recovery of damages, forfeitures or penalties from defaulting witnesses, 22, 1353

Work and labor, see WORK AND LABOR.**DECOY:***Service of process*, see SERVICE OF PROCESS.**DECREEES, 5, 946**

See BILLS OF REVIEW; JUDGMENTS; ORDERS.

Accounts and accounting, 1, 102; 5, 954

Action at law to enforce decree, 5, 1069

DECREEES, *cont'd.*

- Decrees *pro confesso, cont'd.*
 - Failure to appear, demur, plead, or answer, *cont'd.*
 - Supplemental bill, 5, 975
 - Time of answer, 5, 979
 - Waiver of irregularity of service, 5, 977
 - Final decree, 5, 999
 - Hearing, 5, 999
 - Impeaching the decree, 5, 1001
 - By appeal, 5, 1001
 - By bill of review, 5, 1002
 - By original bill, 5, 1002
 - Necessity of proof of allegations of bill, 5, 989
 - Notice of application after final decree, 5, 998
 - Orders *pro confesso*, 5, 984
 - Origin of proceeding, 5, 970
 - Proof of allegations of bill, 5, 989
 - Proof of allegations of bill against nonresident, 5, 994
 - Rights of defendant after default, 5, 998
 - Right to be heard upon final decree, 5, 998
 - Setting cause for hearing, 5, 999
 - Successful defense by codefendant, 5, 994
 - Successful defense by codefendant where defendants are jointly interested, 5, 995
 - Successful defense where defendants' interests are separable, 5, 995
 - Waiver of objection to bill, 5, 987
 - When bill may be taken as confessed, 5, 973
- Default, see *infra*, Decrees on default at the hearing; Decrees *pro confesso*.
- Default *pro confesso*, see *infra*, Decrees *pro confesso*.
- Defenses, see *infra*, Opening orders and decrees *pro confesso* and allowing defenses.
- Definiteness and certainty, 5, 1063
 - Certainty attainable by reference, 5, 1067
 - Decree elucidated by pleadings and proceedings, 5, 1064
 - Fatal uncertainty as to parties, 5, 1065
 - Id certum est quod certum reddi potest*, 5, 1067
 - In general, 5, 1063
 - In respect of parties, 5, 1065
 - Money decree, 5, 1063
 - Persons sufficiently designated, 5, 1066
- Definition, 5, 949

DECREEES, *cont'd.*

- Demurrers in chancery, see DEMURRERS IN CHANCERY.
- Disbarment and suspension of attorneys, 6, 717
 - Collateral attack, 6, 718
 - Effect, 6, 717
 - Form, 6, 717
- Distringas, writ of, 7, 35
- Divorce, see DIVORCE.
- Dower, see DOWER.
- Drafting, 5, 1033
- Enforcement, 5, 1068
 - Action at law, 5, 1069
 - Assistance, see ASSISTANCE, WRIT OF.
 - Attachment, 5, 1068
 - Bills in equity, see BILLS TO ENFORCE DECREES.
 - Control of court over execution, 5, 1075
 - Distringas, see DISTRINGAS.
 - Execution, 5, 1068
 - Execution as at law, 5, 1068
 - In general, 5, 1068
 - Sequestration, see SEQUESTRATION.
- Enrolment, 5, 1034, 1035
- Entry, 5, 1034
 - Time of entry, 5, 1037
 - When a decree becomes operative, 5, 1037
- Essentials of a valid decree (see *infra*, Conformity to allegation and prayer), 5, 955
 - Issues must be made up, 5, 957
 - Jurisdiction, 5, 955
 - Parties, 5, 955
- Exceptions and objections, see EXCEPTIONS AND OBJECTIONS.
- Execution, 5, 1068
 - Changing time or manner of execution, 5, 1068
 - Execution at law, 5, 1068
 - In general, 5, 1068
- Executors and administrators, 8, 697
- Final decrees (see *infra*, Amendment, modification, and vacation; and see FINAL JUDGMENTS AND DECREES), 5, 950
 - Decrees *pro confesso*, 5, 999
 - Opening decrees *pro confesso*, 5, 1029
 - Setting aside decrees *pro confesso*, 5, 1004, 1005
- Flexibility of decrees, 5, 958
- Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.
- Form of decrees, 5, 1038
 - Date, 5, 1038
 - Declaratory part, 5, 1039
 - Ordering part, 5, 1040
 - Recitals, 5, 1038

DECREES, *cont'd.*

- Form of decrees, *cont'd.*
 - Several parts, 5, 1038
 - Title, 5, 1038
- Garnishment*, see GARNISHMENT.
- Good cause, 5, 1009
- Guardians*, see GUARDIANS.
- Hearing (see *infra*, Decrees on default at the hearing), 5, 957
 - Decrees *pro confesso*, 5, 999
 - Opening decrees *pro confesso*, 5, 1029
- Heirs and devisees, 10, 51
- Impeachment of decrees*, see BILLS TO IMPEACH DECREES AND JUDGMENTS; and see *infra*, Decrees *pro confesso*; Opening orders and decrees *pro confesso* and allowing defenses.
- Infants*, see INFANTS.
- Injunctions*, see INJUNCTIONS.
- Interlocutory decrees (see FINAL JUDGMENTS AND DECREES), 5, 950
- Interpleader:
 - Decree between defendants, 11, 473
 - Directing action, issue, or reference, 11, 473
 - Dismissal of plaintiff, 11, 472
 - Dismissal without prejudice, 11, 473
- Irrigation, 11, 596
- Issues, 5, 957
 - Consent decree not necessarily confined to issues, 5, 962
- Issues to the jury*, see ISSUES TO THE JURY.
- Judgments (see JUDGMENTS), 5, 904
 - Equitable relief against judgments, 11, 1216
- Jurisdiction, 5, 955
- Kinds of decrees, 5, 950
- Laches:
 - Opening decrees *pro confesso*, 5, 1021
- Legatees and distributees, 13, 9, 14
- Limitation of actions:
 - Opening decrees *pro confesso*, 5, 1021
 - Opening decrees to let in defense, 5, 1019
- Lost instruments and records, 13, 355
 - Restoration of lost decree, 13, 378
- Marriage (annulment), 13, 887
- Mechanics' liens*, see MECHANICS' LIENS.
- Mistake:
 - Amendment or modification of decrees, 5, 1056
 - Opening orders and decrees *pro confesso*, 5, 1012
- Modification*, see *infra*, Amendment, modification, and vacation.

DECREES, *cont'd.*

- Nature and extent of relief, 9, 958
 - Complete relief, 5, 958
 - Enforcing ultimate liability, 5, 959
 - Flexibility of decrees, 5, 958
- Nisi*, 5, 950
- Notice of application to open, 5, 1025
- Nuisances*, see NUISANCES.
- Nunc pro tunc*, 5, 951
- Objections to jurisdiction, 12, 179
 - Effect of want of jurisdiction, 12, 179
- Judgments absolutely void, 12, 179
- Opening decrees*, see *infra*, Amendment, modification, and vacation.
- Opening decrees on default at the hearing, 5, 1031
- Opening orders and decrees *pro confesso* and allowing defenses, 5, 1002
 - Application, 5, 1019
 - Advice of counsel, 5, 1025
 - Application based on irregularity, 5, 1023
 - Bill or petition, 5, 1022
 - Counter-affidavits, 5, 1026
 - Form of application, 5, 1022
 - Laches, 5, 1021
 - Limitations, 5, 1021
 - Necessity of petition, 5, 1023
 - Notice of application, 5, 1025
 - Opening order or decree and allowing defense, 5, 1027
 - Original decree remaining *in statu quo*, 5, 1027
 - Parties to the application, 5, 1019
 - Party in contempt, 5, 1020
 - Petition, 5, 1023
 - Proceedings on application, 5, 1026
 - Renewal of application, 5, 1026
 - Statement of advice of counsel, 5, 1025
 - Testing sufficiency of petition, 5, 1026
 - To be accompanied by proposed answer, 5, 1024
 - Verification, 5, 1023
 - When to be made, 5, 1021
 - Where to be made, 5, 1022
 - As an exercise of discretion, 5, 1004
 - By implication, 5, 1009
 - Character of proposed defense, 5, 1017
 - Confined to defense by answer, 5, 1018
 - Defenses merely technical, 5, 1017

DECREES, *cont'd.*

- Opening orders and decrees *pro confesso* and allowing defenses, *cont'd.*
 - Character of proposed defense, *cont'd.*
 - Meritorious defense, 5, 1017
 - Statute of limitations, 5, 1019
 - Unconscionable defenses, 5, 1019
 - Usury, 5, 1019
 - Constitutionality of special acts, 5, 1007
 - Counter-affidavit, 5, 1026
 - Discretion, 5, 1004
 - Final decrees *pro confesso*, 5, 1004, 1005
 - Final hearing and decree, 5, 1029
 - Good cause, 5, 1009
 - Grounds for opening, 5, 1009
 - Accident, 5, 1012
 - After enrolment, 5, 1012
 - After foreclosure sale, 5, 1013
 - Character of proposed defense, 5, 1017
 - Collusion, 5, 1017
 - Defective copy of subpœna, 5, 1011
 - Defective pleadings, 5, 1016
 - Defective service of process, 5, 1010
 - Error in the decree, 5, 1017
 - Good cause, 5, 1009
 - Irregularity, 5, 1010
 - Mistake, 5, 1012
 - Negligence of solicitor, 5, 1015
 - Notice of hearing, 5, 1011
 - Statutes, 5, 1017
 - Surprise, 5, 1012
 - United States courts, 5, 1011
 - Injury to plaintiff, 5, 1006
 - Interlocutory orders *pro confesso*, 5, 1004, 1005
 - Intermediate purchase by third person, 5, 1002
 - Laches, 5, 1021
 - Limitations, 5, 1019, 1021
 - Notice of application, 5, 1025
 - Opening order or decree and allowing defenses, 5, 1027
 - Original decree remaining in *statu quo*, 5, 1027
 - Petition, 5, 1022, 1026
 - Power in the federal court, 5, 1003
 - Power to open, 5, 1002
 - Power to open after term, 5, 1003
 - Power to open during the term, 5, 1002
 - Proceedings on application, 5, 1026

DECREES, *cont'd.*

- Opening orders and decrees *pro confesso* and allowing defenses, *cont'd.*
 - Review of ruling on application, 5, 1029
 - Statutory regulations, 5, 1004, 1007
 - Sufficiency of petition, 5, 1026
 - Terms, 5, 1028
 - Verification of application, 5, 1023
- Ordering part, 5, 1040
- Orders, see *infra*, Opening orders and decrees *pro confesso* and allowing defenses.
- Orders *pro confesso*, 5, 984
- Parties:
 - Definiteness and certainty, 5, 1065
- Parties to action, 5, 955
- Partition, see PARTITION.
- Partnership, 15, 998
- Patents, 16, 23
 - Bill in equity when patents interfere, 16, 28
 - Profits and damages, 16, 40
 - Repeal or cancellation of letter patent, 16, 32
- Petitions:
 - Determining scope of decree, 16, 509
 - Enforcement of decree, 16, 509
 - Petition as substitute for bill, 16, 513
 - Petition to open decree *pro confesso*, 5, 1022, 1026
- Plead.
 - Failure to plead, see *infra*, Decrees *pro confesso*.
- Pleas, see *infra*, Conformity to allegation and prayer.
- Pleas in equity, 16, 601
 - Plea to bills to enforce decrees, 16, 601
 - Plea to bills to impeach decrees, 16, 601
- Prayer, see *infra*, Conformity to allegation and prayer.
- Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.
- Pro confesso*, see *infra*, Decrees *pro confesso*.
- Pro forma*, 5, 954
- Quieting title, see QUIETING TITLE.
- Recitals, 5, 1038
- Records:
 - Enrolment, 5, 1035
- Redemption, see REDEMPTION.
- References, see REFERENCES.
- Rehearing, see REHEARING.
- Removal of cloud, see QUIETING TITLE.

DECREES, *cont'd.*

- Rendition (see DECISIONS), 5, 1032
 - Consent decrees, 5, 1033
 - In general, 5, 1032
 - In vacation, 5, 1033
 - Judicial act, 5, 1032
 - When a decree becomes operative, 5, 1037
 - Without statutory authority, 5, 1033
- Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
- Restitution:
 - Bond for restitution, 5, 1000
- Reversal, 5, 965
- Service of process:
 - Decrees *pro confesso*, 5, 975
 - Opening decrees, 5, 1010
- Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.
- Settling, 5, 1033
- Several parts, 5, 1038
- Signing, 5, 1034
- Specific performance, see SPECIFIC PERFORMANCE.
- Statutes:
 - Opening decrees *pro confesso*, 5, 1007
- Stipulations, see STIPULATIONS.
- Stock and stockholders, see STOCK AND STOCKHOLDERS.
- Submission, 5, 957
- Supplemental decrees, 5, 951
- Surprise:
 - Modification or amendment to decrees, 5, 1056
 - Opening orders and decrees *pro confesso*, 5, 1012
- Taking the plea as confession, see *infra*, Decrees *pro confesso*.
- Taxation, see TAXATION.
- Terms:
 - Opening decrees *pro confesso*, 5, 1028
- Time the decree becomes operative, 5, 1037
- Title, ownership, and possession, 5, 1038
 - Decrees vesting or divesting title to property, 5, 964
 - In general, 5, 964
 - Land in another state, 5, 965
 - Personalty, 5, 964
 - Real estate, 5, 964
- Trusts and trustees, see TRUSTS AND TRUSTEES.
- United States courts:
 - Opening decrees, 5, 1011
 - Opening orders and decrees *pro confesso* and allowing defenses, 5, 1003

DECREES, *cont'd.*

- United States courts, *cont'd.*
 - State practice not followed as to amendment or modification of decree, 5, 1050
- Usury (see USURY), 22, 457, 476
 - Opening decrees to let in defense, 5, 1019
- Vacation (see *infra*, Amendment, modification, and vacation), 5, 1033
- Vendor's liens, see VENDOR'S LIENS.
- Verification:
 - Application to open decrees *pro confesso*, 5, 1023
 - Opening decree *pro confesso*, 5, 1023
- Waters and watercourses, 22, 1157, 1170
- Ways, 22, 1183
- When the decree becomes operative, 5, 1037
- Wills, see PROBATE AND CONTEST OF WILLS; WILLS.
- DEDICATION:
 - Limitations, 13, 293
 - Definition, 13, 293
 - Manner of pleading, 13, 293
 - Remedy for improper use of dedicated property, 13, 294
- DEEDS (see JUDICIAL SALES):
 - Answers in code pleading:
 - Specific denial, 1, 789
- Appeals:
 - Setting aside deeds, 2, 46
- Exceptions and objections, 8, 300
- Forgery:
 - Description of instrument, 9, 568
- Guardian *ad litem*:
 - Execution of deeds, 10, 670
- Infants:
 - Sale of real estate, 10, 825
- Issues to the jury, 11, 651
- Parties to actions, 15, 507
 - Parties plaintiff, 15, 507
 - Deed *inter partes*, 15, 508
 - Deeds poll, 15, 509
 - In general, 15, 507
- Partition, 15, 823
- DE FACTO CORPORATION:
 - Quo warranto, 17, 393
 - Religious societies, 18, 100
- DE FACTO OFFICERS:
 - Injunctions, 17, 418
- Judgments:
 - Rendition of judgment by *de facto* judges, 11, 817
- Jury, 12, 287
- Service of process, 19, 657
- DEFAULTS, 6, 1
 - Absence of party or attorney:
 - Excuse for default, 6, 171
 - Judgment taken in defendant's absence, 6, 61

DEFAULTS, *cont'd.*

Admiralty:

Appearance and default, 1, 263
Defendant's default, 1, 260

Prize, 1, 302

Admissions, 6, 115

Actions of tort, 6, 120

Allegations of amount of damages, 6, 128

Application of the general rule, 6, 119

Capacity of plaintiff to sue, 6, 121

Cause of action, 6, 116

Conclusion of law, 6, 118

Confession of judgment, 6, 124

Contracts, 6, 119

Criminal cases, 6, 121

Default of a codefendant, 6, 119

Default of executor, 6, 121

Errors not cured, 6, 123

Facts not well pleaded, 6, 117

Failure to sign answer, 6, 125

Fraud, 6, 120

In general, 6, 115

Joint defendants, 6, 121

Judgment, 6, 116

Judgment *nil dicit*, 6, 123

Misjoinder, 6, 122

Official bond, 6, 119

Plaintiff's failure to reply to partial defense, 6, 119

Questions of jurisdiction, 6, 124

Real action, 6, 120

Regularity of previous proceedings, 6, 123

Scire facias, 6, 121

Secundum allegata et probata, 6, 119

Statute of jeofails and amendment, 6, 125

Summary proceedings, 6, 120

Trustee process, 6, 121

Unauthorized amendment, 6, 123

What defects are cured by default, 6, 122

Affidavit:

Application for relief, 6, 167

Counter affidavit on relief from defaults, 6, 158

Plaintiff's affidavit, 6, 54

Affidavits of merits or defense (see AFFIDAVITS OF MERITS OR DEFENSE):

Meritorious defense, see *infra*,
Meritorious defense.

Against joint codefendants:

Against all or none, 6, 22

Against portion served, 6, 18

Default against part before final disposition as to others, 6, 20

Effect of judgment against part, 6, 19

DEFAULTS, *cont'd.*

Against joint codefendants, *cont'd.*

Form of joint judgment where some default, 6, 19

In actions based on several or joint and several liability, 6, 23

Irregular service of a portion, 6, 17

Liability joint and several, 6, 24

Verdict and default, 6, 19

Where part are not served, 6, 16

Writ of inquiry, 6, 21

Amendments (see *infra*, What defects are cured by default):

Amendment of complaint where pleading of defendant is undisposed of, 6, 88

Amendment on declaration and complaint, 6, 51

After default taken, 6, 53

After record lost, 6, 54

Immaterial amendments, 6, 52

Judgment not void, 6, 53

Material amendments, 6, 51

Prior default, 6, 52

Supplemental complaint, 6, 52

Application for relief, 6, 210

Waiver of default, 1, 493

Answers (see *infra*, Defendant's failure to plead):

Before expiration of time to answer, 6, 95

Failure to sign answer, 6, 125

Appeals, 2, 102, 106; 6, 223

Abuse of discretion, 6, 232

Appeal from defaults, 6, 223

Appeals from entry of default, 6, 230

Appeals from inferior courts, 6, 227

Appeals from orders made in proceedings on default, 6, 230

Appeals not encouraged, 6, 227

Appearance, 6, 244

Assignment of errors, 6, 235

At common law, 6, 223

By consent, 6, 224

Code procedure, 6, 223

Construction of statute, 6, 227

Effect of appeal, 6, 236

Effect of appeal from order, 6, 237

Effect of appeal from magistrate, 6, 237

Effect of default in appellate court, 6, 239

Effect of reversal, 6, 240

Exception required, 6, 234

Final judgment, 6, 227

Findings of fact, 6, 231

DEFAULTS, *cont'd.*

Appeals, *cont'd.*

- General rule, 6, 223
- Imposition of terms, 6, 218
- Interlocutory orders, 6, 232
- Judgment by default, 2, 456
- Manner of rendition of judgment, 6, 242
- Motion to set aside, 6, 230
- Opening default in appellate court, 6, 239
- Preliminary motion, 6, 228
- Presumptions of regularity, 6, 235
- Principles of review, 6, 234
- Qualifications of the general rule, 6, 224
- Recitals in record of service, 6, 242
- Record in respect of service of process, 6, 240
- Record on appeal from judgment by default, 6, 240
- Record on appeal from magistrate, 6, 244
- Review of facts, 6, 236
- Statutory appeal, 6, 226, 233
- Technical errors, 6, 234
- To review assessment of damages on default, 6, 226
- Trial *de novo*, 6, 238
- What is brought up on appeal, 6, 236

Appearances (see APPEARANCES):

- Appeals, 6, 244
- Appearance to set aside default, 2, 653
- Defendant's failure to plead, 6, 72
- General appearance, 6, 42
- Special appearance, 6, 44
- Unauthorized appearance by attorney, 6, 44
- Upon nonappearance of defendant, 6, 70
 - Effect of withdrawal of appearance, 6, 72
 - In criminal cases, 6, 71
 - In general, 6, 70
 - Rule in Nebraska, 6, 71
 - What is an appearance, 6, 72
 - Where appearance made, 6, 72

- Waiver of process, 6, 42
- Withdrawal of appearance, 6, 44

Application, see *infra*. When application to the court required.

Application for relief from defaults (see *infra*, Relief by proceedings in equity), 6, 149

- Amendment of motion, 6, 210
- Appellate court, 6, 150
- Application of the statute, 6, 153

DEFAULTS, *cont'd.*

Application for relief from defaults, *cont'd.*

- Application to open default, 6, 151
- By whom application to be made, 6, 155
- Assignee, 6, 156
- Interest in controversy, 6, 155
- Legal representative, 6, 156
- Party to record, 6, 155
- Where judgment is void, 6, 156

- Chambers, 6, 149
- Compliance with statute, 6, 154
- Construction of statutory provisions, 6, 153
- Correction of judgment by default, 6, 210
- Court rendering judgment, 6, 149
- Decision on motion lies in discretion, 6, 200
- Discontinuance, 6, 161
- Discretion of court, 6, 200

- Abuse of discretion, 6, 206
- Abuse of discretion by denial of motion, 6, 206
- Abuse of discretion in granting the motion, 6, 207
- Motion to open default, 6, 200

- Affecting coparty only, 6, 202
- Discretion liberally exercised, 6, 201
- In general, 6, 200
- Special proceedings and orders after judgment, 6, 202

- Motion to vacate default, 6, 202
 - Criminal cases, 6, 206
 - Extent of rule, 6, 205
 - Facts arising after judgment, 6, 204
 - General rule, 6, 202
 - Judgment void or irregular, 6, 204
 - Statutes, 6, 205
 - Vacating order of vacation, 6, 204

Moulding the proceedings, 6, 206

Effect of motion and ruling thereon, 6, 208

- After cause continued, 6, 208
- Effect of application in conferring jurisdiction, 6, 209
- Effect of vacation on joint defendants, 6, 209
- Effect on parties, 6, 208
- Effect on proceedings, 6, 208

DEFAULTS, *cont'd.*

- Declaration and complaint, *cont'd.*
 - Replication, 6, 51
 - Scire facias, 6, 51
 - Several counts, 6, 47
 - Supplemental complaint, 6, 52
 - Verification, 6, 46
- Decrees, see DECREES.*
- Defects, see infra, What defects are cured by default.*
- Defendants, see infra, Appearances;*
 - While pleading of defendant undisposed of.
- Defendant's failure to plead, 6, 72
 - After appearances, 6, 72
 - Calling defendant, 6, 78
 - Defendant's affidavit of defense, 6, 79
 - Demand of oyer, 6, 76
 - Expiration of final day to plead, 6, 77
 - Failure to answer interrogatories, 6, 75
 - Failure to file replication, 6, 76
 - Failure to rejoin, 6, 76
 - Judgments on demurrer, 6, 80
 - Judicial notice of expiration of time, 6, 77
 - Mandamus proceedings, 6, 78
 - Order extending time to plead, 6, 74
 - Order to show cause, 6, 78
 - Partial defense, 6, 77
 - Personal service, 6, 75
 - Rule to answer, 6, 72
 - Rule to answer generally unnecessary, 6, 73
 - Submission of issues error, 6, 77
 - Substituted service, 6, 75
 - Supplementary proceedings, 6, 78
 - Withdrawal of demurrer, 6, 82
 - Withdrawal of plea, 6, 77
- Defenses, see infra, Application for relief from defaults; Meritorious defense.*
- Definition, 6, 10
- Demurrer:
 - Frivolous demurrer, 6, 388.
 - Judgments on demurrer, 6, 80
 - Demurrer to special count, 6, 81
 - In general, 6, 80
 - Judgment technically on demurrer, 6, 81
 - Modern practice, 6, 80
 - Terms, 6, 81
 - Withdrawal of demurrer, 6, 82
 - Pleading of defendant undisposed of, 6, 85
 - While demurrer is on file, 6, 92
- Diligence, see infra, Time when application for relief from defaults may be brought.*

DEFAULTS, *cont'd.*

- Discontinuance:
 - Vacation of judgment, 6, 161
- Discretion of court, see infra, Application for relief from defaults;*
 - Imposition of terms discretionary.
- Dismissal, discontinuance, and nonsuit:
 - Motion by defendant while in default, 6, 883
- Divorce, 7, 115
 - Decrees, 7, 126
 - Opening defaults, 7, 141
 - Counter affidavits, 7, 142
 - Court's discretion, 7, 141
 - The application, 7, 142
 - To protect public interests, 7, 141
 - Where plaintiff has remarried, 7, 142
- Effect of default on further proceedings (see *infra, Collateral attack; Effect on defendant's participation in subsequent proceedings; Res adjudicata*), 6, 111
- Admissions by defendant, see infra, Admissions.*
- Proof of cause of action, 6, 111
 - At common law, 6, 111
 - By statute, 6, 112
 - Findings by court, 6, 115
 - Inferior courts, 6, 114
 - In general, 6, 111
 - Mandamus, 6, 113
 - Partition cases, 6, 113
 - Record on appeal, 6, 114
- Effect on collateral attack, see infra, Collateral attack.*
- Effect on defendant's participation in subsequent proceedings, 6, 126
- Defendant out of court, 6, 126
- Effect on adjudication of damages, 6, 127
 - Admits power of court, 6, 127
 - Allegations of amount not admitted, 6, 128
 - Burden of proof, 6, 129
 - Cross-examination of witness on the inquiry, 6, 137
 - Damages capable of computation, 6, 131
 - Default of garnishee, 6, 136
 - Default taken by agreement, 6, 138
 - Defendants cannot have judgment, 6, 128
 - Defendant's right on the inquiry, 6, 136
 - Disproving cause of action on the inquiry, 6, 137
 - Exceptions to the rule, 6, 129

DEFAULTS, *cont'd.*

- Effect on defendant's participation in subsequent proceedings, *con.*
- Effect on adjudication of damages, *cont'd.*
- Failure to enter interlocutory judgment, 6, 135
- Final judgment, 6, 132
- Final judgment without writ of inquiry, 6, 137
- Fixes liability, 6, 127
- In general, 6, 127
- Inquiry in damages, 6, 137
- Instructions, 6, 138
- Interlocutory judgment by default, 6, 134
- Judgment for costs, 6, 136
- Liquidated damages, 6, 130
- New trial, 6, 139
- Nominal damages, 6, 128
- Unliquidated damages, 6, 132
- When application to court not required, 6, 132
- Writ of inquiry by right, 6, 136
- Filing pleadings, 6, 126
- Jury trial, 6, 126
- Motion for new trial, 6, 127
- Notice of further proceedings, 6, 127
- Writ of inquiry, 6, 126
- Ejectment:
 - Judgment by default against casual ejector, 6, 14
- Entry, *see infra*, Premature entry of default.
- Entry of default, 6, 54
 - Effect of failure to enter, 6, 56
 - Effect of irregular entry, 6, 57
 - Entry *nunc pro tunc*, 6, 56
 - Judgment by failure of default, 6, 56
 - Necessity and purpose of entry, 6, 54
 - Necessity and sufficiency, 6, 56
 - Notice to defendant, 6, 55
 - Premature entry of judgment, 6, 57
 - Simple default, 6, 54
 - Strict compliance with law, 6, 57
- Equity (*see infra*, Relief by proceedings in equity):
 - Relief from defaults, 6, 155
- Exceptions and objections, 8, 294
- Excuses, *see infra*, Application for relief from defaults.
- Executors and administrators, 8, 689
- Failure to plead, *see infra*, Defendant's failure to plead.
- Falsity of plea, 6, 90
- Fictitious name, 6, 28

DEFAULTS, *cont'd.*

- Filing declaration and complaint, 6, 49
- Findings, 6, 115
- Foreclosure of mortgages, *see* FORECLOSURE OF MORTGAGES.
- Foreign judgments, 6, 26
 - Collateral attack, 6, 148
 - Res adjudicata*, 6, 142
 - Service of process, 6, 26
- Form of judgment by default, 6, 59
 - In general, 6, 59
 - Interlocutory or final, 6, 59
 - Judgment taken in defendant's absence, 6, 61
 - Mere memorandum, 6, 59
 - Nil dicit*, 6, 59
 - When in default and when in *nil dicit*, 6, 59
- For what kind of relief judgment by default may be rendered, 6, 109
- Fraud:
 - Admissions, 6, 120
 - Application for relief, 6, 167, 175
 - Relief in equity, 6, 214
 - Fraud or laches of party seeking relief, 6, 216
 - How pleaded, 6, 216
 - In case where personal service is had, 6, 215
 - In general, 6, 214
 - What constitutes fraud, 6, 216
 - Where service was by publication, 6, 216
- Further proceedings, *see infra*, Effect of default on further proceedings.
- Garnishment:
 - Admissions, 5, 121
 - Amount of damages, 6, 136
 - Judgment against garnishee, 6, 14
- Good faith:
 - Application for relief, 6, 165
- Guaranty:
 - Declaration and complaint, 16, 948
 - Alleging default of principal obligor, 16, 948
 - Alleging notice of default of principal obligor, 16, 947
- Guardians *ad litem*, *see* GUARDIANS AD LITEM.
- Hearing:
 - Application for relief from defaults, 6, 158
- Ignorance of law, 6, 167
- Imposition of terms discretionary, 6, 217
 - Acceptance of benefit, 6, 222
 - Appeal from magistrate, 6, 218
 - Costs, 6, 219
 - Debarring unconscionable defense, 6, 220

DEFAULTS, *cont'd.*

- Imposition of terms discretionary, *con*
- Full compliance required, 6, 223
- In general, 6, 217
- Requiring judgment to stand as security, 6, 221
- Review on appeal, 6, 218
- Security for costs, 6, 219
- Security for payment of judgment, 6, 218
- Statute of limitations, 6, 220
- Terms should exclude technical objection, 6, 222
- Usury, 6, 221
- Whether judgment substantially irregular, 6, 223
- Infants, 10, 724
 - Effect of default on further proceedings, 6, 112
 - Infant as plaintiff, 6, 12
 - Judgment against infants, 6, 13
- Injunctions, 6, 214
- Inquests and inquiries:
 - Effect of default on adjudication of damages, 6, 127
 - Admits power of court, 6, 127
 - Allegations of amount not admitted, 6, 128
 - Burden of proof, 6, 129
 - Cross-examination of witnesses on inquiry, 6, 137
 - Damages capable of computation, 6, 131
 - Default of garnishee, 6, 136
 - Default taken by agreement, 6, 138
 - Defendants cannot have judgment, 6, 128
 - Defendant's right on the inquiry, 6, 136
 - Disproving right of action on the inquiry, 6, 137
 - Exceptions to the rule, 6, 129
 - Failure to enter interlocutory judgment, 6, 135
 - Final judgment, 6, 132
 - Final judgment without writ of inquiry, 6, 136
 - Fixes liability, 6, 127
 - In general, 6, 127
 - Inquiry in damages, 6, 137
 - Instructions, 6, 138
 - Interlocutory judgment by default, 6, 134
 - Judgment for costs, 6, 136
 - Liquidated damages, 6, 130
 - New trial, 6, 139
 - Nominal damages, 6, 128
 - Unliquidated damages, 6, 132
 - When application to court not required, 6, 132
 - Writ of inquiry by right, 6, 136

DEFAULTS, *cont'd.*

- Inquiry, writ of, 6, 21
- Insanity:
 - Judgment against insane persons, 6, 13
- Interrogatories:
 - Failure to answer interrogatories, 6, 75
- In what action applicable, 6, 10
- Actions commenced by *capias*, 6, 11
- Actions *ex contractu*, 6, 11
- Criminal cases, 6, 11
- Judgment by default, 6, 11
- Simple default, 6, 10
- Issues to the jury, 11, 677
- Joint codefendants*, see *infra*, Parties to default.
- Joint liability*, see *infra*, Parties to default.
- Judgment by default (see *infra*, Entry of default; Parties to default):
 - Criminal cases, 6, 11
 - Definition, 6, 10
 - In what action applicable, 6, 11
 - Statutory special proceedings, 6, 11
- Judgments:
 - Amount of recovery, 11, 900
 - Limiting relief to that sought by pleadings, 11, 874
 - Nil dicit* distinguished from default, 11, 839
- Judicial notice:
 - Expiration of time to plead, 6, 77
- Jurisdiction of person as affecting validity, 6, 24
- Application of the rule, 6, 25
- Attachment proceedings, 6, 36
- Foreign judgments, 6, 26
- In general, 6, 24
- Irregularity of service of process*, see *infra*, Service of process.
- Judgment void not merely erroneous, 6, 25
- Record on appeal, 6, 44
- Service by publication*, see *infra*, Service of process.
- Service of legal process required*, see *infra*, Service of process.
- Waiver of process*, see *infra*, Service of process.
- Jurisdiction of subject-matter, 6, 45
- Justices of the peace, 12, 739
- Appeal in judgment by default, 12, 757
- At what time default may be taken, 6, 69
- Plaintiff must prove his case, 12, 739
- Setting aside, 12, 742

DEFAULTS, *cont'd.*

- Justices of the peace, *cont'd.*
 - Waiting for defendant's appearance, 12, 740
 - When default rendered, 12, 740
- Laches (see *infra*, Time when application for relief from defaults may be brought):
 - Application for relief, 6, 190
- Limitations (see *infra*, Time when application for relief from defaults may be brought), 13, 210
- Condition that defendant shall not plead statute of limitation, 6, 220
- Relief from defaults, 6, 153
- Liquidated damages, 6, 130
- Lost plea, 6, 86
- Mandamus (see **MANDAMUS**):
 - Defendant's failure to plead, 6, 78
 - Effect of default, 6, 113
- Mechanics' liens, 13, 1041
- Meritorious defense, 6, 181
 - Affidavit, 6, 186
 - Affidavit of attorney, 6, 187
 - Application by plaintiff, 6, 182
 - Application for relief from defaults, 6, 181
 - Counter-affidavits, 6, 188
 - Defendant must show before default will be opened, 6, 181
 - Defense alone insufficient, 6, 185
 - Exceptions to rule, 6, 183
 - Extent of rule, 6, 183
 - General rule, 6, 181
 - How stated, 6, 184
 - In general, 6, 181
 - In what form presented, 6, 186
 - Judgment void or substantially irregular, 6, 184
 - Open default, 6, 181
 - Partial defense, 6, 185
 - Set-off and counterclaim, 6, 189
 - Sufficiency of defense, 6, 188
 - Sworn answer, 6, 187
 - Technical or frivolous defense, 6, 188
 - To accompany motion papers, 6, 187
 - Unconscionable defenses, 6, 189
 - Vacating defaults, 6, 181
- Misjoinder:
 - Whether cured by default, 6, 122
- Mistake:
 - Application for relief, 6, 165
 - Ignorance of law, 6, 167
- Mortgages*, see **FORECLOSURE OF MORTGAGES**.
- Motion for default, 6, 108
 - Character of order overruling motion, 6, 109
 - Defense, 6, 109

DEFAULTS, *cont'd.*

- Motion for default, *cont'd.*
 - Statutes, 6, 108
 - Time, 6, 108
- Motion in arrest of judgment, 6, 211
- Motions (see *infra*, Application for relief from defaults), 14, 172
 - At what term default may be taken, 6, 70
 - Of moving party, 14, 172
 - Of party moved against, 14, 173
- Name, 6, 28
- Negligence:
 - Gross negligence, 6, 164
- Negligence or incompetence of defendant's attorney*, see *infra*, Attorneys.
- New trial, 14, 853
 - Application for relief from defaults, 6, 152
- Next friend, 14, 1039
- Nil dicit*, 6, 59, 123
 - As confession of judgment, 6, 124
 - Errors not cured, 6, 123
 - Substantially a judgment by default, 6, 123
 - Waiver of errors, 6, 123
- Nominal damages, 6, 128
- Nonappearance of defendant*, see *infra*, Appearances.
- Notice of motion to set aside a default*, see *infra*, Application for relief from defaults.
- Nunc pro tunc*, 6, 65
- Offer of judgment*, see **OFFER OF JUDGMENT**.
- Official bond:
 - Admissions, 6, 119
- Opening, amending, and vacating judgments, 15, 232
- Opening defaults (see *infra*, Application for relief from defaults):
 - Default before expiration of time to answer, 6, 96
- Orders, 6, 108
 - Character of order overruling motion, 6, 109
 - Orders to show cause, 15, 372
- Oyer to demand, 6, 76
- Parties to default, 6, 13
 - Against whom, 6, 13
 - Casual ejector in ejectment proceedings, 6, 14
 - Collateral attack, 6, 14
 - Deceased defendant, 6, 15
 - Defendants named in complaint, 6, 13
 - Disability accruing pending the suit, 6, 14
 - Garnishee, 6, 14
 - Infants, 6, 13
 - Insane persons, 6, 13
 - Personal representative, 6, 15
 - Public corporation, 6, 16

DEFAULTS, *cont'd.*

- Parties to default, *cont'd.*
 - In whose favor, 6, 12
 - Deceased plaintiff, 6, 13
 - Infants, 6, 12
 - Persons not parties, 6, 12
 - Stipulation, 6, 12
- Partition:
 - Effect of default, 6, 113
- Pending action*, see *infra*, Effect of default on further proceedings.
- Pleadings (see *infra*, Defendant's failure to plead; Upon what pleadings authorized; What defects are cured by default; While pleading of defendant undisposed of):
 - Application for relief from defaults, 6, 158
- Prayers for relief:
 - Answers stricken out, 16, 817
 - Effect of default by defendant, 16, 815
 - Granting relief not prayed, 16, 817
 - Measure of relief, 16, 815
- Premature entry of default, 6, 94
 - Before expiration of time to answer, 6, 95
 - Before prior judgment set aside, 6, 95
 - Declaration irregularly filed, 6, 97
 - Extension of time to plead, 6, 96
 - In general, 6, 94
 - On short service or before return day, 6, 96
 - Opening default, 6, 96
 - Premature cause of action, 6, 97
 - Waiver of irregularity, 6, 99
 - Whether judgment void or merely erroneous, 6, 98
- Process*, see *infra*, Service of process.
- Pro confesso*, see DECREES.
- Profit and oyer:
 - Demand of oyer, 6, 76
- Publication (see *infra*, Service of process):
 - Opening defaults, 17, 122
- Quieting title, 17, 369
- Records (see *infra*, Collateral attack):
 - Pleading of defendant undisposed of, 6, 94
- Rejoinder:
 - Failure to rejoin, 6, 76
- Relief, 6, 109
 - Amount, 6, 110
 - Attachment proceedings, 6, 111
 - Default on motion, 6, 111
 - Effect of excessive judgment, 6, 111
 - In general, 6, 109
 - Specific kind of judgment, 6, 109

DEFAULTS, *cont'd.*

- Relief by proceedings in equity, 6, 211
 - Exhaustion of other remedies, 6, 212
 - Fraud, 6, 214
 - Fraud in case where personal service is had, 6, 215
 - Fraud or laches of party seeking relief, 6, 216
 - Fraud where service was by publication, 6, 216
 - Good defense, 6, 213
 - Grounds for interference in equity, 6, 212
 - In general, 6, 211
 - Injunction, 6, 214
 - Remedy by injunction, 6, 211
 - Void judgment by default, 6, 213
 - What constitutes fraud, 6, 216
- Relief from default*, see *infra*, Application for relief from defaults.
- Remittitur, 6, 111
- Replication, 6, 51
 - Failure to file replication, 6, 76
- Res adjudicata*, 6, 139
 - Available defense, 6, 141
 - Counterclaim, 6, 142
 - Effect of codefendant, 6, 143
 - Examples, 6, 135, 141
 - Foreign judgments by default, 6, 142
 - General rule, 6, 139
 - Judgment against corporation, 6, 143
 - Judgment of another state, 6, 142
 - Legality of claim, 6, 143
 - On whom binding, 6, 143
 - Requiring judgment to stand as security, 6, 222
 - Ruling on motion to open or vacate, 6, 208
 - State courts, 6, 142
 - United States courts, 6, 142
- Returns:
 - Motion or action to set aside default judgment, 18, 971
 - Effect of setting aside judgment, 18, 973
 - In general, 18, 971
- Review (see *infra*, Appeals), 18, 994, 997, 1006
- Right of inquest*, see INQUESTS AND INQUIRIES.
- Scire facias, 19, 288
 - Declaration, 6, 51
- Sentence, 19, 440
- Separate suits requiring separate judgments, 6, 62
- Service of notice of trial, 6, 68
- Service of process, 6, 27
 - Admissions, 6, 120

DEFAULTS, *cont'd.*

- Service of process, *cont'd.*
 - After quashal of writ, 6, 27
 - Against joint codefendants, 6, 16
 - Against portion served, 6, 18
 - Irregular service of process on portion of defendants, 6, 17
 - Judgment erroneous but not void, 6, 18
 - Where portion of defense is not served, 6, 16
- Application for relief from defaults, 6, 177
- Action to revive judgment by default, 6, 180
- Amendment of return of service, 6, 180
- Conclusiveness of record, 6, 179
- Effect of finding on the motion, 6, 181
- Evidence *dehors* record, 6, 180
- In general, 6, 177
- Judgment regular, 6, 178
- Opening judgment, 6, 177
- Return of service not conclusive, 6, 180
- Service a question of fact, 6, 177
- Service irregular, 6, 177
- Attachment proceedings, 6, 36
- At what term default may be taken, 6, 69
- Corporation, 6, 29
- Defendants named but not served, 6, 28
- Due proof of service, 6, 29
- Effect of irregularity in service of process, 6, 38
 - Default on too short a notice, 6, 41
 - Examples of erroneous service, 6, 39
 - Instances of void service, 6, 38
 - Process not properly signed, 6, 40
 - Waiver of process, 6, 42
 - When judgment by default is void, 6, 38
 - When judgment is merely erroneous, 6, 39
- Fictitious name, 6, 28
- Foreign judgments, 6, 26
- Name, 6, 28
- Necessity, 6, 27
- Publication, 6, 30
 - Attachment proceedings, 6, 36
 - Judgment *in personam*, 6, 34
 - Judgment *in rem*, 6, 35

DEFAULTS, *cont'd.*

- Service of process, *cont'd.*
 - Publication, *cont'd.*
 - Material requirement must be fulfilled, 6, 31
 - Order for publication, 6, 34
 - Preliminary affidavit, 6, 33
 - Statements merely defective, 6, 34
 - Strict compliance with statute, 6, 30
 - Strict construction with statute, 6, 30
 - What judgment authorized against nonresident, 6, 34
 - Recitals of service in record, 6, 242
 - Record on appeal, 6, 44, 240
 - Service by fictitious name, 6, 28
 - Short service, 6, 96
 - Substantial compliance with statute, 6, 28
 - Substituted and personal service, 6, 75
 - Unknown persons, 6, 29
 - Waiver of process, 6, 42
 - By general appearance, 6, 42
 - Effect of general appearance, 6, 42
 - Special appearance, 6, 44
 - Unauthorized appearance by attorney, 6, 44
 - Withdrawal of appearance, 6, 44
- Set-off, recoupment, and counterclaim:
 - Meritorious defense, 6, 189
 - Res adjudicata*, 6, 142
- Several liabilities, see *infra*, Parties to default.
- Sickness:
 - Applicant for relief, 6, 174
 - Attorney, 6, 174
- Simple default (see *infra*, Entry of default), 6, 10
 - Definition, 6, 10
 - In what action applicable, 6, 10
- Special proceedings:
 - Discretion of court on motion to open default, 6, 202
- Statutes:
 - Relief from defaults, 6, 153
- Stipulation:
 - Violation of stipulation, 6, 173
- Summary proceedings:
 - Admissions, 6, 120
- Summons:
 - Vacation of summons, 6, 161
- Supplementary proceedings:
 - Defendant's failure to plead, 6, 78
- Surprise:
 - Application for relief, 6, 165

DEFAULTS, *cont'd.*

- Terms (see *infra*, Imposition of terms discretionary), 6, 217
- Acceptance of benefit, 6, 222
- Applicant required to plead, 6, 217
- At what day or term defaults may be taken, 6, 64, 66
- Costs, 6, 219
- Debarring unconscionable defenses, 6, 220
- Full compliance required, 6, 223
- In general, 6, 217
- Requiring judgment to stand as security, 6, 221
 - Effect of the order, 6, 221
 - Enforcement of the collateral judgment, 6, 222
 - Issuance of execution, 6, 222
 - New judgment roll must be filed, 6, 222
 - Power of the court, 6, 221
 - Res adjudicata*, 6, 222
- Security for payment of costs, 6, 219
- Security for payment of judgment, 6, 218
- Statute of limitations, 6, 220
- Terms should exclude technical objection, 6, 222
- Usury, 6, 221
- Where judgment substantially irregular, 6, 223
- Time when application for relief from defaults may be brought, 6, 189
- Application within statutory time, 6, 192
 - At subsequent term, 6, 193
 - At the same term, 6, 192
 - By consent, 6, 195
 - Computation of time, 6, 194
 - Decisions made after the time limited, 6, 198
 - Due diligence in general, 6, 189
 - Laches, 6, 190
 - Question of diligence, how decided, 6, 192
 - Remedy after the term, 6, 194
 - Simple defaults, 6, 192
 - Statutory limitations, 6, 194
 - Under statutes limiting the time, 6, 197
 - When not regulated by statute, 6, 192
 - When statute begins to run, 6, 200
 - Where proceedings are irregular, 6, 195
 - Where rights of third parties involved, 6, 192
 - Where the judgment is void, 6, 195

DEFAULTS, *cont'd.*

- Time when defaults may be taken, 6, 62
 - At what term and day thereof, 6, 64
 - Before magistrate, 6, 69
 - Continuance of cause, 6, 68
 - Day, 6, 64
 - Elapsed time, 6, 64
 - General rule, 6, 63
 - Judgment by default, 6, 63
 - Motions, 6, 70
 - Nunc pro tunc*, 6, 65
 - On cause called irregularly, 6, 64
 - Presumption on appeal, 6, 64
 - Return day, 6, 66
 - Scire facias to revive, 6, 69
 - Service of notice of trial, 6, 68
 - Simple default, 6, 62
 - Term, 6, 64
 - Vacation, 6, 67
 - Where term not held, 6, 66
 - Where the cause is at issue, 6, 68
- Unconscionable defenses, 6, 220
- United States courts:
 - Res adjudicata*, 6, 142
- Unliquidated damages, 6, 132
- Upon what pleadings authorized, 6, 45
 - Amendment*, see *infra*, Amendments.
 - Declaration and complaint*, see *infra*, Declaration and complaint.
 - Effect of irregularity, 6, 51
 - Plaintiff's affidavit, 6, 54
 - Pleadings must authorize judgment, 6, 45
 - Replication, 6, 51
 - Scire facias, 6, 51
- Usury:
 - Condition that defendant shall not plead, 6, 221
- Vacation of defaults*, see *infra*, Application for relief from defaults.
- Vacation*, see *infra*, Chambers and vacation.
- Verification, 6, 46, 91
 - Unverified pleas, 6, 87
- Waiver of process*, see *infra*, Service of process.
- What defects are cured by default, 6, 122
 - Amendments, 6, 123, 125
 - Failure to sign answer, 6, 125
 - In general, 6, 122
 - Jeofails, 6, 125
 - Judgment *nil dicit*, 6, 123
 - Judgment *nil dicit* as confession of judgment, 6, 124
 - Judgment *nil dicit* must conform to facts alleged, 6, 125
 - Misjoinder, 6, 122

DEFAULTS, *cont'd.*

- What defects are cured by default, *cont'd.*
 - Questions of jurisdiction, 6, 126
 - Unauthorized amendment, 6, 123
- When application to the court required, 6, 99
 - Act of clerk deemed to be act of court, 6, 102
 - Attachment cases, 6, 105
 - Character of order overruling motion, 6, 109
 - Clerk acts ministerially, 6, 102
 - Contract actions under code procedure, 6, 99
 - Contract actions where arrest is bad, 6, 101
 - Defense of motion for default, 6, 109
 - Determination of amount, 6, 102
 - Effect of failure to apply to the court, 6, 107
 - Effect of irregularity in general, 6, 106
 - Effect of irregularity on appeal, 6, 107
 - Entry by clerk without application, 6, 99
 - Filing, 6, 103
 - For what relief, 6, 106
 - Irregular assessment, 6, 107
 - Joint codefendants, 6, 103
 - Motion for default, 6, 108
 - Notice of application, 6, 105
 - Order defaulting defendant not required, 6, 108
 - Prejudicial errors, 6, 107
 - Proof of cause of action required, 6, 104
 - Proof of service, 6, 103
 - Terms of judgment, 6, 106
 - Time of application, 6, 105
 - Time of motion for default, 6, 108
 - Tort, 6, 101
 - Undertaking, 6, 105
 - When application must be made to the court, 6, 104
 - Where application to be made, 6, 105
- When authorized, 6, 24
- While pleading of defendant undisposed of, 6, 82
 - Abandonment of pleading, 6, 88
 - Affidavit of defense, 6, 87
 - Affidavit of merits, 6, 85
 - Amendment of complaint and declaration, 6, 88
 - Code practice, 6, 91
 - Demurrer, 6, 85
 - Demurrer on file, 6, 92
 - Distinction between negative and affirmative pleas, 6, 87

DEFAULTS, *cont'd.*

- While pleading of defendant undisposed of, *cont'd.*
 - Extent of rule, 6, 84
 - Falsity of plea, 6, 90
 - Filed out of time, 6, 85
 - Inadvertent default, 6, 92
 - Inconsistent pleadings, 6, 90
 - In general, 6, 82
 - Insufficient pleading, 6, 89
 - Lost plea, 6, 86
 - Negative and affirmative pleas, 6, 87
 - Pending motion, 6, 93
 - Pleading after default taken, 6, 87
 - Pleading filed only, 6, 84
 - Pleading served only, 6, 84
 - Pleading without affidavit of defense, 6, 87
 - Plea making partial answer, 6, 92
 - Plea not adapted to action, 6, 90
 - Record on appeal, 6, 94
 - Remedy where the answer cannot be ignored, 6, 91
 - Unsigned plea, 6, 90
 - Unverified pleas, 6, 87
 - Verification, 6, 87, 91
 - Waiver by plaintiff, 6, 86
 - Waiver of pleading, 6, 88
 - Withdrawal of pleading, 6, 89
- DEFENSE, AFFIDAVIT OF**, see AFFIDAVITS OF MERITS OR DEFENSE.
- DEFENSES** (see ANSWERS; EQUITABLE DEFENSES; PLEAS):
 - Another suit pending*, see ANOTHER SUIT PENDING.
 - Answers in code pleading*, see ANSWERS IN CODE PLEADING.
 - Connivance, 7, 93
 - Contributory negligence*, see CONTRIBUTORY NEGLIGENCE.
 - Notice or brief statement of defense*, see NOTICE OR BRIEF STATEMENT OF DEFENSE.
- DEFINITENESS AND CERTAINTY IN PLEADINGS**, 6, 240.
 - See BILLS OF PARTICULARS; DEFINITENESS AND CERTAINTY IN PLEADING; MOTIONS; SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER.
 - Abatement in pleading, 1, 6, 24
 - Accounts and accounting:
 - Bill for accounting, 1, 97
 - Alternative averments, 6, 268
 - Ambiguity, 6, 267
 - Amendments, 6, 253, 280
 - Answer:
 - Cured of defects, 6, 280
 - Answer in equity, 6, 251, 290
 - Answers in code pleadings, 6, 251
 - Argumentativeness, 6, 268
 - Assumpsit, 2, 1002

DEFINITENESS AND CERTAINTY IN PLEADINGS, *cont'd.*

Authority, 6, 258
 Bills in equity, 3, 363; 6, 284
 Aider by answer, 6, 287
 Alternative averments, 6, 288
 Defendant's title, interest, and residence, 6, 289
 Description of realty, 6, 288
 Examples, 6, 285
 In a bill to open settled accounts, 6, 284
 In general, 6, 284
 Parties, 6, 286
 Plaintiff's title and interest, 6, 287
 Remedy for indefiniteness and uncertainty, 6, 289
 Bonds, 3, 667
 Collateral allegations, 6, 253
 Conspiracy, 4, 720
 Construction of pleadings, 4, 744
 Contracts, 4, 918; 6, 263, 266
 Breach, 6, 267
 Consideration, 6, 266
 In general, 6, 266
 Modification, 6, 266
 Contradictory statements, 6, 270
 Cure of defects, 6, 280
 Death by wrongful act, 5, 861, 892
 Declaration and complaint, 6, 249
 Clerical mistake, 6, 251
 Evidence, 6, 250
 In general, 6, 249
 Precise nature of claim, 6, 250
 Prescribed forms, 6, 251
 Probative matter, 6, 250
Decrees, see DECREES.
 Definitions, 6, 247
 Degrees of certainty, 6, 248
 Demurrers, 6, 272, 273, 308
 Demurrers in chancery, 6, 408
Depositions, see DEPOSITIONS.
 Diligence, 6, 265
 Divorce, 6, 267, 7, 76, 100
 Cruelty, 7, 76
 Duty in general, 6, 264
 Elections, 7, 382
 Eminent domain:
 Description of premises, 7, 520
 Equity:
 Definiteness and certainty in equity pleadings, 6, 283
 Exceptions and objections (*see infra*,
 Objection for indefiniteness), 8, 167
 Bill or complaint, 8, 199
 Exhibits, 6, 253
 Facts peculiarly known to adverse party, 6, 271
 False representations, 6, 262
 Foreclosure of mortgages, 9, 367
 Foreign statutes, 20, 601

DEFINITENESS AND CERTAINTY IN PLEADINGS, *cont'd.*

Forgery, 9, 552
 Examples, 9, 552, 554
 Ground for quashal, 9, 554
 Intent to defraud, 9, 582
 Reasonable certainty, 9, 552
 Fraud, 6, 262; 9, 686
 Hypothetical statements, 6, 270
 Indictments:
 Charging the offense, 10, 473
 Inference, 6, 269
 Injunctions, 10, 923
 Answer, 10, 1062
 Averments of title, 10, 946
 Intoxicating liquors:
 Indictments, complaints, and informations for unlawful sales, barter, and gifts, 11, 515
 Irrelevant allegations, 6, 253
 Issues to the jury, 11, 668
 Jeofails, 6, 280, 283
 Judgments, 11, 820
 Judgments of justices of the peace, 12, 737
 Jurisdiction:
 Jurisdictional facts, 6, 254
 Justices of the peace:
 Pleadings in justice courts, 6, 272
Larceny, see LARCENY.
 Malicious prosecution, 13, 456
 Mandamus:
 Peremptory writ of mandamus, 13, 783
 Relator's pleading, 13, 674
 Certainty as in ordinary proceedings, 13, 674
 In general, 13, 674
 In what respects required, 13, 675
 Sufficient certainty, 13, 674
 Return or answer, 13, 716
 Argumentativeness, 13, 720
 As compared with other pleadings, 13, 717
 Common law, 13, 718
 Distinct denial necessary, 13, 717
 Evasiveness, 13, 720
 In general, 13, 716
 Responsiveness, 13, 720
 Surplusage, 13, 719
 What statements must be certain, 13, 721
 Modern practice, 6, 248
 Names, 6, 257
 Negligence, 6, 265
 Negotiable instruments, 14, 687
 Denial of execution of instrument, 14, 606
 Denial of plaintiff's title, 14, 670

**DEFINITENESS AND CERTAIN-
TY IN PLEADINGS, *cont'd.***

- Objection for indefiniteness, 6, 272
 - At what stage of proceedings motion should be made, 6, 278
 - Code practice, 6, 273
 - Demurrer under the code, 6, 273
 - Exclusiveness of code remedy, 6, 276
 - Federal practice follows state practice, 6, 278
 - Form of motion, 6, 279
 - General demurrer, 6, 272
 - How defects are cured or waived, 6, 280
 - How taken at common law, 6, 272
 - Motion to make more definite and certain, 6, 274
 - Notice of motion, 6, 279
 - Order granting motion and effect of noncompliance therewith, 6, 279
 - Review of ruling on the motion, 6, 280
 - Special demurrer, 6, 272
 - Uncertainty amounting to essential omission, 6, 277
- Object of and reasons for certainty, 6, 248
- Offer of judgment, 15, 41
- Official bonds:
 - Declaration and complaint in action, 15, 135
 - Failure to pay over money, 15, 137
 - In general, 15, 135
 - Nonperformance of duty, 15, 136
 - Plea or answer, 15, 147
- Ordinances, 6, 264
- Parties, 6, 257
 - Examples, 6, 257, 258
 - In general, 6, 257
 - Names, 6, 257
- Partnership:
 - Bill or complaint for accounting, dissolution, and settlement, 15, 1085
- Payment*, see PAYMENT.
- Personal injuries:
 - The injury, 16, 378
- Place, 6, 254
- Plea, 6, 252
 - Dilatory pleas and pleas in estoppel, 6, 253
 - In general, 6, 252
 - Insufficient pleas, 6, 252
- Pleas at law, 16, 562
 - Certainty to a certain intent, 16, 563
 - In general, 16, 562
 - Matter informally pleaded, 16, 563

**DEFINITENESS AND CERTAIN-
TY IN PLEADINGS, *cont'd.***

- Pleas in equity, 6, 290; 16, 603
- Prolivity, 6, 271
- Public officers:
 - Indictment, 17, 246
 - Suspension and removal, 17, 219
- Receivers:
 - Pleadings of applicant for receiver, 17, 723
- Recitals, 6, 270
- Records, 6, 265
- References:
 - Objections to and review of referee's proceedings, 17, 1066
- Replications and replies, 6, 253; 18, 657, 668, 710
 - Ambiguity, 18, 658
 - In general, 18, 657
 - Setting out particulars, 18, 658
 - Time and place, 18, 658
- Repugnancy*, see REPUGNANCY.
- Rescission, cancellation, and reformation of contracts, 18, 802
 - Allegations on subject of mistake, 18, 816
 - Bill or complaint, 18, 802
 - Statement of general rule, 18, 802
- Scilicet or videlicet*, see SCILICET OR VIDELICET.
- Scire facias, 19, 269
 - Recognizances in criminal cases, 19, 315
- Sentence, 19, 476
- Set-off, recoupment, and counterclaim, 6, 253; 19, 751
 - In general, 19, 751
 - Motion to make more definite and certain, 19, 777
 - Requisites of notice, 19, 751
 - Sufficient certainty, 19, 752
- Specific performance, 20, 435
- Statutes:
 - Foreign statutes, 6, 264
 - Private acts, 6, 264
- Statutory rights, 6, 263
 - Cause of action, 6, 263
 - Defense, 6, 264
- Stock and stockholders, 20, 776
- Subject-matter of action, 6, 259
- Summons and process, 20, 1144
- Supplemental pleadings, 21, 69
- Tender, 21, 567
- Time, 6, 255
 - Date of contract, 6, 256
 - In general, 6, 255
 - Particular periods of time, 6, 256
 - When material, 6, 256
 - When time is not material, 6, 256
- Title, ownership, and possession, 6, 258; 21, 715
 - Consistency of title alleged, 21, 717

**DEFINITENESS AND CERTAIN-
TY IN PLEADINGS, *cont'd.***

Title, ownership, and possession, *con.*
Departure from earlier pleading,

21, 717

In general, 21, 715

Representative rights, 21, 717

Where time is material, 21, 716

Trespass, 21, 843

Trover and conversion, 21, 1058

Allegations of conversion, 21,
1074

Demand, 21, 1087

United States courts:

Federal follows state practice, 6,
278

Usury, 6, 263; 22, 430

Vendor and purchaser:

Plea or answer in vendor's ac-
tion for price, 22, 681

Vendor's liens, 22, 719

Verdict:

Cure of defects, 6, 281

Videlicet, see *SCILICET* OR *VIDELICET*.

Waiver of defects, 6, 280

Winding up corporations, 22, 1264

Written instruments, 6, 263

DEFRAUD:

Conspiracy, 4, 731, 732

**DE INJURIA (see REPLICATIONS AND
REPLIES):**

Trespass, 21, 855

DEL CREDERE COMMISSION:

Executions against the body and
arrest in civil cases, 8, 594

**DELICTO, see CONTRACTU AND DE-
LICTO: TORT.****DELIVERY BONDS, see FORTHCOM-
ING AND DELIVERY BONDS.****DEMAND:**

Accounts and accounting:

Allegation of demand, 1, 98

Agency:

Actions against agents, 16, 914

Allegation of demand against
agent, 16, 914

Complaint against agent, 16, 914

Date of demand, 16, 915

When allegation of demand un-
necessary, 16, 914

Assumpsit, 2, 1001, 1004

Demand implied, 2, 1013

Money paid, 2, 1012

Awards, 3, 136

Bills and notes, see *NEGOTIABLE IN-
STRUMENTS*.

Bills in equity:

Demand in answer, 3, 358

Bonds (see *OFFICIAL BONDS*), 3, 647

Breach of promise of marriage, 3, 687

Chattel mortgages, 4, 514

Demand and notice to attaching
creditors, 4, 528

DEMAND, *cont'd.*

Conditions precedent, 4, 646

Demand and notice in actions on
commercial paper, 4, 649

Contempt, 4, 778

Conversion, see *TROVER AND CONVER-
SION*.

Debt, 5, 919

Detinue, 6, 650

Examples, 6, 650, 651

In general, 6, 650

Service of the writ, 6, 650

Distress, 7, 23

Dower, see *DOWER*.

Embezzlement:

Demand and refusal to pay, 7,
440

Executions:

Necessity of demand, 8, 376

Executions against the body and
arrest in civil cases, 8, 630

Guaranty:

Allegation of demand on princi-
pal obligor, 16, 946

Homesteads and exemptions, 10, 104

Injunctions:

Demand before bringing suit,
10, 886

Judgments:

Declaration and complaint on
judgments, 11, 1124

Mandamus, see *MANDAMUS*.

Negotiable instruments, see *NEGOTIA-
BLE INSTRUMENTS*.

Official bonds, see *OFFICIAL BONDS*.

Production of documents, 6, 796, 807

Replevin, 18, 541

Failure to allege demand cured,
18, 542

When possession was originally
rightful, 18, 541

When there was a wrongful tak-
ing, 18, 542

Special and struck juries, see *SPECIAL
AND STRUCK JURIES*.

Specific performance, 20, 456

Supplementary proceedings, 21, 123

Suretyship, 16, 933

Action by surety against princi-
pal, 16, 953

Action for contribution, 16, 960,
962

Trover and conversion (see *TROVER
AND CONVERSION*):

Demand and refusal, 21, 1018

Variance, 22, 592

Vendor and purchaser, 22, 755

Vendor's liens, 22, 730

DEMURRERS, 6, 292

See *MOTIONS*.

Abandonment, see *infra*, *Waiver*.

Abatement in pleading, 1, 36

Nonjoinder, 1, 17

DEMURRERS, *cont'd.*

- Additional allowances of costs, 1, 221
- Admissions, 6, 334
 - Construction of statute, 6, 337
 - Extent of admissions, 6, 336
 - For what purpose admission used, 6, 338
 - In general, 6, 334
 - Legal effect of written instrument, 6, 337
 - Matters contrary to law, 6, 338
 - New facts, 6, 338
 - What is admitted, 6, 336
 - When admission of no effect, 6, 338
- Affidavits of merits or defense, 1, 342
 - Extension of time, 1, 355
- Amendments (see *infra*, Demurrer to amended and supplemental pleadings), 1, 494, 595
 - Amending demurrer, 6, 384
 - Amendment after demurrer, 1, 479, 591
 - Amendment of demurrer, 1, 632
 - Filing amendment without leave, 1, 635
 - Objection taken by demurrer, 1, 476
- Another suit pending, 1, 772, 773; 6, 324
 - Waiver of defects by failure to demur, 6, 376
- Answer:
 - Answer as demurrer, 6, 297
 - Demurrer in answer, 11, 875
 - Want of sufficient facts, 6, 345
- Answers in equity pleading:
 - Answer accompanied by plea or demurrer, 1, 901
 - Answer not demurrable, 1, 871
 - Demurring answer to different parts of the bill, 1, 889
- Appeals, 6, 367
 - Criminal cases, 2, 148
 - Defendant introducing evidence, 2, 548
 - Error cured, 2, 548
 - Error in overruling demurrers, 2, 547; 6, 367
 - Error in sustaining demurrers, 2, 546
 - Harmless error, 6, 368
 - In general, 6, 367
 - Judgment not rendered on bad plea, 6, 367
 - Orders affecting demurrers, 2, 114
 - Overruling demurrer, 6, 367
 - Presumption as to rulings on demurrer, 2, 466
- Appearances, 6, 326
 - Filing demurrer as general appearance, 2, 635
- Index Pl. & Pr. — 17

DEMURRERS, *cont'd.*

- Argumentativeness, 6, 370
- Arraignment and plea:
 - Plea of not guilty in demurrer, 2, 776
- Arrest of judgment:
 - Errors fatal on demurrer, 2, 796
 - Principles covering, 2, 819
- Assignment of errors, 2, 969
- Awards, 3, 146
- Bankruptcy, 22, 355
 - Petition for discharge, 22, 383
- Bills to enforce decrees, 3, 606
- Certiorari, 4, 219, 247
- Chancery*, see DEMURRERS IN CHANCERY.
- Classes, 6, 296
- Clerical error, 6, 370
- Codes, 6, 309
- Conditions precedent, 4, 661
- Construction of pleadings, 4, 755; 6, 346, 389
 - Allegations separately construed, 4, 756
 - Liberal construction under the code, 4, 755
 - Pleadings supported if possible, 4, 756
- Contributory negligence, 5, 10
 - Demurrer to complaint showing contributory negligence, 5, 10
 - Failure to negative contributory negligence, 5, 10
- Corporations:
 - Corporate existence, 5, 89
- Costs, 5, 131
 - Double costs, 5, 183
 - Executions, 5, 257
 - Payment of costs as a condition of pleading over, 6, 363
 - Whether interlocutory costs, 5, 223
- Counts, paragraphs, and separate statements:
 - Demurrer to several paragraphs in same answer, 6, 305
 - Demurrer to whole count when matter divisible, 6, 303
 - One count for several causes of action, 5, 335
 - One good count, 5, 338, 339
 - Several counts for one cause of action, 5, 335
- Covenant, 5, 376
 - Grounds for demurrer, 5, 376
 - In general, 5, 376
 - One or several breaches sufficient, 5, 372
 - Plea, 5, 385
 - Plea and demurrer, 5, 377
- Creditors' bills, 5, 578
- Discovery, 5, 587

DEMURRERS, *cont'd.*

- Cross-bills, 5, 369
 - Demurrer to cross-bill, 5, 662
- Damages, 6, 370
- Declaration and complaint:
 - Demurrer in conjunction with other pleadings, 6, 382
 - Effect of sustaining demurrer, 6, 353
 - Waiver of defects, 4, 609
 - Want of sufficient facts, 6, 343
- Defaults:
 - Frivolous demurrer, 6, 388
 - Judgments on demurrer, 6, 80
 - Demurrer to special count, 6, 81
 - In general, 6, 80
 - Judgment technically on demurrer, 6, 81
 - Modern practice, 6, 80
 - Terms, 6, 81
 - Withdrawal of demurrer, 6, 82
 - Pleading of defendant undisposed of, 6, 85
 - While demurrer is on file, 6, 92
- Defects not reached by demurrer, 6, 369
 - Argumentativeness, 6, 370
 - Clerical error, 6, 370
 - Damages, 6, 370
 - Examples, 6, 369, 372
 - Inconsistency, 6, 370
 - In general, 6, 369
 - Plea *puis darrein continuance* not pleaded in time, 6, 371
- Defects waived by failure to demur, 6, 372
 - Amended pleading, 6, 374
 - Another action pending, 6, 376
 - As to parties, 6, 374
 - Defects of parties, 6, 375
 - Defects supplied by plea or answer, 6, 372
 - Facts sufficient to constitute cause of action, 6, 372
 - General rule, 6, 372
 - Inadmissible counterclaim, 6, 372
 - Incapacity to sue, 6, 376
 - Jurisdiction of subject-matter, 6, 374
 - Jurisdiction of the person, 6, 374
 - Misjoinder, 6, 374
 - Misjoinder of causes of action, 6, 377
 - Misjoinder of defendants, 6, 375
 - Misjoinder of plaintiffs, 6, 374
 - Statute of limitations, 6, 377
 - When waived no other means available, 6, 378
- Definiteness and certainty in pleadings, 6, 272, 273, 308

DEMURRERS, *cont'd.*

- Definition, 6, 296
- Demurrer in conjunction with other pleadings, 6, 382
 - Demurrer and motion, 6, 383
 - Demurrer and plea to declaration, 6, 382
 - Demurrer in reply to answer, 6, 383
 - Effect of pleading and demurring to same pleading, 6, 384
- Demurrer to amended and supplemental pleadings, 6, 381
 - Amended pleadings generally, 6, 381
 - Substituted pleading, 6, 381
 - Supplemental pleading, 6, 382
 - Waiver of demurrer to original pleading, 6, 382
 - When demurrer must be filed to amended pleadings, 6, 381
- Demurrer too broad, 6, 301
 - General demurrer to several paragraphs in the same answer, 6, 305
 - General demurrer to several pleas, 6, 305
 - In general, 6, 301
 - Judgment on demurrer too large, 6, 304
 - To whole count when matter is divisible, 6, 303
- Discretion of court:
 - Leave to plead over, 6, 362
- Dismissal, discontinuance, and nonsuit:
 - After demurrer argued and allowed, 6, 845
- Divorce, 7, 100
 - Causes for, 7, 100
 - Indefiniteness, 7, 100
 - When overruled, 7, 100
- Duplicity, 7, 243, 244
- Effect of demurrer, 6, 326
 - Admissions, *see infra*, Admissions.
 - Appearance, 6, 326
 - Defects waived by, 6, 338
 - Searches the whole record, 6, 326
- Effect of overruling, 6, 360
 - Introductory statement, 6, 360
 - Judgment, 6, 366
 - New trial, 6, 369
 - Pleading over, 6, 361
 - Effect of pleading over, 6, 363
 - Error in overruling demurrer waived, 6, 365
 - Generally, 6, 361
 - Leave to plead over discretionary, 6, 362
 - Payment of costs as a condition of leave, 6, 363

DEMURRERS, *cont'd.*

- Effect of overruling, *cont'd.*
 - Pleading over, *cont'd.*
 - Second demurrer, 6, 366
 - Terms and time of pleading over discretionary, 6, 363
 - Time allowable, 6, 363
 - Review on appeal, 6, 367
 - Error in overruling demurrer, 6, 367
 - Harmless error, 6, 368
 - In general, 6, 367
 - Judgment not rendered on bad plea, 6, 367
 - Overruling demurrer, 6, 367
- Effect of sustaining demurrer:
 - Harmless error, 6, 356
 - In general, 6, 356
 - To one or several pleas, 6, 356
 - To one paragraph of answer or reply, 6, 357
 - To one paragraph of complaint, 6, 356
 - Where amended pleading is filed, 6, 359
 - Where defense pleaded is permitted to be shown, 6, 358
 - Where ruling is changed, 6, 360
- Judgment, 6, 352
 - At common law, 6, 352
 - Demurrer to declaration and complaint, 6, 353
 - Demurrer to plea or answer, 6, 354
 - Demurrer to replication, 6, 355
 - Effect of other issues pending, 6, 355
 - Introductory statements, 6, 352
 - Parties affected by judgment, 6, 355
 - Statutory amendments, 6, 352
- Effect of withdrawal of demurrer, 6, 385
- Eminent domain, 7, 539
 - Cross-petition, 7, 539
- Equity*, see DEMURRERS IN CHANCERY.
- Exceptions and objections (see EXCEPTIONS AND OBJECTIONS), 8, 205
- Exhibits, 6, 299
- Filing of demurrer, 6, 324
 - Extension of time, 6, 325
 - Failure to file in time, 6, 325
 - In general, 6, 324
- Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.
- Former adjudication, 9, 613

DEMURRERS, *cont'd.*

- Form of demurrer, 6, 314
- Defects of form, 6, 318
- Joint demurrers, 6, 319
- No precise form necessary, 6, 314
- Requisites of valid demurrer, 6, 315
- Several demurrers, 6, 320
- Statement of grounds, see *infra*, Statement of grounds.
- Frauds, statute of:
 - Where noncompliance with statute appears upon face of pleading, 9, 704
 - Where noncompliance with statute does not appear upon face of pleading, 9, 708
- Frivolous demurrer, 6, 385
 - Default, 6, 388
 - Demurrer for cause not provided by code, 6, 386
 - Incapacity to sue, 6, 386
 - In general, 6, 385
 - Nature of, 6, 385
 - Nature of motion after judgment, 6, 388
 - Notice of motion to strike out, 6, 388
 - Pleading over, 6, 388
 - Remedy, 6, 387
 - Unsupported by authority, 6, 386
- General demurrer (see *infra*, Demurrer too broad), 6, 305
 - Matter in abatement, 6, 306
 - Plea purporting to answer part of declaration, 6, 307
 - Plea to the whole count, 6, 307
 - To several paragraphs in same answer, 6, 305
 - To several pleas, 6, 305
- Grounds, see *infra*, Statement of grounds; Specifying grounds for demurrer.
- Harmless error, 6, 356
 - In general, 6, 356
 - Overruling demurrer, 6, 368
 - To one or several pleas, 6, 356
 - To one paragraph of answer or reply, 6, 357
 - To one paragraph of complaint, 6, 356
 - Where amended pleading is filed, 6, 359
 - Where defense pleaded is permitted to be shown, 6, 358
 - Where ruling is changed, 6, 360
- Hearing, 6, 339
- Husband and wife:
 - Nonjoinder or misjoinder, 10, 227, 229, 231
- Indictments, 10, 563, 572
 - Action upon, 10, 573
 - Effect of overruling, 10, 573

DEMURRERS, *cont'd.*

- Indictments, *cont'd.*
 - Effect of sustaining, 10, 575
 - Limitations, 13, 282
 - Nature, 10, 572
 - Scope, 10, 573
 - Trial without action, 10, 573
 - Withdrawal of demurrer, 10, 573
- Information and belief, 10, 855
- Injunctions, see INJUNCTIONS.
- Insurance, 11, 420
- Interstate commerce:
 - Method of demurring to complaint, 11, 486
- Intervention, 11, 508
 - Right of intervener to demur, 11, 509
- Joinder in demurrers, 6, 312
 - Nature and effect of joinder, 6, 313
 - Necessity for joinder, 6, 312
 - Objections waived by joinder, 6, 314
 - Time for joinder, 6, 313
 - Waiver of joinder, 6, 313
- Joinder of counts and causes:
 - Misjoinder of causes, 6, 340
 - Effect of sustaining demurrer, 6, 343
 - In general, 6, 340
 - Must go to whole pleading, 6, 342
 - Two or more good causes of action, 6, 342
 - Waiver of defects by failure to demur, 6, 377
 - Who may demur, 6, 311
- Joinder of parties:
 - Defect of parties, 6, 319
 - Equity, 15, 681, 698
 - Misjoinder under codes, 15, 760, 762
 - Nonjoinder under codes, 15, 747
 - Waiver of defects by failure to demur, 6, 374
 - Who may demur:
 - For misjoinder of defendants, 6, 310
 - For misjoinder of plaintiffs, 6, 311
- Joint demurrers, 6, 319, 321
 - Definition, 6, 321
 - Good cause of action against any one of the parties joined, 6, 321
 - Illustrations, 6, 321
 - Instances of demurrers held to be joined, 6, 319
- Judgments:
 - Decision on demurrer is an order, 11, 830
 - Demurrer in answer, 11, 875
 - Demurrer to actions on judgments where leave to sue has not been shown, 11, 1098

DEMURRERS, *cont'd.*

- Judgments, *cont'd.*
 - Effect of overruling, 6, 366
 - Effect of sustaining demurrer, 6, 352
 - Judgment on demurrer too large, 6, 304
 - Profect of record in actions on judgments, 11, 1141
- Jurisdiction
 - Jurisdiction of person, 6, 323
 - Jurisdiction over subject-matter, 6, 323
 - Waiver of defects, 6, 374
- Justices of the peace, 12, 694, 702
- Kinds of:
 - General demurrers, 6, 306
 - Special demurrers, 6, 307
 - Statutory demurrers, 6, 309
- Leave to plead over, 6, 362
- Legal conclusions:
 - Conclusions of law not admitted by demurrer, 12, 1026
 - Construction of written instruments, 12, 1040
- Libel and slander*, see LIBEL AND SLANDER.
- Limitations*, see LIMITATIONS.
- Lost instruments and records, 13, 371
- Malicious prosecution:
 - Objections for omission, insufficiency, or indefiniteness of averments, 13, 456
- Mandamus*, see MANDAMUS.
- Mechanics' liens*, see MECHANICS' LIENS.
- Misjoinder, 6, 340
- Misnomer, 14, 295
- Motions* see MOTIONS.
- Multifariousness, 14, 210
- Municipal corporations:
 - Presentation of claim, 14, 236
- Nature of, 6, 297
 - Answer as demurrer, 6, 297
 - Demurrer as part of pleading, 6, 300
 - Demurrer broad*, see *infra*, Demurrer too broad.
 - Demurrer comprehensive*, see *infra*, Demurrer too broad.
 - Demurrer too broad*, see *infra*, Demurrer too broad.
 - Exhibits, 6, 299
 - Illegality of contract, 6, 298
 - In general, 6, 297
 - Objections must appear upon face of pleading, 6, 297
 - Pleading demurred to controls, 6, 298
 - Speaking demurrers, 6, 298
- Negligence, 14, 341

DEMURRERS, *cont'd.*

New trial:

Errors in decisions on demurrers, 14, 829

Overruling demurrer, 6, 369

Next friend:

Failure to appoint or irregular appointment, 14, 1023, 1024

Notice of motion to strike out, 6, 388, 389

Notice or brief statement of defense, 14, 1082

Open and close, 15, 185

Ore tenus, 6, 349

Overruling, *see infra*, Effect of overruling.

Parties to actions:

Misjoinder in equity, 15, 698

Misjoinder under codes, 15, 760, 762

Nonjoinder in equity, 15, 681

Nonjoinder under codes, 15, 747

Objections that plaintiff has no real party in interest under codes, 15, 713

Waiver of defects by failure to demur, 6, 374

Defects of parties, 6, 375

In general, 6, 374

Misjoinder of defendants, 6, 375

Misjoinder of plaintiffs, 6, 374

Waiving objections, 15, 475

Partition, 15, 807

Partnership:

Misjoinder, 15, 897

Nonjoinder, 15, 896

Patents, *see* PATENTS.

Pleading demurred to controls:

Demurrer searches the whole record, 6, 326

Pleading over, 6, 361

F frivolous demurrer, 6, 388

Pleadings:

Demurrer to part of pleading, 6, 300

Pleading demurred to controls, 6, 298

Plea in abatement:

General or special demurrers, 6, 306

Plea or answer:

Demurrer in conjunction with other pleadings, 6, 382

Effect of sustaining demurrer, 6, 354

General demurrer to several pleas, 6, 305

Want of sufficient facts, 6, 345

Pleas at law, 16, 582

Harmless error in striking out or sustaining demurrer to plea, 16, 584

DEMURRERS, *cont'd.*Pleas at law, *cont'd.*

Pleas to distinct part of declaration, 16, 578

Propriety of motion or demurrer, 16, 582

Prayer for relief, 6, 324, 350

Examples, 6, 350, 352

How objection made, 6, 352

In general, 6, 350

No prayer for relief, 6, 352

Objections by demurrer, 16, 793

Statutory provisions, 6, 350

Premature suits, 16, 881

Prohibition, 16, 1140

Puis darrein continuance, 6, 371; 17, 271

After demurrer, 17, 268

Quieting title, 17, 354

Quo warranto, 17, 476

Admission, 17, 476

Information charging usurpation, 17, 477

In general, 14, 476

Overruling, 17, 477

Searches the record, 17, 476

Receivers, 17, 737, 830

Record, *see infra*, Searches the whole record.

Rejoinders and subsequent pleadings, 18, 86

Double pleading, 18, 87

Inconsistency, 18, 86

In general, 18, 86

Wrong conclusion, 18, 87

Release, 18, 94

Remedy at law (*see* REMEDY AT LAW), 6, 324

Remittitur, *see* REMITTITUR.

Removal of causes:

Ruling on demurrer, 18, 364

Repleader, 18, 492

Replication (*see* REPLICATIONS AND REPLIES):

Demurrer and reply to answer, 6, 383

Effect of sustaining demurrer, 6, 355

Requisites of valid demurrer, 6, 315

Res adjudicata, 6, 324

Rescission, cancellation, and reformation of contracts, 18, 846

Scandal and impertinence, 19, 214

Scire facias, 19, 282

Defect of parties, 19, 283

Demurrer searches the record, 19, 284

To plea, 19, 283

To writ, 19, 282

Where writ is both declaration and summons, 19, 282

DEMURRERS, *cont'd.*

- Searches the whole record, 6, 326
 - After demurrer to previous pleading overruled, 6, 331
- Demurrer to amended pleading, 6, 332
- Demurrer to cross-complaint or counterclaim, 6, 329
- Demurrer to part of pleading, 6, 330
- Insufficiency of pleading demurred to unavailing, 6, 331
- Over general issue, 6, 332
- Pleading demurred to controls, 6, 328
- Pleading equivalent to demurrer, 6, 331
- Plea in abatement, 6, 332
- Rule stated, 6, 326
- To what extent, 6, 237
- What defects reached, 6, 333
- When the pleading is insufficient as a demurrer, 6, 332
- Second demurrer:
 - Effect of overruling demurrer, 6, 366
 - Leave to plead over, 6, 366
 - Waiver of first demurrer, 6, 381
- Set-off, recoupment, and counterclaim (see SET-OFF, RECOUPMENT, AND COUNTERCLAIM):
 - Demurrer to whole plea, 6, 306
 - Waiver of objection to inadmissible counterclaim, 6, 372
- Several demurrers, 6, 320
- Sham and frivolous pleadings*, see SHAM AND FRIVOLOUS PLEADINGS.
- Signature, 6, 315
- Speaking demurrers, 6, 298
- Special demurrer, 6, 307
 - Argumentativeness, 6, 308
 - Conclusion, 6, 308
 - Defects of substance, 6, 308
 - Definition, 6, 307
 - In general, 6, 307
 - Pointing out defects, 6, 309
 - Uncertainty and ambiguity, 6, 308
 - Where special demurrers are abolished, 6, 309
- Special interrogatories to juries, 20, 303
- Specific performance, 20, 465
 - General or special demurrer, 20, 466
 - In general, 20, 465
- Specifying grounds for demurrer (see *infra*, Statement of grounds), 6, 322
- Adequacy of remedy at law, 6, 324
- Another action pending, 6, 324
- In general, 6, 322
- Jurisdiction of person, 6, 323

DEMURRERS, *cont'd.*

- Specifying grounds for demurrer, *con.*
 - Jurisdiction over subject-matter, 6, 323
 - Legal capacity to sue, 6, 323
 - Objection as to parties, 6, 323
 - Prayer for relief, 6, 324
 - Prior adjudication, 6, 324
 - Statute of limitations, 6, 323
- Statement of grounds (see *infra*, Specifying grounds for demurrer), 6, 315
 - Defect of parties, 6, 319
 - Defects of form, 6, 318
 - Defects of substance, 6, 315
 - Demurrer to answer, 6, 317
 - General demurrer, 6, 315
 - Grounds fixed by statute, 6, 315
 - Instances of insufficient demurrers, 6, 317
 - Instances of sufficient demurrers, 6, 316
 - Insufficient facts, 6, 316
 - Numbering grounds of objection, 6, 319
 - Special demurrer, 6, 315
 - Statutory demurrer, 6, 309
- Stock and stockholders, 20, 793
 - Enforcement of stockholders' liability to creditors, 20, 753
- Striking demurrer from files, 6, 389
 - Examples, 6, 389
 - Frivolous demurrer, 6, 389
 - In general, 6, 389
 - Notice of motion, 6, 388, 389
- Supplemental pleadings*, see *infra*, Demurrer to amended and supplemental pleadings; and see SUPPLEMENTAL PLEADINGS.
- Sustaining*, see *infra*, Effect of sustaining demurrer.
- Telegraphs and telephones, 21, 521
- Tender, 21, 567
- Terms:
 - Pleading over, 6, 363
- Title, 6, 315
- Trade-marks and trade names, 21, 762
- Trover and complaint, 21, 1095
- United States courts:
 - Jurisdictional defects, 22, 273
- Usury, 22, 444
- Variance, 22, 526, 631
- Venue, 22, 828
- Verification, 22, 1022
- Waiver (see *infra*, Defects waived by failure to demur), 6, 378
 - Answering amended complaint, 6, 381
 - Failure to state cause of action, 6, 380
 - How waived, 6, 378
 - Other pleadings filed while demurrer pending, 6, 380

DEMURRERS, *cont'd.***Waiver, *cont'd.***

- Pleadings filed after demurrer sustained, 6, 380
- Second demurrer, 6, 381
- Trial by consent of the parties, 6, 380
- Trial without disposition of, 6, 379
- Waiver of defects, 6, 338
- Waiver of joinder, 6, 313

Want of sufficient facts, 6, 343

- Construction of pleadings, 6, 346
- Declaration and complaint, 6, 343
- Demurrer the proper remedy, 6, 346

- Plea or answer, 6, 345
- What defects reached, 6, 346

Waste, 22, 1131**Who may demur, 6, 310**

- Misjoinder of causes, 6, 311
- Misjoinder of defendants, 6, 310
- Misjoinder of plaintiffs, 6, 311
- Plaintiff's incapacity to sue, 6, 312

Withdrawal of demurrer, 6, 385**DEMURRERS IN CHANCERY, 6,**

391

Admissions, 6, 396

- Admissions on hearing, 6, 426
- Against whom admission operates, 6, 398
- Conclusions of law, 6, 397
- For what purpose admission used, 6, 398
- Fraud, 6, 398
- Inconsistency, 6, 397
- Inferences, 6, 397
- Matters impossible in law, 6, 398
- What matters admitted, 6, 396

Amended bills, 6, 435**Amendments, 6, 427**

- Application for leave to amend, 6, 428
- Effect of amendment, 6, 428
- In general, 6, 427
- Limitation of right to amend, 6, 427
- What defects amendable, 6, 427
- When allowable, 6, 427

Another suit pending, 6, 407**Answer, 6, 395**

- Answer after demurrer overruled, 6, 430
- Answer to part and demurrer to part, 6, 431
- Entry of final decree, 6, 430
- In general, 6, 430
- Leave to answer, 6, 432
- Objection sometimes raised at hearing, 6, 432
- What matter set up by answer, 6, 431

DEMURRERS IN CHANCERY,*cont'd.***Answer, *cont'd.***

- Answer overruling demurrer, 6, 414
- Examples, 6, 395
- Filing after answer, 6, 424
- Hearing where demurrer is incorporated in the answer, 6, 426
- Incorporating demurrers in answers, 6, 415
- In general, 6, 395

Appeals:

- Orders affecting demurrers, 2, 117
- Overruling demurrer on appeal, 6, 432
- Sustaining demurrer on appeal, 6, 428

Bill in equity (see *infra*, Sustaining demurrer), 6, 400

- Amended bills, 6, 435
- Another suit pending, 6, 407
- Classification, 6, 400
- Construction of bill on demurrer, 6, 411

Demurrer for delay short of statutory period, 6, 406

- Demurrer to substance, 6, 400
- Exceptions to the rule, 6, 403
- Failure to state facts positively, 6, 408

Form, 6, 407**Founded on matters apparent on face of bill, 6, 393****Laches, 6, 404****Limitation, 6, 403****Omission to state plaintiff's residence, 6, 407****Regulations as to minimum amount, 6, 402****Statute of frauds, 6, 406****Triviality of subject matter, 6, 402****Uncertainty, 6, 408****Waiver of penalties or forfeiture, 6, 408****Want of offer to do equity, 6, 408****Want of signature, 6, 408****Want of title in one of several plaintiffs, 6, 401****Want of title in plaintiff, 6, 400****Want of verification, 6, 409****Where relief sought is based on fraud, 6, 404****Bills not original, 6, 435****Bills of revivor, 6, 436****Bills of revivor and supplement, 6, 437****Bills to set aside decrees for fraud, 6, 437****In general, 6, 435****Supplemental bills, 6, 435**

DEMURRERS IN CHANCERY, DEMURRERS IN CHANCERY,

cont'd.

- Bills of revivor, 6, 436
- Comprehensiveness*, see *infra*, Demurrer too extensive.
- Conclusions of law, 6, 397
- Construction of bill, 6, 411
- Decrees:
 - Effect of final decree on overruling demurrer, 6, 433
 - Effect of final decree on sustaining demurrer, 6, 429
- Defects waived by failure to demur, 6, 433
 - Adequate remedy at law, 6, 434
 - Defects not cured by answer or proof, 6, 433
 - Defects of substance, 6, 433
 - Examples, 6, 434
 - Formal defects, 6, 433
 - Misjoinder of parties, 6, 434
 - Multifariousness, 6, 434
 - Objection sometimes raised at hearing, 6, 434
- Definiteness and certainty in pleadings, 6, 408
- Definition, 6, 393
- Demurrer in conjunction with other defenses, 6, 413
 - Answer overruling demurrer, 6, 414
 - Demurrer to part, plea or answer to remainder, 6, 414
 - Incorporating demurrers in answers, 6, 415
 - Plea overruling demurrer, 6, 414
 - Several defenses permissible, 6, 413
- Demurrer *ore tenus*, 6, 412
- Demurrer too extensive, 6, 416
 - Applications of the rule, 6, 418
 - Demurrer too extensive as to parties, 6, 420
 - General rule, 6, 416
 - Where any part of relief sought is grantable, 6, 418
 - Where both relief and discovery are sought, 6, 419
 - Where there are several grounds for relief, 6, 418
- Demurrers to relief*, see *infra*, Relief.
- Departure, 6, 468
- Disclaimer, 6, 724
- Discovery, 6, 398, 409, 777
 - Assignment of grounds for demurrer, 6, 779
 - Cases not of equitable jurisdiction, 6, 777
 - Defendant's title, 6, 778
 - Demurrer too extensive, 6, 419
 - Failure to state facts inquired into, 6, 778

cont'd.

- Discovery, *cont'd.*
 - Grounds for demurrer, 6, 778, 779
 - Immateriality of discovery sought, 6, 778
 - Nature of suit or defense, 6, 778
 - Pendency of suit, 6, 778
 - Prayer for relief, 6, 778
 - Privileged communications, 6, 778
 - Self-crimination, 6, 778
 - Specifying part of bill demurred to, 6, 779
 - Want of equity, 6, 779
 - Want of interest in defendant, 6, 777
 - Want of interest or title in plaintiff, 6, 777
 - Want of parties, 6, 779
 - Want of privity, 6, 777
 - What are grounds for demurrer, 6, 777
- Extensive*, see *infra*, Demurrer too extensive.
- Filing demurrers, 6, 423
 - After answer, 6, 424
 - After time has expired, 6, 424
 - Failure to file in time, how availed of, 6, 424
 - Time of filing, 6, 423
- Founded on proposition of law, 6, 393
- Frame of demurrer, 6, 420
 - Causes of demurrer, 6, 421
 - Oath, 6, 422
 - Partial demurrers, 6, 421
 - Protestation clause, 6, 420
 - Several causes of demurrer, 6, 422
 - Signature, 6, 422
 - Specific application, 6, 422
 - Specifying intent, 6, 421
 - Title, 6, 420
- Fraud:
 - Where relief sought is based on fraud, 6, 404
- Frauds, statute of, 6, 406
- General demurrers, 6, 410
 - Defects of substance, 6, 410
 - Defects reached by general demurrer, 6, 410
 - Exceptions, 6, 410
 - In general, 6, 410
 - Statutory provisions relating to general demurrer, 6, 411
- Hearing:
 - Admissions on hearing, 6, 426
 - Demurrer incorporated in the answer, 6, 426
 - Setting down demurrer for argument and hearing, 6, 425
- Injunctions*, see INJUNCTIONS.
- Interpleader, 11, 468

DEMURRERS IN CHANCERY, DEMURRERS IN CHANCERY,*cont'd.*

Joinder of parties:

Waiver of defects by failure to demur, 6, 434

Joint demurrers, 6, 412

Laches, 6, 404; 12, 832

Limitation of actions, 6, 403

Multifariousness:

Waiver of defects, 6, 434

Nature, 6, 393

Necessity, 6, 395

Oath, see VERIFICATION.

Objections not proper for demurrer, 6, 409

Office of demurrer, 6, 393

Ore tenus, 6, 412

Costs, 6, 413

Examples, 6, 412, 413

In general, 6, 412

Overruling demurrer, 6, 429

Answer after demurrer overruled, 6, 430

Demurrer overruled by implication, 6, 429

Effect of final decree on overruling demurrer, 6, 433

Leave to file second demurrer, 6, 429

Overruling demurrer on appeal, 6, 432

Second demurrer, 6, 429

Second demurrer not so extensive as first, 6, 429

Second demurrer to amended bill, 6, 430

Partial demurrers, 6, 421

Partnership:

Objection to nonjoinder of partners, 15, 994

Patents, see PATENTS.

Plea, 6, 395

Pleas in equity:

Plea and demurrer compared, 16, 589

Plea to part and demurrer to part, 16, 606

Pleas overruling demurrer, 6, 414

Prayer for judgment, 6, 422

Prayer for relief (see *infra*, Relief), 6, 398

Proceedings after joinder, 6, 451

Protestation clause, 6, 421

Relief (see *infra*, Prayer for relief), 6, 399

Classification, 6, 399

Defects of title to character in which plaintiff sues, 6, 400

Personal disability, 6, 399

To form of bill, 6, 407

To jurisdiction, 6, 399

To matter of bill, see *infra*, Bills.

To person of plaintiff, 6, 399

*cont'd.**Remedy at law*, see REMEDY AT LAW.

Replication and reply, 6, 395

Residence:

Omission to state plaintiff's residence, 6, 407

Revivor of suits and actions, 18, 1111, 1118, 1119

Scandal and impertinence, 6, 409

Second demurrer, 6, 429

Amended bill, 6, 430

First demurrer overruled, 6, 429

Leave to file, 6, 429

Not so extensive as first demurrer, 6, 429

Setting down demurrer for argument and hearing, 6, 425

Several causes of demurrer, 6, 422

Signature, 6, 408, 422

Speaking demurrer, 6, 394

Special demurrers, 6, 411

Defects reached by special demurrer, 6, 411

Supplemental bills, 6, 435

Surplusage, 6, 409

Sustaining demurrer, 6, 426

Amendment before allowing demurrer, 6, 427

Amendments generally, 6, 427

Application for leave to amend, 6, 428

Effect of amendment, 6, 428

Effect of final decree on sustaining demurrer, 6, 429

Limitation of right to amend, 6, 427

Sustaining demurrer on appeal, 6, 428

To part of bill, 6, 426

To whole of bill, 6, 426

Time of filing, 6, 423

Title, 6, 420

Verification, 6, 409, 422

In general, 6, 422

Statutory requirements, 6, 423

Waiver, see *infra*, Defects waived by failure to demur.

When necessary, 6, 395

Who may demur, 6, 412

DEMURRERS OF THE PAROL:

Infants, 10, 698

Generally abolished, 10, 699

In general, 10, 698

DEMURRERS TO EVIDENCE, 6, 438

See DIRECTING VERDICT.

Admissions:

What is admitted, 6, 441

Analogous proceedings, 6, 456

Appeals, 2, 559; 6, 457

Final judgment by appellate court, 6, 459

DEMURRERS TO EVIDENCE, DEMURRERS TO EVIDENCE,

*cont'd.*Appeals, *cont'd.*

Harmless error, 6, 458

In general, 6, 457

Review, 6, 457

Constitutional law, 6, 439

Criminal procedure, 6, 456

Damages:

Assessment of damages, 6, 451

In general, 6, 451

Liquidated damages, 6, 452

Submission to jury that
heard evidence, 6, 452

Definition, 6, 439

Directing verdict, 6, 671

Directing verdict governed by
the same rules as demurrers to
evidence, 6, 692

Effect of demurrer, 6, 441

Estoppel, 6, 446

Inference by court, 6, 443

Inference of facts, 6, 442

What is admitted, 6, 441

What is waived, 6, 444

Burden of issue resting on
demurrant, 6, 444

Demurrant's evidence, 6, 444

Evidence of demurree favor-
able to demurrant, 6, 445

Exceptions, 6, 444

Objections to competency of
evidence, 6, 445Reconciling conflicting evi-
dence, 6, 445Effect of introducing evidence after
demurrer overruled, 6, 455Cure of error in overruling de-
murrer, 6, 455

Waiver of right, 6, 456

Estoppel:

Effect of demurrer, 6, 446

Evidence, see *infra*, Effect of de-
murrer; Effect of introducing evi-
dence after demurrer overruled.

Form of demurrer, 6, 449

Directed to whole of adverse
party's evidence, 6, 449

Parol evidence, 6, 451

Stating inferences, 6, 451

Stating only facts deducible, 6,
451What should appear in demur-
rer, 6, 450

Writing, 6, 449

Written evidence, 6, 450

Inquests and inquiries:

After demurrer to evidence over-
ruled, 10, 1164

Introduction, 6, 439

Joinder in demurrer (see *infra*, Pro-
ceedings after joinder), 6, 446

Effect of refusal to join, 6, 449

*cont'd.*Joinder in demurrer, *cont'd.*

Evidence in writing, 6, 446

Necessity for, 6, 446

Parol evidence, 6, 447

When joinder may be compelled,
6, 446Where the evidence is partly oral
and partly written, 6, 449

Judgment, 6, 455

Jury:

Motion to exclude evidence from
jury, 6, 456

Malicious prosecution, 13, 463

Motion to exclude evidence from
jury, 6, 456

New trial, 6, 440

Office of demurrer, 6, 439

Order of proof:

Reopening the case after demur-
rer to the evidence, 15, 400Overruling demurrer (see *infra*,
Effect of introducing evidence after
demurrer overruled), 6, 453

Parol evidence:

Joinder in demurrer, 6, 447
Effect of refusal to join, 6,
449

Examples, 6, 447, 448

In general, 6, 447

Necessity for, 6, 447

Where evidence partly oral
and partly written, 6, 449What should appear in demur-
rer, 6, 451

Pleadings:

Waiver of objections to plead-
ings, 6, 446

Proceedings after joinder:

Assessment of damages, 6, 451

Liquidated damages, 6, 452

Submission to jury that heard
evidence, 6, 452What questions to be considered,
6, 451When demurrer should be over-
ruled, 6, 453When demurrer should be sus-
tained, 6, 452Proceedings analogous to demurrers
to evidence, 6, 456

Reopening the case, 15, 400

Sustaining demurrer, 6, 452

United States courts, 22, 304

Variance, 22, 638

Waiver, see *infra*, Effect of demur-
rer.

What is waived:

Objections to pleadings, 6, 446

Who may demur, 6, 440

Withdrawal of demurrer, 6, 449

Writing, 6, 449

DENIALS, see ANSWERS IN CODE PLEADING; ANSWERS IN EQUITY PLEADING.

DE NOVO, see APPEALS.

DEPARTURE, 6, 460

Bonds, 3, 669

Covenant, 6, 468

Defendant's pleading, 6, 463

Departure to plea of no award, 6, 464

Departure to plea of *non damnicatus*, 6, 465

Departure to plea of performance, 6, 464

In general, 6, 463

New matter, when no departure, 6, 467

Definition, 6, 460

Demurrer, 6, 468

Duplicity, 7, 241

Elections, 7, 388

How cured, 6, 470

How taken advantage of, 6, 468

Demurrer, 6, 468

Motion to strike out, 6, 100

Negotiable instruments, 14, 688

New assignment, 6, 467

New matter in pleadings, 6, 465

Defendant's pleadings, 6, 467

New assignment, 6, 467

Plaintiff's pleadings, 6, 465

Replication of a different right, 6, 466

Reply alleging counterclaim, 6, 466

Variance in matter of inducement, 6, 467

When no departure, 6, 465

Official bonds, 15, 156

Order of proof, see ORDER OF PROOF.

Parties, 6, 463

Plaintiff's pleading, 6, 461

Assignment for new promise, 6, 463

Assignment of different breach, 6, 463

Change of ground in point of law, 6, 463

Declaration alleging performance, 6, 463

Departure as to parties, 6, 463

In general, 6, 461

New matter, when no departure, 6, 465

Reformation or modification of instrument declared on, 6, 462

Replication or excuse for non-performance, 6, 462

Test of departure, 6, 462

Pleas, see *infra*, Defendant's pleading.

Replications and replies, 18, 659, 705

Variance in immaterial matters, 6, 467

DEPOSIT IN COURT, see FUNDS AND DEPOSITS IN COURT.

DEPOSITIONS, 6, 471

Absence of witness:

Accounting for, 6, 566

Address, 6, 535

Adjournment, 6, 525

Adjournment to another place, 6, 527

Certificate to show cause for adjournment, 6, 551

Examples, 6, 525, 527

In general, 6, 525

Notice, 6, 621

Notice providing for adjournment, 6, 526

Admiralty, 1, 284

Commission to take testimony, 1, 285

De bene esse, 1, 284

Dedimus potestatem, 1, 285

Depositions in *perpetuam rei memoriam*, 1, 286

Letters rogatory, 1, 285

Admissions, 6, 570

Depositions taken in another suit, 6, 579

Adverse party, 6, 482

Affidavit, 1, 309; 6, 488

Affidavit and deposition compared, 1, 309

Failure to make affidavit, 6, 488

Issuance of commission, 6, 488

Reasons for taking depositions, 6, 568

Sufficient affidavit, 6, 488

Alteration, 6, 562

Alteration of instrument, 6, 562, 606

Amendments, 6, 606

Certificate, 6, 558

Certificate in United States court, 6, 628

Effect of amendment of process or pleading after taking deposition, 6, 581

Annexation, see *infra*, Exhibits.

Another suit:

Depositions taken in another suit, 6, 579

As between parties privy, 6, 579

Competency as an admission or for contradiction, 6, 579

Ejectment, 6, 579

Filing in the first cause, 6, 580

Inability of witness to attend, 6, 581

In general, 6, 579

Introduction in evidence, 6, 579

Parties and subject matter are the same, 6, 580

DEPOSITIONS, *cont'd.*Another suit, *cont'd.*Depositions taken in another suit, *cont'd.*

Two suits pending at the same time, 6, 581

Answers (see *infra*, Incomplete depositions):

Objections to answer, 6, 595

Annexing papers, 6, 536

Appeals, 6, 636

In general, 6, 636

Objections, 6, 637

Action of trial court must appear, 6, 638

Character of objections and exceptions, 6, 638

Harmless error, 6, 639

In general, 6, 637

Objections not raised below, 6, 637

Review of discretion, 6, 639

Specific exceptions, 6, 639

Order for commission, 6, 642

Presumptions, 2, 475: 6, 640

As to acts of officer, 6, 640

As to existence of conditions, 6, 641

As to notice, 6, 641

Examples, 6, 641

Service of notice, 6, 641

Transcript on appeal, 2, 262

Appearances, 2, 652

Effect of, on objection, 6, 598

Attorney:

Written by attorney, 6, 529

Authentication:

Certificate, 6, 542

Books as evidence, see *infra*, Exhibits.

Burden of proof:

Showing reasons for taking depositions, 6, 567

Caption, 6, 537

Aider by caption, 6, 546, 556

Aider of omission, 6, 539

Definition, 6, 537

Indicating time, 6, 538

Necessity for, 6, 537

Sufficient certainty, 6, 538

Use of, 6, 537

Certificate, 6, 539

Absence of disqualification, 6, 541

Administration of oath to witness, 6, 554

Amendments, 6, 558

Authentication, 6, 542

Certificate as *prima facie* proof of identity of officer, 6, 540Certificate *prima facie* proof of regularity, 6, 545

Court, 6, 547

Deposition taken without authority, 6, 541

DEPOSITIONS, *cont'd.*Certificate, *cont'd.*

Form, 6, 543

Identity of cause, 6, 546

Identity of officer, 6, 539

Identity of witness, 6, 549

Immaterial errors, 6, 557

Inability of witness to attend, 6, 548

Indorsement upon commission, 6, 544

Legal requirements should be observed, 6, 545

Names of the parties, 6, 547

Necessity for, 6, 529

Objections, 6, 593

Omissions, 6, 557, 558

Particular requirements, 6, 546

Presence of adverse party, 6, 549

Presumptions, 6, 559

As to administration of oath to officer, 6, 540

Of qualification of officer, 6, 540

Qualification of officer, 6, 539

Reasons, 6, 547

Requisites, 6, 539

Seal, 6, 542

Setting out office, 6, 541

Sufficiency, 6, 545

That witness testified, 6, 546

Time and place, 6, 547

Time of examination of witness, 6, 550

Certiorari, 4, 282

Chambers and vacation:

Issuance of commission, 6, 490

Civil proceedings, 6, 480

Clerical errors:

Notice of taking deposition, 6, 513

Clerk of court:

Issuance of commission, 6, 490

Signature, 6, 492

Commission, 6, 487

Commission (see *infra*, Officer; United States courts):

Affidavit, 6, 488

Application for, 6, 487

Appointee's designation by title of office, 6, 494

At what time issued, 6, 489

By whom issued, 6, 489

Failure to make affidavit, 6, 488

Filing and service of interrogatories, 6, 491

Form and sufficiency, 6, 492

Issuance as a matter of right, 6, 490

Issuance by clerk, 6, 490

Issuance in vacation, 6, 490

Issuance of, 6, 489

DEPOSITIONS, *cont'd.*

- Commission, *cont'd.*
 - Issuance upon condition as to cross-examination, 6, 492
 - Mere delay, 6, 487
 - Name of appointee, 6, 493
 - Name of appointee omitted by consent, 6, 493
 - Names of witnesses, 6, 494
 - Notice, 6, 491
 - Residence of commissioner, 6, 494
 - Right to issue, 6, 487
 - Seal, 6, 493
 - Signature of clerk, 6, 492
 - Style of cause, 6, 495
 - Sufficient designation of commissioner, 6, 494
 - Who may make application, 6, 487
- Commissioner:
 - United States courts, 6, 613
 - Commissioner's return as evidence, 6, 614
 - Discretion in appointing commissioner, 6, 613
 - Who may appoint commissioner, 6, 613
- Commitments:
 - Indorsement of order of commitment on deposition, 4, 575
- Common law, 6, 477
- Constitutional law:
 - Criminal proceedings, 6, 609
- Contempt of court:
 - United States courts, 6, 622
- Continuances, 4, 849, 857
- Copies, see infra, Exhibits.*
- Costs:
 - Examples, 6, 635, 636
 - In equity and at law, 6, 636
 - In general, 6, 635
 - United States courts, 6, 633
 - Attendance of witness at trial, 6, 634
 - Bill of costs, 6, 635
 - Deposition in another suit, 6, 634
 - Of attorney, 6, 634
 - Of officer, 6, 633
- Courts:
 - Certificate, 6, 547
 - Depositions taken in inferior courts, 6, 578
 - Notice of taking depositions, 6, 508
- Criminal proceedings, 6, 609
 - By what authority, 6, 609
 - Constitutional law, 6, 609
 - Constitution of the United States, 6, 609
 - On behalf of accused, 6, 611
 - On behalf of the state, 6, 609

DEPOSITIONS, *cont'd.*

- Criminal proceedings, *cont'd.*
 - Strict conformity with statute, 6, 610
 - Waiver of objections, 6, 611
- Cross-bills, 5, 667
- Cross-examination:
 - Effect of absence of, 6, 575
 - Effect of on objection, 6, 598
 - Issuance upon condition as to cross-examination, 6, 492
 - United States courts, 6, 623
 - Waiver of objections, 6, 630
- De bene esse, see Bills de bene esse; and see infra, United States courts.*
- Definition, 6, 476
- Depositions upon commission and interrogatories, see infra, Commission; Interrogatories.*
- Development of the use of depositions, 6, 477
- Disbursements, 6, 635
- Discretion of court:
 - Admission of deposition, 6, 564
 - Copies of original papers, 6, 606
 - Refusal to answer, 6, 574
- Divorce, 7, 114
- Eminent domain:
 - Certiorari, 7, 664
- Erasures, 6, 562
- Evidence, see infra, Introduction in evidence; Objections.*
- Examination of parties before trial, see EXAMINATION OF PARTIES BEFORE TRIAL.*
- Exceptions and objections, see infra, Objections.*
- Exhibits, 6, 603
 - Admissibility of exhibits, 6, 605
 - Copies as exhibits, 6, 606
 - Copies of books, 6, 603
 - Effect of failure to attach, 6, 604
 - General rule as to, 6, 603
 - Identification, 6, 604
 - Identification by parol at trial, 6, 605
 - Independent use as evidence, 6, 605
 - Oath, 6, 605
 - Private correspondence, 6, 605
 - Sufficiency of identification, 6, 604
 - When the exhibit is not annexed, 6, 604
- Federal courts, see infra, United States courts.*
- Fees, 6, 635
- Filing, 6, 560
 - In general, 6, 560
 - Notice of filing, 6, 561
 - Opening, 6, 561
 - Withdrawing from office after filing, 6, 561

DEPOSITIONS, *cont'd.*

Foreign depositions:

De bene esse, 6, 618

Notice, 6, 621

United States courts, 6, 614, 618

Foreign language, 6, 582

Former trial:

Depositions used in former trial,

6, 578

"Going" witness, 6, 482, 565

Harmless error:

Appeals, 6, 639

Harmless error in suppressing,
6, 603

Hearsay evidence:

Reasons for taking depositions,
6, 568

Holidays, 6, 524

Identification:

Exhibits, 6, 604, 605

Identity and qualification of officer:

Certificate, 6, 539

Identity of cause, 6, 572

Identity of witness, 6, 571

Certificate, 6, 549

Immaterial variances in the
name of the witness, 6, 571

In general, 6, 571

Introducing the deposition in
evidence, 6, 571

Necessity to show, 6, 571

Impeachment of witnesses, 10, 285,
287Proof of former testimony, 10,
293Incompetency of witness after dep-
osition taken, 6, 572Incompetency of witness removed,
6, 572

Incomplete depositions, 6, 572

Absence of cross-examination,
6, 575Answers not full or responsive,
6, 574

Discretion of court, 6, 573

Duplication of testimony, 6, 574

Facts ascertainable from other
answers, 6, 574Irrelevant, immaterial, or im-
pertinent questions, 6, 573

Last general interrogatory, 6, 573

Refusal to answer, 6, 572

Withholding facts, 6, 575

Interlineations, 6, 562

Interpreter, 6, 528

Interrogatories, 6, 495

Duty of officer where interroga-
tories are written, 6, 528

Examples, 6, 495, 497

In general, 6, 494

Objections to form of interroga-
tories, 6, 595

Proof of service, 6, 496

DEPOSITIONS, *cont'd.*Interrogatories, *cont'd.*Refusal to answer last general
interrogatory, 6, 574Service and filing of interroga-
tories, 6, 491

Settling interrogatories, 6, 496

Time of filing, 6, 495

Interstate commerce, 11, 487

Introduction in evidence, 6, 562

Absence of witness, 6, 566

Accounting for absence of wit-
ness, 6, 566Affidavit showing existence of
cause, 6, 568

By whom written, 6, 576

Deposition incomplete, 6, 572

Depositions in foreign language,
6, 582Depositions taken in another
suit, 6, 579Depositions taken in inferior
courts, 6, 578Depositions used on former trial,
6, 578

Discretion of court, 6, 564

Effect of amendment of process
or pleading after taking dep-
osition, 6, 581Effect of presence of witness in
court, 6, 569Essential requirements to be ob-
served, 6, 563Failure to leave jurisdiction, 6,
566

Giving deposition to jury, 6, 586

Hearsay as to absence of wit-
ness, 6, 568

How written, 6, 576

Identity of cause, 6, 572

Identity of witness, 6, 571

Incompetency of witness after
deposition taken, 6, 572Incompetency of witness re-
moved, 6, 572

In general, 6, 562

Interlineations and erasures, 6,
562

Lost depositions, 6, 583

Memoranda, 6, 562

Nonresident witness, 6, 569

Offering as evidence, 6, 564

Onus for showing existence of
cause for introducing deposi-
tion, 6, 567

Pregnancy, 6, 567

Presence of witness in court, 6,
569Reading deposition as admis-
sion, 6, 570Reasons for taking must exist
when offered, 6, 564

Death of witness, 6, 565

DEPOSITIONS, *cont'd.*

- Introduction in evidence, *cont'd.*
 - Reasons for taking must exist when offered, *cont'd.*
 - "Going" witness, 6, 565
 - In general, 6, 564
 - Taken by agreement 6, 565
 - Removal into jurisdiction, 6, 566
 - Return of subpoena, 6, 568
 - Signature, 6, 577
 - Suppression, 6, 564
 - United States courts, 6, 631
 - After death of party, 6, 631
 - Of parties, 6, 631
 - Re-examination, 6, 632
 - Second deposition, 6, 632
 - Who may read, 6, 632
 - What evidence necessary to show existence of cause, 6, 568
 - Who may read, 6, 583
 - Depending upon the right to withdraw, 6, 585
 - Effect of offering, 6, 585
 - How much of the deposition may be read, 6, 586
 - Right of parties generally, 6, 583
- Issues to the jury:
 - Reading depositions, 11, 684
- Jury:
 - Giving deposition to jury, 6, 586
 - In jury room, 12, 594
 - When in evidence, 12, 594
 - When not in evidence, 12, 595
- Laches:
 - Waiver of objections, 6, 631
- Leading questions:
 - Objections, 6, 589
 - Time of taking objections, 6, 598
- Letters rogatory, 6, 497
 - Definition, 6, 497
 - Distinguished from commission, 6, 497
 - Nature and origin, 6, 497
 - Origin, 6, 498
 - United States courts, 6, 619
- Lost depositions, 6, 583
- Lost instruments and records:
 - Restoration of judicial records, 13, 383
- Lost papers:
 - United States courts, 6, 632
- Mail:
 - Return of deposition, 6, 533, 534, 535
- Mandamus, 13, 553
 - Criminal procedure, 13, 594
- Names:
 - Certificate, 6, 547
 - Name of commissioner, 6, 493
 - Designation by title of office, 6, 494
 - In general, 6, 493

DEPOSITIONS, *cont'd.*

- Names, *cont'd.*
 - Name of commissioner, *cont'd.*
 - Insufficient designation, 6, 494
 - Names of witnesses, 6, 494
 - Notice of taking depositions:
 - Names of witnesses, 6, 509
 - Witnesses, 6, 571
 - Nonresident witness, 6, 569
 - Notary public, see *infra*, Officer.
 - Notice, 6, 491
 - Certificate:
 - United States courts, 6, 627
 - Presumptions on appeal, 6, 641
 - United States courts, 6, 614, 619
 - Adjournment, 6, 621
 - Contents, 6, 621
 - Depositions *de bene esse*, 6, 619
 - Depositions on commission, 6, 621
 - How served, 6, 620
 - Time, 6, 620
 - Notice of filing, 6, 561
 - Notice of objection, 6, 590
 - Notice of taking depositions, 6, 503
 - Adjournment, 6, 525
 - Alternative statements, 6, 511
 - Annexation of notice to certificate, 6, 550
 - By adverse party, 6, 505
 - Certificate as *prima facie* proof of notice, 6, 549
 - Clerical errors, 6, 513
 - Necessity of notice, 6, 503
 - New notice, 6, 504
 - Objections to, 6, 594
 - Officer named in notice, 6, 500
 - Oral notice, 6, 507
 - Particularity, 6, 511
 - Place of taking the deposition, 6, 510
 - Reasonableness of notice, 6, 519
 - Computation of time, 6, 521
 - Dependent on circumstances, 6, 519
 - General rule, 6, 519
 - Insufficient notice, 6, 522
 - Questions for court, 6, 522
 - Time for travel, 6, 521
 - What considered in determining reasonableness, 6, 519
 - Requisites of notice, 6, 507
 - Service not statutory, 6, 515
 - Service of notice, 6, 514
 - Service, on whom to be made, 6, 514
 - Service, proof of, 6, 516
 - Service, substituted, 6, 516
 - Service where there are several defendants, 6, 518

DEPOSITIONS, *cont'd.*

- Notice of taking depositions, *cont'd.*
 - Signature, 6, 513
 - Stating court, 6, 508
 - Stating different days and place, 6, 510
 - Stating names of witnesses, 6, 509
 - Stating officer before whom it is proposed to take the deposition, 6, 508
 - Stating place of taking deposition, 6, 510
 - Stating reason for taking deposition, 6, 510
 - Stating title of the cause, 6, 508
 - Sufficiency of notice, 6, 507
 - Time, 6, 524
 - Time of taking deposition, 6, 509
 - Waiver by appearance and cross-examination, 6, 599
 - Waiver of defects, 6, 513
 - Waiver of notice, 6, 505
 - Who required to give notice, 6, 506
- Oath of witness, 6, 532
 - Certificate, 6, 554
 - Aider by caption, 6, 556
 - Exactness, 6, 555
 - Manner of administering oath, 6, 556
 - Showing that oath was administered to witness, 6, 554
 - Statutory requirements, 6, 554
 - Sufficiency of certificate, 6, 555
 - United States courts, 6, 627
 - Exhibits, 6, 605
 - Presumption as to administration of oath, 6, 540
 - United States courts, 6, 624
- Objections, 6, 587
 - Allowing deposition to remain on file, 6, 590
 - Appeals, 6, 637
 - Action of trial court must appear, 6, 638
 - Character of objections and exceptions, 6, 638
 - Harmless error, 6, 639
 - In general, 6, 637
 - Objections not raised below, 6, 637
 - Review of discretion, 6, 639
 - Specific exceptions, 6, 639
 - Appearance, 6, 598
 - Before trial, 6, 591
 - Competency of witness, 6, 599
 - Cross-examination, 6, 598
 - Depositions once read, 6, 600

DEPOSITIONS, *cont'd.*

- Objections, *cont'd.*
 - Depositions read by adverse party, 6, 602
 - Evidence, 6, 596
 - Exclusiveness of interrogatory, 6, 588
 - Future admissibility, 6, 596
 - Generally, 6, 587
 - General objection, 6, 589
 - Harmless error in suppressing, 6, 603
 - Incompetency of officer, 6, 594
 - Incompetency of testimony, 6, 596
 - Incompetency of witness, 6, 597
 - Irrelevancy of testimony, 6, 596
 - Irresponsive answers, 6, 599
 - Leading questions, 6, 589, 598
 - Manner, 6, 592
 - Manner of objecting, 6, 587
 - Material portions unanswered, 6, 589
 - Motion to suppress, 6, 588
 - Nature of objection, 6, 588
 - Notice, 6, 594, 599
 - Notice of objection, 6, 590
 - Objections taken on trial, 6, 596
 - Objection to certificate, 6, 593
 - Part good and part bad, 6, 588
 - Renewal of objection, 6, 600
 - Renewal of objection at trial, 6, 593
 - Retrial, 6, 601
 - Secondary evidence, 6, 599
 - Second deposition, 6, 592
 - Specificness, 6, 588
 - Stipulation waived, 6, 602
 - Sufficiency of objection, 6, 588
 - Surprise, 6, 602
 - Term of court intervening, 6, 592
 - Time, 6, 592
 - To answer, 6, 595
 - To form of interrogatories, 6, 595
 - United States courts, 6, 629
 - By whom decided, 6, 631
 - Cross-examination, 6, 630
 - Deposition read, 6, 630
 - In general, 6, 629
 - Interested witnesses, 6, 630
 - Laches, 6, 631
 - Motion to suppress, 6, 630
 - When waived, 6, 629
 - Waiver, 6, 589
 - Waiver by appearance and cross-examination, 6, 598
 - When objection should be made, 6, 589
 - Written interrogatories, 6, 596
- Officer (see *infra*, Certificate; Commission), 6, 499
- Execution by commissioner not named, 6, 502

DEPOSITIONS, *cont'd.***Officer, *cont'd.***

- General statement, 6, 499
- Identity and qualification of officer, 6, 539
 - Absence of disqualification, 6, 541
- Appearing in certificate, 6, 539
- Certificate as *prima facie* proof of identity, 6, 540
- Official character, 6, 539
- Presumptions as to administration of oath, 6, 540
- Setting out office, 6, 541
- Joint commission, 6, 503
- Nature of authority under commission, 6, 502
- Notice of taking depositions, 6, 508
- Objections to, 6, 594
- Officer named in notice, 6, 500
- Presumptions on appeal, 6, 640
- Proceedings before the officer*, see *infra*, *Proceedings before the officer*.
- Relation of officer to parties, 6, 500
- Under commission, 6, 502
- Waiver by stipulation, 6, 500
- Who may be appointed, 6, 502

Opening, 6, 561**Origin, 6, 477****Party's own deposition, 6, 482****Penalties and penal actions, 16, 237*****Perpetuation of testimony*, see PERPETUATION OF TESTIMONY.****Place:****Certificate:**

Place of trial of cause, 6, 547

Place of taking, 6, 526

Certificate, 6, 550

Notice of taking depositions, 6, 510

Pregnancy, 6, 567**Presence of parties, 6, 530**

Certificate, 6, 549

Deposition upon written interrogatories, 6, 531

In general, 6, 530

Presence of witness before officer, 6, 527**Presence of witness in court, effect of, 6, 569**

In general, 6, 569

Reading deposition as admission, 6, 570

Whether deposition can be read, 6, 659

Presumptions (see *infra*, Appeals):

Administration of oath to officer, 6, 540

Certificate, 6, 559

Index Pl. & Pr. — 18

DEPOSITIONS, *cont'd.***Presumptions, *cont'd.***

Regularity of return, 6, 537

The officer, 6, 540

Probate and contest of wills, 6, 480**Proceedings before the officer, 6, 527**

By whom written, 6, 528

Deposition previously prepared, 6, 527

How testimony should be taken, 6, 527

Interpreter, 6, 528

Oath, 6, 532

Place of taking, 6, 526

Presence of parties, 6, 530

Presence of parties, written interrogatories, 6, 531

Presence of witness before officer, 6, 527

Previous inspection, 6, 528

Procuring witnesses to testify, 6, 522

Reading over to witness, 6, 531

Refusal of witness to answer, 6, 523

Refusal of witness to appear, 6, 523

Time of taking, 6, 524

Typewritten, 6, 529

Written by agent, 6, 529

Written by attorney, 6, 529

Written by party himself, 6, 530

Written by person related to party, 6, 529

Written by witness himself, 6, 529

Written interrogatories, 6, 528

Reading over to witness, 6, 531**Reading the testimony:**

Certificate, 6, 553

Reasonableness of notice, see *infra*, *Notice of taking depositions*.*Refusal to answer*, see *infra*, *Incomplete depositions*.**Retaking depositions, 6, 607**

Before first commission is returned, 6, 609

In general, 6, 607

Order of court, 6, 608

Return of deposition, 6, 532

Annexing papers, 6, 536

By whom returned, 6, 533

Deposition *de bene esse*, 6, 618

How returned, 6, 533

Presumptions, 6, 537

Retaining until delivered, 6, 537

Sealing, 6, 534

Superscription on envelope, 6, 535

To whom returned, 6, 533

When returned, 6, 532

Right to take the deposition, 6, 479

Criminal proceedings, 6, 481

DEPOSITIONS, *cont'd.*Right to take the deposition, *cont'd.*

In general, 6, 479

Probate, 6, 480

Sole witness having knowledge
of material facts, 6, 479When deposition may be taken,
6, 483Who entitled to exercise the
right, 6, 481

Rules of court, 18, 1250

Scandal and impertinence, 19, 184,
186

Scope of article, 6, 476

Seal, 6, 493

Certificate, 6, 542

United States courts, 6, 628

Sealing deposition, 6, 534

Service of process, see *infra*, Notice
of taking depositions.

Signature, 6, 577

Certificate, 6, 553

United States courts, 6, 627

Covers whole deposition, 6, 577

Denying signature of witness,
6, 577

Necessity of, 6, 577

Notice of taking depositions, 6,
513

United States, 6, 625

United States courts:

Amending certificate, 6, 628

By whom written, 6, 626

Depositions *de bene esse*, 6,
625Depositions under commis-
sion, 6, 628

In general, 6, 625

Interest of officer, 6, 626

Oath, 6, 627

Re-examination, 6, 629

Requisites, 6, 628

Residence of witness, 6, 625

Seal, 6, 628

Signature, 6, 627

Want of notice, 6, 626

Stipulations, 20, 622

Strict construction, 6, 479

Subpœna *duces tecum*, 6, 622

Surprise:

Objections, 6, 602

Time:

Caption, 6, 538

Certificate, 6, 550

Annexation of certificate, 6,
551Discrepancy between certi-
ficate and notice, 6, 551Time in which examination
of witness took place, 6,
550

Time of trial of cause, 6, 547

Notice of time, 6, 524

DEPOSITIONS, *cont'd.*

Time, computation of, 6, 521

Time of making objection, 6, 589

Time of taking (see *infra*, When dep-
osition may be taken), 6, 524

Adjournment, 6, 525

Holidays, 6, 524

In general, 6, 524

Notice of taking, 6, 510

Not taken at the time designated
in the notice, 6, 524

Opening within hours, 6, 524

Title of cause:

Notice of taking depositions, 6,
508

Typewritten, 6, 529

United States courts (see *infra*,
Letters rogatory), 6, 612; 22,
302

Caption, 6, 624

Certificate, 6, 625

Commission, 6, 612

Commission returned as evi-
dence, 6, 614

Common usage, 6, 614

Discretion in appointing
commissioner, 6, 613

Equity, 6, 614

Foreign depositions, 6, 614

General authority, 6, 612

How executed, 6, 614

Judiciary act of 1789, 6, 612

Notice, 6, 614

Power to ask, 6, 614

Several commissioners, 6,
615

Where returned, 6, 616

Who may appoint commis-
sioner, 6, 613Witnesses within reach of
process, 6, 612

Contempt of court, 6, 622

Costs, 6, 633

Attendance of witness at
trial, 6, 634

Bill of costs, 6, 635

Deposition in another suit,
6, 634

Of attorney, 6, 634

Of officer, 6, 633

Cross-examination, 6, 623

De bene esse, 6, 616

Before whom taken, 6, 617

By whom written, 6, 618

Foreign depositions, 6, 618

Publication, 6, 618

Residence of witness, 6, 616

Return, 6, 618

Return as evidence of offi-
cer's authority, 6, 618Temporary absence, 6, 617
When they may be taken,
6, 616

DEPOSITIONS, *cont'd.*United States courts, *cont'd.*

Depositions in other suits, 6, 632
 Depositions lost or destroyed,
 6, 633

Depositions must be complete,
 6, 623

Foreign depositions, 6, 619

How attendance of witness en-
 forced, 6, 621

Depositions in American
 courts, 6, 621

Foreign depositions, 6, 622

Introduction in evidence, 6, 631

Notice, 6, 619

Adjournment, 6, 621

Contents, 6, 621

Depositions *de bene esse*, 6,
 619

Depositions on commission,
 6, 621

How served, 6, 620

Time, 6, 621

Oath, 6, 624

Objections, 6, 629

By whom decided, 6, 631

Cross-examination, 6, 630

Depositions read, 6, 630

In general, 6, 629

Interested witnesses, 6, 630

Laches, 6, 631

Motion to suppress, 6, 630

When waived, 6, 629

Proceedings before officer taking
 deposition, 6, 621

Relation to subject generally,
 6, 612

Signature, 6, 625, 627

Amending certificate, 6, 628

By whom written, 6, 626

Depositions *de bene esse*, 6, 625

Depositions under commis-
 sion, 6, 628

In general, 6, 625

Interest of officer, 6, 626

Oath, 6, 627

Re-examination, 6, 629

Requisites, 6, 628

Residence of witness, 6, 625

Seal, 6, 628

Want of notice, 6, 626

Subpoena *duces tecum*, 6, 622

When deposition may be read,
 6, 631

After death of parties, 6, 631

Of parties, 6, 631

Re-examination, 6, 732

Second deposition, 6, 632

Who may read, 6, 632

Who may read, 6, 632

Verification (see *infra*, Certificate):

Oath of witness, 6, 532

United States courts, 6, 624

DEPOSITIONS, *cont'd.*

Waiver:

Effect of appearance and cross-
 examination, 6, 598

Notice:

Waiver of notice, 6, 505

Waiver of defects, 6, 513

Officer, 6, 500

Stipulation, 6, 602

United States courts, 6, 629

When deposition may be taken, 6,
 483

Action must be pending, 6,
 484

Before answer, 6, 485

Before process returned or issue
 joined, 6, 485

In chancery, 6, 487

In general, 6, 483

Pending trial, 6, 486

Prior to or during term, 6,
 486

Whose deposition may be taken, 6,
 482

Witnesses (see *infra*, Certificate;
 Objections; Proceedings be-
 fore the officer):

Names of witnesses in notice of
 taking, 6, 509

Writing:

Certificate, 6, 552

By whom written, 6, 528, 576

How written, 6, 576

DEPUTY:

Affidavits, 1, 319

Authority to take, 1, 329

Appeals:

Certificate of clerk, 2, 285

Service of notice of appeal, 2,
 225

Attachment, 3, 56

Judicial sales, 12, 49

Official bonds:

Demand on deputy, 15, 103

Prosecuting attorneys, 17, 7, 11

Returns:

Death of deputy, 18, 912

Names of principal and deputy,
 18, 912

Omission of deputy's name or
 title, 18, 913

Order of names of principal and
 deputy, 18, 913

Service of process, see SERVICE OF
 PROCESS.

Sheriffs, see SHERIFFS AND CON-
 STABLES.

Sheriffs' sales, 20, 211

Survival of actions, 21, 355, 356

DESCENT AND DISTRIBUTION,
 see HEIRS AND DEVISEES.

DESCRIPTION:

Abbreviations, 1, 47

DESERTION (see HUSBAND AND WIFE):

- Divorce, 7, 76
 - Allegations of, 7, 76
 - Defenses, 7, 95
 - Desertion without cause, 7, 77
 - Failure to support, 7, 77
 - Misconduct of plaintiff, 7, 95
 - Recrimination, 7, 91
 - Status of innocent party, 7, 77
 - Statutory terms, 7, 76
 - Terms equivalent to those of statute, 7, 77
 - Time of desertion, 7, 77

DE SON TORT, see EXECUTORS AND ADMINISTRATORS.**DETAINDER**, see FORCIBLE ENTRY AND DETAINDER.**DETINUE**, 6, 643

- Action on detinue bond, 6, 663
- Amendments:
 - Amending judgment, 6, 663
- Bailments:
 - Parties to the action, 6, 647
- Bonds:
 - Action on detinue bond, 6, 663
- Chattel mortgages, 4, 513
- Constables*, see SHERIFFS AND CONSTABLES.
- Damages:
 - Verdict assessing damages, 6, 658
- Declaration, 6, 651
 - Certainty, 6, 651
 - Demand, 6, 653
 - Description of property, 6, 652
 - In general, 6, 651
 - Possession in defendant, 6, 652
 - Reasonable certainty, 6, 653
 - Showing plaintiff's property, 6, 651
 - Value of property, 6, 653
- Defenses, 6, 656
 - Fraud, 6, 658
 - In general, 6, 656
 - Showing title in third person, 6, 657
 - Statute of limitations, 6, 658
 - Want of title in plaintiff, 6, 657
- Definition, 6, 644
- Demand, 6, 650
 - Declaration, 6, 653
 - Examples, 6, 650, 651
 - In general, 6, 650
 - Service of writ, 6, 650
- Election of remedies, 6, 649
- Executors and administrators:
 - Judgment against, 6, 663
 - Parties to the action, 6, 647, 648
- Fraud, 6, 658
- Inquiry, writ of, 6, 659
- Joinder of parties, 6, 649
 - Defendant, 6, 649
 - Plaintiff, 6, 649

DETINUE, *cont'd.*

- Joint tenants and tenants in common:
 - Between joint tenants and tenants in common, 11, 762
 - Joinder of parties, 11, 774
- Judgment, 6, 661
 - Amending judgment, 6, 663
 - Effect of judgment, 6, 663
 - Executors and administrators, 6, 663
 - Failure to assess separate values, 6, 661
 - Form of judgment, 6, 662
 - In general, 6, 661
 - Voluntary nonsuit, 6, 662
- Jurisdiction, 6, 645
- Limitation, 13, 187
- Limitation of actions, 6, 658
- Lost instruments and records, 13, 350
- Modern practice, 6, 645
- Nature, 6, 644
- Non detinet*, 6, 654
- Nonsuit, 6, 662
- Open and close, 15, 196
- Parties, 6, 645
 - Bailees as plaintiff, 6, 647
 - Defendant generally, 6, 648
 - Executors and administrators as defendants, 6, 648
 - Executors and administrators as plaintiffs, 6, 647
 - Particular persons as plaintiff, 6, 647
 - Plaintiff, 6, 645
 - Plaintiff generally, 6, 645
 - Revival of action, 6, 648
 - Trustees as plaintiff, 6, 647
- Pleas, 6, 653
 - In general, 6, 653
 - Non detinet*, 6, 654
 - Puis darrein continuance*, 6, 655
- Pledges, 16, 642, 649
- Puis darrein continuance*, 6, 655
- Remittitur, 6, 660
- Revival of action, 6, 648
- Sheriffs and constables*, see SHERIFFS AND CONSTABLES.
- Survival of actions, 21, 332
- Title, ownership, and possession of property, 6, 657
- Trover and conversion, 21, 1013
 - Description of property, 21, 1009
 - Election of remedies, 21, 1025
- Trusts and trustees, 6, 647; 22, 139
- Verdict, 6, 658
 - Assessing value, 6, 658
 - In general, 6, 658
 - Partial findings, 6, 660
 - Remittitur, 6, 660
 - Valuation, 6, 660
 - Writ of inquiry, 6, 659

DEVASTAVIT:

Survival of actions, 21, 329

DEVISEES, see **HEIRS AND DEVISEES**;
SETTLEMENT OF DECEDENTS' ESTATES.**DEVISES**, see **LEGACIES AND DEVISES.****DIAGRAMS:**

Arguments of counsel, 2, 741

DIES NON JURIDICUS, see **SUNDAYS AND HOLIDAYS.****DILATORY PLEAS**, 6, 665

Definition, 6, 665

Jurisdiction, 6, 666

Kinds of dilatory pleas, 6, 665

Not favored, 6, 666

Parties, 6, 666

DILIGENCE:

Definiteness and certainty in pleadings, 6, 265

DIRECTING VERDICT, 6, 667See **DEMURRER TO EVIDENCE.**

Admissions:

What is admitted, 6, 693

Amendment, 6, 689

Appeals, 6, 701, 702

Application, 6, 690

Bill of exceptions, 6, 701

Compared to nonsuit, 6, 694

Credibility of witness, 6, 694

Defect in the declaration, 6, 691

Error to deny in a proper case, 6, 690

Exceptions, 6, 700

Governed by same rules as demurrer to evidence, 6, 692

In general, 6, 690

Motion to direct, see *infra*, *Motion to direct*.

Motion to exclude evidence, 6, 692

Particular cases discussing facts relative to directing verdict, 6, 705

Refusal to grant motion to go to jury, 6, 702

Rendition of verdict, 6, 704

Review of instruction, 6, 701, 702

Waiver of exception, 6, 700

What is admitted by motion to direct verdict, 6, 693

Where general verdicts are not allowed, 6, 692

Assumpsit, 6, 705

Bills and notes, 6, 706

Bills of exceptions, 6, 701

Cases in which verdict should be directed, 6, 683

Absence of material proof, 6, 686

Amendment, 6, 689

Criminal cases, 6, 689

Evidence documentary or undisputed, 6, 688

Examples, 6, 706

In cases of variance, 6, 688

DIRECTING VERDICT, *cont'd.*Cases in which verdict should be directed, *cont'd.*

In general, 6, 678

Insufficiency in law and fact, 6, 681

"Scintilla of evidence" rule, 6, 675

Test, 6, 679

Verdict directed that party might testify, 6, 674

Verdict directed upon documentary evidence, 6, 675

When the opposite theory is supported by no evidence of an essential fact, 6, 686

When there is no conflict in the evidence or question as to its credibility, 6, 687

When there is no evidence to support the opposite theory, 6, 683

Corporations, 6, 705

Criminal procedure, 6, 689

Acquittal, 6, 690

Conviction, 6, 689

Damages, 6, 705

Demurrer to evidence, 6, 671

Directing verdict governed by the same rules as demurrer to evidence, 6, 692

Development, 6, 673

Earlier and minority rule, 6, 673

Later and prevailing doctrine, 6, 678

Documentary evidence, 6, 675, 688

Earlier and minority rule, 6, 673

Direction of verdict viewed with disfavor and seldom permitted, 6, 673

Exceptions, 6, 674

"Scintilla of evidence" rule, 6, 675

Verdict directed that party might testify, 6, 674

Verdict directed upon documentary evidence, 6, 675

Ejectment, 6, 705

Evidence, see *infra*, Cases in which verdict should be directed.

Exceptions and objections, 6, 700; 8, 282

Facts, see *infra*, Steps towards the separation of law and fact.

Foreclosure of mortgages, 9, 398

Fraud, 6, 705

Insurance, 11, 431

Issues to the jury, 11, 689

Jury, 6, 668

Right to go to jury, 6, 703

Law, see *infra*, Steps towards the separation of law and fact.

Libel and slander, 13, 111

DIRECTING VERDICT, *cont'd.*

- Life insurance, 6, 706
- Malicious prosecution:
 - Want of probable cause, 13, 468
- Mistake, 6, 705
- Motion to direct, 6, 698
 - Close of all evidence, 6, 698
 - Forms, 6, 699
 - Grounds, 6, 699
 - Oral application, 6, 699
 - Preponderance of evidence, 6, 700
 - Requiring jury to retire, 6, 699
 - Specification of grounds, 6, 699
 - Sufficiency of grounds, 6, 699
 - When to be made, 6, 698
 - Written, 6, 699
- Nature, 6, 668
- Nonsuit, 6, 673
 - Compared to nonsuit, 6, 694
- Order of proof:
 - Reopening the case after motion to direct, 15, 400
- Origin, 6, 668
- Penalties and penal actions, 16, 236
- Personal injury, 6, 706
- Polling the jury, 22, 934
- Practice defined, 6, 668
- Prevailing doctrines, 6, 678
- Probate and contest of wills, 16, 1040
- Questions of law and fact*, see *infra*, Steps towards the separation of law and fact.
- Railroads:
 - Injuries to animals, 17, 601
- Rendition of verdict, 6, 704
- Replevin, 18, 567
- Review, 6, 701
- Scintilla of evidence, 6, 675
- Special interrogatories to juries, 20, 382
- Special verdicts, 6, 671
- Steps towards the separation of law and fact, 6, 671
 - Demurrer to the evidence, 6, 671
 - In general, 6, 671
 - Nonsuit, 6, 673
 - Special verdicts, 6, 671
- Steps towards verdict from evidence produced in court, 6, 669
- Street railways, 20, 881
- Subscription, 6, 707
- Test of right to direct verdict, 6, 679
- Trespass, 6, 707; 21, 864
- Trespass on the case, 6, 707
- Trespass to try title, 21, 945
- United States courts, 22, 304
- Variance:
 - Motions to direct verdict, 22, 636
 - Immaterial variances, 22, 637
 - In general, 22, 636

DIRECTING VERDICT, *cont'd.*

- Variance, *cont'd.*
 - Motions to direct verdict, *cont'd.*
 - Province of court and jury in general, 22, 638
 - Province of court and jury where evidence is conflicting, 22, 638
 - Province of court and jury where facts are not disputed, 22, 638
 - Withdrawal of case from jury by court, 22, 636
- Waiver of exception, 6, 700
- Witnesses:
 - Question of credibility of witnesses, 6, 694
- DIRECTORS** (see OFFICERS AND AGENTS OF PRIVATE CORPORATIONS; STOCK AND STOCKHOLDERS):
- Death:
 - Death of plaintiff, 5, 811
- DISBARMENT AND SUSPENSION OF ATTORNEYS, 6, 708**
 - Accusation, 6, 712
 - Affidavit, 6, 713
 - Bar association, 6, 712
 - Requisites, 6, 713
 - Verification, 6, 713
 - Who may make, 6, 712
 - Affidavit, 6, 713
 - Answer, 6, 715
 - Contents, 6, 715
 - Pleadings after answer, 6, 715
 - Time to answer, 6, 715
 - Appeals, 6, 718
 - Bar association, 6, 712
 - Certiorari, 6, 718
 - Citation, 6, 714
 - Civil proceedings, 6, 709
 - Commitment for contempt, 6, 710
 - Contempt of court, 6, 709
 - Costs:
 - Taxing costs against informant, 6, 717
 - Criminal proceedings, 6, 709
 - Decrees, 6, 717
 - Collateral attack, 6, 718
 - Effect, 6, 717
 - Form, 6, 717
 - Definition, 6, 708
 - Error, writ of, 6, 718
 - Evidence, 6, 716
 - Hearing, 6, 715
 - Appointing counsel to prosecute, 6, 717
 - Dismissal, 6, 716
 - Evidence, 6, 716
 - Jury trial, 6, 715
 - Procedure as in civil cases, 6, 716
 - Sufficiency of proof, 6, 716

DISBARMENT AND SUSPENSION OF ATTORNEYS, *cont'd.*

- Judgment, 6, 717
 - Collateral attack, 6, 718
 - Form, 6, 717
 - Juries, 6, 715
 - Mandamus, 6, 719
 - New trial, 6, 718
 - Notice, 6, 714
 - Ordinary contemnors, 6, 709
 - Proceedings against attorneys as officers of the court, 6, 710
 - At common law, 6, 710
 - Power independent of statutory authority, 6, 710
 - Statutes, 6, 711
 - Statutory causes, 6, 711
 - What courts, 6, 711
 - Proceedings against attorneys as ordinary contemnors, 6, 709
 - Prohibition, 6, 720
 - Review, 6, 718
 - Service of process, 6, 715
 - Supersedeas and stay of proceedings, 6, 719
 - Verification, 6, 713
- DISBURSEMENTS, see COSTS.**
- DISCHARGE :**
- Confession and avoidance, 4, 665
 - Payment, see PAYMENT.*
- DISCLAIMERS, 6, 721**
- Affidavit, 6, 724
 - Answers in equity, 6, 722
 - Costs, 5, 132; 6, 726
 - Definition, 6, 721
 - Demurrer in equity, 6, 724
 - Dower:
 - Pleas, 7, 164
 - Effect of disclaimer, 6, 725
 - As to other parties, 6, 725
 - Dismissal of bill, 6, 726
 - In general, 6, 725
 - When interposed by mistake, 6, 725
 - When untrue, 6, 725
 - Ejectment, 7, 282
 - Nature, 6, 722
 - Patents, see PATENTS.*
 - Proceedings after disclaimers, 6, 724
 - Quieting title, 17, 346
 - Demurrer, 17, 347
 - Effect on costs, 17, 347
 - Effect on decree, 17, 348
 - In general, 17, 346
 - Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 379
 - Quo warranto, 17, 470
 - Signature, 6, 724
 - Time of entering, 6, 724
 - Vendor's liens, 22, 731
 - When proper, 6, 722
 - After disclaimer, 6, 724

DISCLAIMERS, *cont'd.*

- When proper, *cont'd.*
 - In general, 6, 722
 - Necessity of answering not to be evaded by, 6, 722
 - With answer, 6, 722

DISCLOSURE :

- Poor debtor acts, see POOR DEBTOR ACTS.*

DISCONTINUANCE, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.**DISCOVERY, PRODUCTION, AND INSPECTION, 6, 728**

- See ANSWERS IN EQUITY PLEADING; PRODUCTION OF DOCUMENTS.

Admissions:

- Equity, 6, 782
- Against whom production or inspection may be had, 6, 797
- Co-operate officers, 6, 798
- Infants, 6, 798
- In general, 6, 797
- Nominal party, 6, 798
- Persons in representative capacity, 6, 798
- Real party, 6, 798
- Agency, 16, 921
- Communications between agents and clients, 6, 750
- Parties, 6, 762, 763
- Privileged communications, 6, 756

Amendments:

- Amending bill, 6, 771
 - Adding parties, 6, 771
 - Adding prayer for relief, 6, 771
 - Amendment to waive discovery, 6, 772
 - For relief and discovery, 6, 772
- Answer, 6, 775**
- Disclosures by answer, 6, 775
 - Protection from discovery by answer, 6, 776
 - Rule as to responsiveness, 6, 776
 - To aid in framing pleadings, 6, 789

Answer in equity, 6, 783**Appeals, 6, 816****Application, 6, 801**

- Allegations of demand and refusal, 6, 807
- Allegations of materiality and necessity, 6, 804
- Case in which equity would compel discovery, 6, 807
- Description of writings, 6, 802
- Interrogatories, 6, 807
- Pendency, nature, and object of suit, 6, 801
- Possession or control of writings by adverse party, 6, 802

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.***Application, *cont'd.***

Prayer, 6, 807

Specification of information sought, 6, 802

Verification, 6, 807

Attorneys, see infra, Privileged communications.

Bad faith, 6, 794

Bill of discovery (*see infra, Frame of bill*), 6, 731

Amendments, 6, 771

Distinguished from bills for relief, 6, 731

Effect of answer, 6, 731

Nature of, 6, 731

No dismissal for want of prosecution, 6, 732

Not brought to hearing, 6, 731

Not taken *pro confesso*, 6, 732

Time of filing bill, 6, 764

When bill of discovery may be maintained, see infra, When bill of discovery may be maintained.

Bills in equity, 6, 783

Clergymen:

Privileged communications, 6, 757

Constitutional law, see infra, Self-crimination.

Continuances:

Pendency of bill of discovery, 4, 832

Copyright, 5, 22

Corporations, 6, 798

Costs, 6, 780, 818

Application for costs, 6, 781

Carelessness of attorney, 6, 781

Exceptions, 6, 780

General rule, 6, 780

Qualifications, 6, 780

Creditors' bills, 5, 394, 583

Answer, 5, 587

Demurrer, 5, 587

Fishing bills, 5, 585

Fraud, 5, 586

In general, 5, 583

Insufficient answers, 5, 588

Parties, 5, 584

The bill, 5, 585

*Criminal law, see infra, Self-crimination.**Criminal defendant, see infra, Self-crimination.*

Cross-bills, 5, 630, 651

Declaration and complaint:

To aid in framing pleadings, 6, 788

Definition, 6, 730

Delay, 6, 794

Demand, 6, 796, 807

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

Demurrer in equity, 6, 398, 409, 677

Assignment of grounds for demurrer, 6, 779

Cases not of equitable jurisdiction, 6, 777

Defendant's title, 6, 778

Demurrer too extensive, 6, 419

Failure to state facts inquired into, 6, 778

Grounds for demurrer, 6, 778, 779

Immateriality of discovery sought, 6, 778

Nature of suit or defense, 6, 778

Pendency of suit, 6, 778

Prayer for relief, 6, 778

Privileged communications, 6, 778

Self-crimination, 6, 778

Specifying parts of bill demurred to, 6, 779

Want of equity, 6, 779

Want of interest in defendant, 6, 777

Want of interest or title in plaintiff, 6, 777

Want of parties, 6, 779

Want of privity, 6, 777

What are grounds for demurrer, 6, 777

Description of books, papers, or documents:

Orders, 6, 809

Description of writings, 6, 802

Discovery (*see DISCOVERY*):

Case in which equity would compel discovery, 6, 807

Equity, 6, 781

Admissions, 6, 782

Description, 6, 783

Labor involved, no excuse, 6, 783

Sealing up parts, 6, 784

The answer, 6, 783

The bill, 6, 783

The motion, 6, 784

What is requisite to entitle party to production, 6, 782

Evidence not indispensable, 6, 733

Examination of parties before trial (*see EXAMINATION OF PARTIES BEFORE TRIAL*), 8, 57

How enforced, 8, 57

Party not a corporation, 8, 58

Right, 8, 57

Filing bill, time of, 6, 764

Frame of bill, 6, 765

Demand for discovery, 6, 770

Interests of defendant, 6, 766

Materiality of discovery, 6, 767

Nature and ground of suit, 6, 766

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

- Frame of bill, *cont'd.*
 - Pendency of suit, 6, 766
 - Prayer for discovery, 6, 770
 - Prayer for process, 6, 770
 - Privity, 6, 766
 - Statement of matters as to which discovery is sought, 6, 769
 - Title or interest of plaintiff, 6, 765
 - Verification, 6, 771
- Fraud, 9, 680
- Husband and wife:
 - Privileged communications, 6, 757
- Immateriality of discovery:
 - Grounds for demurrer, 6, 778
- Indispensable, see *infra*, Materiality.
- Infants, 6, 798
- Injunctions, 10, 915
- Inspection (see *infra*, Orders):
 - Subjects of inspection, 6, 784
- Inspection of machinery, 6, 786
- Inspection of merchandise, 6, 786
- Interest of defendant, 6, 766
 - Grounds for demurrer, 6, 777
- Interest of plaintiff, 6, 765
- Interpreters:
 - Communications between attorney and client, 6, 751
- Interrogatories, 6, 807
- Issues to the jury, 11, 686
- Joinder of parties, 6, 763
- Limitation of actions:
 - Self-crimination, 6, 746
- Lost instruments and records:
 - Recovery of lost instruments, 13, 356
 - Re-execution and restoration of lost instrument, 13, 351
- Materiality, 6, 740, 793, 804
 - Affidavit of materiality, 6, 804
 - Allegations of materiality in application, 6, 804
 - Necessity, 6, 805
 - Objections that discovery sought is immaterial, 6, 740
 - Test of materiality, 6, 741
 - What is and what is not material, 6, 740
- Materiality of discovery, 6, 767
 - Discovery indispensable, 6, 768
 - Necessity of allegation in bill, 6, 767
 - Where injunction asked, 6, 769
- Materiality of writings, 6, 795
- Method of obtaining discovery, 6, 731
- Method of obtaining production and inspection, 6, 799
 - Inspection, 6, 801
 - Petition or affidavit, 6, 801
 - Production, 6, 799

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

- Necessity:
 - Allegations of necessity, 6, 805
 - To aid in framing answer, 6, 806
 - To aid in framing complaints, 6, 806
- Necessity of writing, 6, 795
- Notice, 6, 797
- Objections to discovery (see *infra*, Discovery; Materiality; Privileged communications; Self-crimination):
 - Relates to defendant's case, see infra*, *Relates to defendant's case.*
 - That discovery sought relates to defendant's case, see infra*, *Relates to defendant's case.*
- Opposing production or inspection, 6, 808
 - Denial of materiality or necessity, 6, 809
 - Denial of possession or control, 6, 806
 - Documents relating solely to affiant's title, 6, 809
- Orders, 6, 808
 - Appealability of order, 6, 816
 - Appeals, 6, 816
 - Compliance, 6, 811
 - Contents, 6, 809
 - Description of books, papers, or documents, 6, 809
 - Effect, 6, 810
 - Effect of noncompliance, 6, 812
 - Exclusiveness of statutory remedies, 6, 814
 - Failure to obey order for inspection, 6, 813
 - Failure to obey order to produce, 6, 813
 - Modifying order, 6, 816
 - Nonsuit and judgment by default, 6, 814
 - Prescribed penalty, 6, 810
 - Proof of contents by affidavit, 6, 816
 - Punishment for contempt, 6, 915
 - Requisites, 6, 809
 - Review of order, 6, 818
 - Sealing up part, 6, 811
 - Service, 6, 810
 - Specifying time, 6, 810
 - Vacating order, 6, 816
 - What order should direct, 6, 809
- Parties to actions, 6, 761
 - Adding parties, 6, 771
 - Agent or arbitrator charged with fraud, 6, 763
 - Effect of nonjoinder, 6, 764
 - Grounds for demurrer, 6, 779
 - Joinder, 6, 763

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

- Parties to actions, *cont'd.*
 - Matters peculiarly within knowledge of agent, 6, 763
 - Officers, agents, and members of corporations, 6, 762
 - Parties to action at law, 6, 673
 - Persons interested in action at law, 6, 761
 - Persons under disability, 6, 763
 - Persons without interest joined for discovery, 15, 602
- Partnership:
 - Accounting, dissolution, and settlement, 15, 1097
- Patents, 16, 37
- Penalties and forfeitures, 6, 743, 745
 - Waived by plaintiff, 6, 747
- Penalties and penal actions, 16, 292
 - Action for double or treble damages, 16, 293
 - Actions against individuals, 16, 292
 - Actions against property, 16, 294
 - Interrogatories, 16, 292
 - Penal action barred by statute of limitations, 61, 294
 - Production of books and papers, 16, 293
 - Statutory provisions, 16, 294
- Pendency of suit, 6, 766, 794
 - Appearing in application, 6, 801
 - Application, 6, 801
 - Grounds for demurrer, 6, 778
- Physicians and surgeons:
 - Privileged communications, 6, 757
- Plea, 6, 772
 - Grounds of pleas in bar, 6, 774
 - In bar, 6, 773
 - Requisites of the plea, 6, 774
 - To the jurisdiction, 6, 772
 - To the person, 6, 773
- Pleas in equity, 16, 601, 605
 - Necessity of supporting answers, 16, 613
 - Discovery of documents or papers, 16, 614
 - Matter of bill insufficient to require answer, 16, 613
 - Nature of supporting answer for discovery alone, 16, 615
 - Necessity dependent on sufficiency of bill, 16, 613
 - Plea overruled by supporting answer, 16, 615
- Plea to relief and discovery, 16, 605
- Plea to relief good for discovery, 16, 605
- Plea to relief only, 16, 606

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

- Pleas in equity, *cont'd.*
 - Refusal to make discovery, 16, 605
 - Requisites and sufficiency of plea, 16, 605
- Possession or control of writings by adverse party, 6, 794, 802
- Prayer for process, 6, 770
- Prayer for relief, 6, 771
 - Adding prayer for relief, 6, 771
 - Grounds for demurrer, 6, 778
- Privileged communications, 6, 793
 - Agents, 6, 750
 - Communication between attorney and client, 6, 747
 - Attorney's clerk, 6, 751
 - Communications between clients of one attorney, 6, 751
 - Communications between codefendants, 6, 756
 - Communications between legal advisers of adverse parties, 6, 756
 - Communications through agents, 6, 750
 - Communications through interpreter, 6, 751
 - Communications to obtain advice as to commission of crime, 6, 752
 - Communications to obtain advice as to perpetuation of fraud, 6, 753
 - Communications to scriveners, stewards, and agents, 6, 756
 - Information obtained from documents, 6, 748
 - Knowledge acquired from other sources, 6, 751
 - Limitation of privilege, 6, 751
 - Limited by strict necessity, 6, 751
 - Loss of privilege, 6, 754
 - Necessity, 6, 751
 - Pendency of suit unnecessary, 6, 748
 - Person consulted must be attorney, 6, 749
 - Principles on which privilege is allowed, 6, 748
 - Privilege exclusively of client, 6, 750
 - Professional advice, 6, 748
 - Retainer unnecessary, 6, 749
 - Rule stated, 6, 747
 - Several clients, 6, 754
 - Termination of relationship, 6, 754

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

- Privileged communications, *cont'd.*
 - Communication between attorney and client, *cont'd.*
 - Waiver of privilege, 6, 754
 - What attorney need not disclose, 6, 747
 - What the client need not disclose, 6, 755
 - Communications between codefendants, 6, 756
 - Communications between government officials, 6, 758
 - Communications between husband and wife, 6, 757
 - Communications between legal advisers of adverse parties, 6, 756
 - Communications to clergymen, 6, 757
 - Communications to medical men, 6, 757
 - Communications to scriveners, stewards, and agents, 6, 756
 - Grounds for demurrer, 6, 778
 - Interpreters, 6, 751
- Privity, 6, 766
 - Grounds for demurrer, 6, 777
- Public records, 6, 785
- Purposes for which production and inspection may be had, 6, 787
 - Answer, 6, 789
 - Counterclaim, 6, 789
 - Declaration and complaint, 6, 788
 - Reply, 6, 791
 - Statutory provisions, 6, 787
 - To aid in framing pleadings, 6, 788
 - To aid in preparation for trial, 6, 791
- Records, 6, 785
- Relates to defendant's case, 6, 758
 - Disputed boundaries, 6, 760
 - Document made part of answer, 6, 761
 - Exceptions, 6, 759
 - General rule, 6, 758
 - Illustrations, 6, 759
 - Limitations, 6, 759
 - Mingling funds, 6, 761
 - Objections that discovery sought relates to defendant's case, 6, 758
- Replication and reply, 6, 791
- Self-crimination, 6, 742, 793
 - Application of the rule, 6, 744
 - As to criminatory matters, 6, 742
 - As to penalties and forfeitures, 6, 743
 - Degradation, 6, 744

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

- Self-crimination, *cont'd.*
 - Direct and indirect consequence, 6, 742
 - Exceptions to the rule, 6, 745
 - Grounds for demurrer, 6, 778
 - How forfeiture enforceable, 6, 744
 - Matters in the nature of penalty or forfeiture, 6, 744, 745
 - Matters tending to degrade, 6, 744
 - Particular crimes, 6, 744
 - Part of discovery legitimate, 6, 745
 - Penalties and forfeitures, 6, 744, 745
 - Penalty is waived by plaintiff, 6, 747
 - Protection waived by defendant, 6, 747
 - Qualifications of the rule, 6, 745
 - Statute of limitations, 6, 746
 - Statutory protection from prosecution, 6, 746
 - The rule stated, 6, 742
- Set-off, recoupment, and counterclaim, 6, 789
- Settlement of decedents' estates:
 - Bill in equity for discovery or recovery of assets, 19, 863
- Several defendants, 6, 742
- Statutes, 6, 784
 - How far superseded by statute, 6, 736
 - In general, 6, 736
 - Various states, 6, 736, 740
- Stock and stockholders, 20, 705
- Subjects of production, 6, 784
- Time of filing bill, 6, 764
- Title of plaintiff, 6, 765
- Usury, *see* USURY.
- Verification, 6, 771, 807; 22, 1018, 1019
- What is requisite to entitle party to production and inspection, 6, 794
 - Demand, 6, 796
 - Materiality of writings, 6, 795
 - Necessity of writings, 6, 795
 - Notice, 6, 797
 - Pendency of suit, 6, 794
 - Possession or control of writings by adverse party, 6, 794
- What the application must show or contain, 6, 801
- When bill of discovery may be maintained, 6, 732
 - Action for tort, 6, 733
 - Application of the principles of discovery, 6, 734
 - By defendant, 6, 732

DISCOVERY, PRODUCTION, AND INSPECTION, *cont'd.*

When bill of discovery may be maintained, *cont'd.*

Cases in which bill of discovery in aid of a defense to an action has been allowed, 6, 736

Cases in which bill of discovery in aid of the prosecution of an action has been allowed, 6, 734

Contemplated action, 6, 732

Evidence not indispensable, 6, 733

Generally, 6, 732

In aid of proceedings in what courts, 6, 734

In aid of what pleadings, 6, 733

Suits in foreign country, 6, 734

When production and inspection will be denied, 6, 792

Actions of tort, 6, 793

Bad faith, 6, 794

Delay, 6, 794

Fishing purposes, 6, 792

Immaterial matters, 6, 793

Privileged communications, 6, 793

Self-crimination, 6, 793

Title of adverse party, 6, 793

DISCRETION, 6, 819

See AMENDMENTS.

Abuse of discretion, 6, 820

Consolidation of actions, see CONSOLIDATION OF ACTIONS.

Contempt, 4, 774

Control of discretion by rules of law, 6, 820

Definition, 6, 819

Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.

Nature, 6, 820

Order of proof, see ORDER OF PROOF.

View by jury, 22, 1056

DISEASED ANIMALS, see TRESPASSING, VICIOUS, AND DISEASED ANIMALS.**DISMISSAL, DISCONTINUANCE, AND NONSUIT, 6, 823**

See APPEALS.

Additional allowances of costs, 1, 221, 228

Before trial, 1, 228

Code of procedure, 1, 228

In general, 1, 228

Offer to allow judgment, 1, 229

Tender, 1, 229

Terms, 1, 228

To plaintiff's attorney, 1, 228

Admissions:

Motion for want of evidence, 6, 942

Adverse party, see *infra*, Involuntary termination of the suit on motion of an adverse party.

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

Affidavit:

Want of prosecution, 6, 916

Agreed case, 1, 396, 400

Alimony, 1, 412, 413

Amendments:

After amendment, 6, 843

Dismissal for defect of parties, 6, 898

Want of prosecution, 6, 917

Amount in controversy, 6, 889

Another suit pending, 1, 755; 6, 932

Appeal bonds and undertakings, see APPEAL BONDS AND UNDERTAKINGS.

Appeals, 2, 104, 535; 6, 997

Appeals from judgments of nonsuit, 2, 106

Defects of form in process, 6, 999

Dismissal of appeals, see APPEALS.

Dismissals by appellate courts, 6, 1004

Entry required, 6, 997

Exceptions, 6, 1004

Final judgments, 2, 61; 6, 997

Findings, 6, 997

General principles of review, 6, 1004

Interlocutory orders, judgments, and decrees, 6, 1001

Opinion or findings not required, 6, 997

Record, 6, 1004

Right of plaintiff in appellate courts, 6, 867

Time when motion must be made, 6, 881

Voluntary dismissal, 6, 1003

When appeal lies from involuntary discontinuance, 6, 1001

When appeal lies from involuntary dismissal, 6, 998

When appeal lies from involuntary nonsuit, 6, 1000

When appeal or writ of error will not lie, 6, 1001

When writ of error lies, 6, 998

Appearances, 2, 645

Arbitration:

Termination of the suit by consent, or submission to arbitration, 6, 955

Agreement must be entered, 6, 957

Attorney's rights, 6, 956

By consent, 6, 935

Construction of agreement, 6, 957

Effect no bar, 6, 961

Extent of principle, 6, 960

In general, 6, 955

Limitation of principle, 6, 960

**DISMISSAL, DISCONTINUANCE,
AND NONSUIT, *cont'd.*****Arbitration, *cont'd.***

Termination of the suit by consent, or submission to arbitration, *cont'd.*

Revocation of agreement, 6, 957

Submission to arbitration in general, 6, 957

Written consent, 6, 956

Attachment:

Retention for partial relief, 6, 968

Attorneys, 6, 855

By attorney without special authority, 6, 855

By client without attorney's consent, 6, 855

**Bankruptcy, see *infra*, INSOLVENCY
AND BANKRUPTCY.****Bills of exceptions:**

Motion to dismiss, 3, 400

Bonds:

Effect of termination of the suit, 6, 981

Certified cases:

Exceptions ordered heard at general term, 3, 952

Chambers and vacation, 6, 832**Change of venue, 6, 924****Codefendants, see *infra*, Voluntary
termination of suit on motion of
the plaintiff.****Collateral attack:**

Dismissal by one of several defendants, 6, 86

Conditions precedent, 4, 661, 663**Consolidation of actions, 4, 702****Construction:**

Construction of discontinuances liberal, 6, 927

Contempt:

Plaintiff in contempt, 6, 852

Continuance:

Want of prosecution, 6, 917

Costs, 5, 126; 6, 969

Against legal representatives, 6, 974

Apportionment of joint items, 6, 970

Costs cannot be offset, 6, 971

Costs on appeal, 6, 971

Costs on denial of motion, 6, 978

Defendant, 6, 975

Defendant's bankruptcy, 6, 973

Defendant usually entitled, 6, 969

Discontinuance, 6, 974

Discontinuance as to defendant answering, 5, 135

Discontinuance as to one or more, 5, 139

**DISMISSAL, DISCONTINUANCE,
AND NONSUIT, *cont'd.*****Costs, *cont'd.***

Dismissal before appearance, 6, 973

Dismissal by court, 5, 129

Dismissal by plaintiff, 5, 128

Dismissal for want of jurisdiction, 6, 975

Effect of nonpayment of costs, 6, 977

Failure to file security for costs, 6, 819

Infant plaintiff, 6, 974

In general, 6, 969

Nonsuit, 6, 977

Quashing writ, 5, 129

Stay of proceedings, 6, 978

To what defendant, 6, 970

Unauthorized bill, 6, 974

Want of prosecution, 6, 915

What costs are included, 6, 970

Where plaintiff relieved of costs, 6, 971

**Courts (see *infra*, In what court
taken; Leave of court):**

By court of its own motion, 6, 961

Disobedience to order of court, 6, 919

Want of evidence, 6, 952

Criminal procedure:

Construction of discontinuance liberal, 6, 927

Entry of order, 6, 874

Jeopardy, 6, 990

Operating as acquittal, 6, 984

Several defendants, 6, 865

Death:

Death of defendant, 6, 924

Time when motion must be made, 6, 882

Decrees *pro confesso*:

Want of evidence, 6, 954

Default (see *infra*, Want of prosecution):

Motion by defendant while in default, 6, 883

Vacation of judgment, 6, 161

**Defect of parties, see *infra*, Parties
to actions.****Defects in pleading, 6, 927**

Examples, 6, 927, 931

Failure to file pleading, 6, 929

Failure to state cause of action, 6, 927

In general, 6, 927

Multifariousness, 6, 930

Nonsuit, 6, 931

**Defendant (see *infra*, Involuntary
termination of the suit on
motion of an adverse party):**

Motion of defendant, 6, 926

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

- Defendant, *cont'd.*
 - Omission due to act of defendant, 6, 926
- Definitions, 6, 828
 - Discontinuance, 6, 829
 - Dismissal, 6, 829
 - Dismissal in chancery practice, 6, 829
 - Dismissal under code procedure, 6, 829
 - Involuntary nonsuit, 6, 828
 - Nonsuit, 6, 828
 - Points of similarity, 6, 829
 - Voluntary nonsuit, 6, 828
- Demurrer:
 - After demurrer argued and allowed, 6, 845
- De novo*, 6, 833
- Detinue, 6, 662
- Directing verdict, 6, 673
 - Compared to nonsuit, 6, 694
- Discontinuance (see *infra*, Want of prosecution):
 - Definitions, 6, 829
 - In what case applicable, 6, 830
 - Voluntary termination of the suit on motion of the plaintiff, 6, 834
 - Waiver by agreement, 6, 965
- Discretion (see *infra*, Leave of court):
 - Disobedience to order of court, 6, 920
 - Want of prosecution, 6, 914
- Dismissal:
 - Definition, 6, 829
 - In what case applicable, 6, 831
- Disobedience to order of court, 6, 919
- Divorce, 7, 116, 122
 - After cross-bill has been filed, 7, 117
 - Alimony, 7, 117
 - Counsel fees, 7, 117
 - Husband escaping liability, 7, 118
 - In general, 7, 116
 - Leave of court, 7, 117
 - Rights of attorneys, 7, 118
 - Terms, 7, 117
 - Where marriage is not denied, 7, 117
- Effect of termination of the suit, 6, 978
 - Application of the rule, 6, 981
 - Attachment bonds, 6, 982
 - Bonds to prosecute to effect, 6, 982
 - Contest between codefendants, 6, 986
 - Criminal cases, 6, 984

DISMISSAL, DISCONTINUANCE AND NONSUIT, *cont'd.*

- Effect of termination of the suit, *con.*
 - Decree dismissing part of the defendants, 6, 986
 - Dismissal of amended bill, 6, 986
 - Disposing of funds, 6, 980
 - Effect as a bar, see *infra*, *Res adjudicata*.
 - Effect of dismissal of levy, 6, 983
 - Effect on defendant's pleadings, 6, 984
 - Effect on pleadings seeking relief, 6, 984
 - Effect on right to sue on bond, 6, 981
 - Extent of proceedings, 6, 978
 - Foreign attachment, 6, 984
 - General rule, 6, 978
 - Injunction bond, 6, 981
 - Nonsuits equal to verdict by statute, 6, 986
 - Nullification of orders, 6, 982
 - Proceedings in intervention, 6, 986
 - Release of funds, 6, 983
 - Replevin, 6, 983
 - Res adjudicata*, see *infra*, *Res adjudicata*.
 - Subsequent order of dismissal, 6, 980
- Elections, 7, 393
- Eminent domain (see EMINENT DOMAIN), 7, 565, 659, 684
- Entry of order, 6, 872
 - As a general requirement, 6, 872
 - Criminal cases, 6, 874
 - Entry *pro forma*, 6, 875
 - Estoppel to dispute dismissal, 6, 874
 - How construed, 6, 875
 - Nunc pro tunc*, 6, 875
 - Relates to first step in proceedings, 6, 874
 - Sufficiency of entry, 6, 874
 - Where made, 6, 873
- Equity*, see *infra*, Want of equity.
- Error, writ of (see ERROR, WRIT OF), 6, 867, 998
- Escape, 7, 939
- Estoppel, 6, 874, 989
 - Want of prosecution, 6, 916
- Evidence*, see *infra*, Want of evidence.
- Exceptions and objections, 8, 292
- Executors and administrators, 15, 637
- Failure to prosecute*, see *infra*, Want of prosecution.
- Fictitious suit, 6, 886
- Final judgments*, see *infra*, Appeals.
- Final judgments and decrees, 2, 54
- Foreign attachment, 6, 984

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

- Gap in proceedings, 6, 921
- Grounds of dismissal (see *infra*, Want of prosecution):
 - Defect of parties*, see *infra*, Parties to actions.
 - Disobedience to order of court, 6, 919
 - Grounds of discontinuance, 6, 921
 - Another suit pending, 6, 932
 - Appearance, 6, 924
 - Bankruptcy of plaintiff, 6, 932
 - Change of venue, 6, 924
 - Construction of discontinuance liberal, 6, 927
 - Death of defendant, 6, 924
 - Defects in pleading, 6, 927
 - Failure in chain of summons, 6, 922
 - Failure to take judgment *nil dicit*, 6, 924
 - Gap in proceedings, 6, 921
 - In general, 6, 921
 - Motion of defendant, 6, 926
 - Omission due to act of official or defendant, 6, 926
 - Refusal to join issue, 6, 922
 - Res adjudicata*, 6, 932
 - Unauthorized suit, 6, 931
 - Want of evidence*, see *infra*, Want of evidence.
 - Withdrawal of case, 6, 923
 - Laches, 6, 920
 - Premature grounds of action, 6, 921
 - Remedy at law, 6, 895
 - Want of equity*, see *infra*, Want of equity.
- Guardians *ad litem*:
 - Failure to appoint, 10, 656
- Habeas corpus, 9, 1050
- Husband and wife:
 - Misjoinder of husband, 10, 230
 - Nonjoinder of husband, 10, 227, 228
 - Nonjoinder of wife, 10, 227
- Implied dismissals, 6, 961
- Imposition of terms, 6, 969
 - Award of costs*, see *infra*, Costs.
 - Costs on denial of motion, 6, 978
 - Effect of nonpayment of costs, 6, 977
 - General rule, 6, 969
 - On discontinuance, 6, 974
 - On dismissal, 6, 969
 - On nonsuit, 6, 977
- Infants, 6, 856
 - Costs, 6, 974
 - Failure to prosecute, 6, 907

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

- Injunction:
 - Effect of termination of the suit on injunction bond, 6, 981
 - Retention for partial relief, 6, 967
- Insolvency and bankruptcy, 22, 354, 360
 - Bankruptcy of plaintiff, 6, 932
 - Costs, 6, 973
 - Discontinuance by plaintiff without costs where defendant obtains discharge in insolvency. 11, 39
 - Right of insolvent, 6, 912
 - Want of prosecution, 6, 917
- Interlocutory judgments*, see *infra*, Appeals.
- Interstate commerce, 11, 488
- Intervention, 6, 856
 - Effect of termination of the suit, 6, 986
- Involuntary termination of the suit on motion of an adverse party, 6, 875
 - Amicus curia*, 6, 875
 - Based on record, 6, 876
 - By whom made, 6, 875
 - Criminal cases, 6, 876
 - Evidence in support of motion, 6, 878
 - General demurrer in chancery, 6, 880
 - General specification, 6, 879
 - Grounds of discontinuance*, see *infra*, Grounds of dismissal.
 - Grounds of dismissal*, see *infra*, Grounds of dismissal.
 - Grounds stated are exclusive, 6, 879
 - In chancery, 6, 877
 - Motion must be specific, 6, 878
 - Motion not specified in an action for nonsuit, 6, 878
 - Motion to discontinue, 6, 877
 - Nature and scope of motion, 6, 877
 - Notice of discontinuance, 6, 885
 - Notice of motion, 6, 884
 - One order, 6, 880
 - Oral motion, 6, 880
 - Renewal of motion, 6, 880
 - Time when motion must be made*, see *infra*, Time of motion.
 - Where facts may be shown *dehors* record, 6, 876
 - Where motion to dismiss appropriate at law, 6, 876
- In what case applicable, 6, 830
- In what court taken, 6, 832
 - At chambers, 6, 832
 - Before referee, 6, 833

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

- In what court taken, *cont'd.*
 - General term, 6, 832
 - In general, 6, 832
 - On trial *de novo*, 6, 833
 - Special term, 6, 832
- Issues to the jury, 11, 692
- Jeopardy, 6, 990
- Joinder of parties, 6, 901
 - Dismissal for misjoinder in chancery, 6, 901
 - Dismissal for misjoinder under code procedure, 6, 901
 - Misjoinder in equity, 15, 699
 - Nonjoinder in equity, 15, 699
 - Nonsuit for misjoinder, 6, 902
- Joint defendants*, see *infra*, Voluntary termination of the suit on motion of the plaintiff.
- Judgments:
 - Failure of proof, 11, 870
- Jurisdiction*, see *infra*, Want of jurisdiction.
- Jury:
 - Arguments and decisions:
 - Motion for nonsuit for want of evidence in presence of jury, 6, 952
 - Justices of the peace, 12, 746
 - Appeal, 12, 759, 802
 - Laches, 6, 920
 - Landlord and tenant:
 - Summary proceedings, 12, 895
 - Leave of court, 6, 868
 - Before verdict, 6, 868
 - Code procedure, 6, 868
 - Common-law practice, 6, 868
 - Discontinuance, 6, 872
 - Discretion, 6, 870
 - Dismissals, 6, 871
 - Ex parte* order, 6, 869
 - In general, 6, 868
 - Order and service thereof, 6, 868
 - Time when order takes effect, 6, 872
 - Libel and slander, 13, 111
 - Limitations, 13, 265
 - At what stage proper, 13, 266
 - Summons served after bar, 13, 265
 - When motion sustained, 13, 265
 - Malicious prosecution, 6, 984; 13, 463
 - Want of probable cause, 13, 467
 - Mandamus*, see MANDAMUS.
 - Mandate, 13, 849
 - Dismissal of appeal, 13, 852
 - Mechanics' liens:
 - Effect of nonsuit or dismissal, 13, 1033
 - Mistake:
 - Want of prosecution, 6, 916

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

- Motion*, see *infra*, Involuntary termination of the suit on motion of an adverse party; Time of motion; Want of equity.
- Motion of defendant, 6, 926
- Multifariousness, 6, 930; 14, 216
- Negotiable instruments:
 - Actions against drawer and acceptor, 14, 458
 - Actions against indorsers, 14, 459
 - Actions against maker, drawer, or acceptor and indorser or assignor, 14, 457
 - Actions against maker and surety, 14, 449
- New trial:
 - After new trial granted, 6, 842
 - Error in granting a nonsuit, 14, 831
 - Failure to apply for nonsuit in case of surprise, 14, 750
 - Motion for nonsuit as a condition precedent, 14, 785
 - Want of evidence, 6, 950
 - Want of prosecution, 6, 913
 - Where nonsuit could have been granted, 14, 785
- Next friend:
 - Failure to appoint or irregular appointment, 14, 1022, 1024
- Nil dicet*:
 - Failure to take judgment *nil dicet*, 6, 924
 - At common law, 6, 924
 - General issue, 6, 925
 - Modern practice, 6, 926
 - Special plea, 6, 925
- Nonsuit (see *infra*, Want of evidence):
 - Definitions, 6, 828
 - In what case applicable, 6, 830
 - Voluntary termination of the suit on motion of the plaintiff, 6, 834
- Notice of discontinuance, 6, 885
- Notice of motion, 6, 884
 - Entitling notice, 6, 884
 - Informal notice, 6, 885
 - Noncompliance with conditional order, 6, 884
 - When indispensable, 6, 884
- Nunc pro tunc*, 6, 875
- Objections*, see *infra*, Want of equity; Want of jurisdiction.
- Objections and exceptions, 6, 1004
- Official bonds, 15, 156
 - Effect of termination of the suit, 6, 981
 - Notice of motion, 15, 177

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

Order of proof:

Reopening the case after motion to dismiss, 15, 400

Orders, see *infra*, Disobedience to order of court; Leave of court.

Partial relief, see *infra*, Retention for partial relief.

Parties to actions, 6, 897

Failure to substitute parties, 6, 907

Misjoinder in equity, 15, 699

Nominal plaintiff, 15, 492

Nonjoinder in equity, 15, 690

Want of parties, 6, 897

Amendment, 6, 898

As to portion of defendants, 6, 900

Code procedure, 6, 901

Disclaimer of interest, 6, 903

Dismissal inappropriate, 6, 899

Dismissal of improper party, 6, 902

Earlier chancery practice, 6, 897

In general, 6, 897

Misjoinder of parties, 6, 901

Modern practice, 6, 897

Neglect of plaintiff, 6, 900

Nonsuit, 6, 901

Nonsuit by one codefendant, 6, 903

Portion of defendants, 6, 902

Refusal to reverse, 6, 899

Without prejudice, 6, 995

Partnership, 15, 949

Discontinuance as to one partner, 15, 950

Effect of dismissal as to partners not served, 15, 949

Examples, 15, 949, 950

In actions against partners, 15, 949

In actions by partners, 15, 950

Partners not served, 15, 949

Right of member to dismiss suit of firm, 15, 950

Part of claim, 6, 865

Payment, 16, 213

Evidence of former discontinuance under plea of payment, 16, 213

Penalties and penal actions, 16, 237

Plaintiff, see *infra*, Voluntary termination of suit on motion of the plaintiff.

Pleadings (see *infra*, Defects in pleading):

Effect of termination of the suit on defendant's pleadings, 6, 984

Index Pl. & Pr. — 19

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

Premature suits:

Manner of raising objection, 16, 878

Privilege, 16, 978

Probate and contest of wills:

Withdrawal of voluntary nonsuit or dismissal, 16, 1028

Pro confesso, 6, 954

Prosecuting attorneys, 17, 10

Prosecution, see *infra*, Want of prosecution.

Public officers, 17, 156

Omission due to act of official, 6, 926

Quo warranto, 17, 478

Railroads, 17, 611

Records, 6, 1004

Redemption:

Effect of dismissal, 17, 975

Reference:

After submission to or awarded by referee, 6, 845

Before referee, 6, 833

Powers of referees, 17, 1018

Reinstatement, 6, 924

Remedy at law:

Dismissal of court *sua sponte*, 18, 112

Effect of dismissal of bill, 18, 122

Grounds for dismissal, 6, 895

Application of the rule, 6, 896

Extent of rule, 6, 896

In general, 6, 895

Implied dismissals, 6, 961

Without prejudice, 6, 995

Removal of causes, 18, 169

Want of jurisdiction, 6, 886

Replevin, 18, 604

Effect of termination of the suit, 6, 983

Inquiry into defendant's right of property, 18, 605

Nonsuit, 18, 605

Return of property, 18, 605

Voluntary dismissal, 18, 604

When return of property improper, 18, 606

Representatives, 15, 637

Res adjudicata, 6, 932

Effect of termination of the suit, 6, 986

After affirmance or reversal, 6, 990

Amendment of decree, 6, 996

Burden on defendant, 6, 993

Criminal cases, 6, 990

Defeat of party, 6, 995

Dismissal for want of equity, 6, 994

**DISMISSAL, DISCONTINUANCE,
AND NONSUIT, *cont'd.****Res adjudicata, cont'd.*Effect of termination of the suit,
*cont'd.*Dismissal on technical
grounds, 6, 990Dismissal upon its merits, 6,
991

Estoppel, 6, 989

Extent of rule, 6, 988

Facts not in issue, 6, 995

General rule 6, 986

Judgment must be entered,
6, 993Presumption as to merits,
5, 993

Reversible error, 6, 996

Review of dismissal without
prejudice, 6, 996

Subsequent suit, 6, 992

Termination by consent, 6,
991

Upon whose motion, 6, 989

Want of jurisdiction, 6, 995

Whether equivalent to de-
murrer, 6, 989

Whom dismissal binds, 6, 993

Without prejudice, 6, 994

Restitution, 18, 872

Retention for partial relief, 6, 965

Attachment cases, 6, 968

Attachment essential to juris-
diction, 6, 968Attachment merely ancillary, 6,
968

Complaint in equity, 6, 966

Conditions requisite, 6, 966

Decree final, 6, 966

In general, 6, 965

Injunction cases, 6, 967

Injunction merely auxiliary, 6, 967

Injunction the sole relief sought,
6, 967

Partial nonsuit, 6, 969

Where no relief is authorized, 6,
966

Reward, 18, 1158

Right of property, trial of, 18, 1180

Scire facias, 19, 287, 305

Sentence, 19, 502

Service of process (see *infra*, Notice
of motion):

Failure to prosecute, 6, 910

Nonservice on a codefendant, 6,
890

Order of dismissal, 6, 868

Set-off, recoupment, and counter-
claim, 6, 848

After set-off filed, 6, 866

Dismissal of plea by defendant
when regarded as plaintiff, 6,
866**DISMISSAL, DISCONTINUANCE,
AND NONSUIT, *cont'd.****Several defendants, see infra*, Volun-
tary termination of suit on motion
of the plaintiff.

Sham and frivolous pleadings, 6, 886

Special proceedings, 6, 866

Special verdict:

After special verdict, 6, 838

Specific performance, 20, 520

Dismissal without costs, 20, 526

Stipulations, 20, 615

Street railways, 20, 871

Submission:

Submission of suit to arbitra-
tion, 6, 955

Supersedeas and stay of proceedings:

Costs, 6, 978

Want of prosecution, 6, 918

Supplemental pleadings, 21, 80

Supplementary proceedings, 21, 198

Suretyship:

Dismissal of action as to princi-
pal, 16, 937

Surrogates:

Right of plaintiff, 6, 867

Telegraphs and telephones, 21, 523

Tender, 21, 589

Terms (see *infra*, Imposition of
terms), 6, 832Time when motion must be
made, 6, 881

Want of equity, 6, 894

Want of prosecution, 6, 913

Time of motion, 6, 880

After appeal, 6, 881

After death of codefendant, 6,
884

After death of plaintiff, 6, 882

After hearing, 6, 881

At hearing, 6, 880

At law, 6, 881

By defendant while in contempt,
6, 882By defendant while in default,
6, 883

In equity, 6, 880

In term, 6, 881

Under code procedure, 6, 882

Want of evidence, 6, 947

Want of evidence in chancery,
6, 954

Want of jurisdiction, 6, 888

Where there is failure to prose-
cute, 6, 911Time when plaintiff must act (see
infra, Voluntary termination
of suit on motion of the
plaintiff.

In term, 6, 843

Trial *de novo*, 6, 833

Trespass:

Joinder, 21, 809

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

Trespass to try title, 21, 929
Trusts and trustees, 15, 637
United States courts, 22, 304

Dismissal under act of 1875, 22,

279

Lack of jurisdictional averments,
22, 274

Nonsuit for want of evidence,
6, 933

Time when the plaintiff must
act, 6, 842

Variance:

Motions for nonsuit, 22, 636

Verdict:

Before verdict, 6, 868

Want of prosecution, 6, 913

Voluntary termination of suit on
motion of the plaintiff, 6, 833

Action to establish a will, 6,
867

After defendant's plea seeking
affirmative relief, 6, 847

At common law, 6, 847

Character of counterclaim
required, 6, 851

Modern rule, 6, 848

Set-off, 6, 848

After set-off filed, 6, 866

Appellate courts, 6, 867

As to a portion of codefendants,
6, 856

Collateral attack, 6, 860

Criminal cases, 6, 865

Effect, 6, 863

General rule in actions *ex
contractu*, 6, 857

In actions of tort, 6, 863

In general, 6, 856

Objection waived if not
taken seasonably, 6, 860

Parties not served, 6, 862

Statutory authorization, 6,
860

Whether plaintiff's discre-
tion is absolute, 6, 861

As to part of claim, 6, 865

At common law, 6, 865

Bills in chancery, 6, 833

Discontinuance, 6, 834

Dismissal of paragraph, 6, 865

Dismissal of plea by defendant
when regarded as plaintiff, 6,
866

Inferior courts, 6, 866

In general, 6, 833

In suits brought on behalf of
others, 6, 853

Bill to establish second
equity, 6, 854

By a portion of coplaintiffs,
6, 854

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

Voluntary termination of suit on
motion of the plaintiff, *cont'd.*

In suits brought on behalf of
others, *cont'd.*

By attorney without special
authority, 6, 855

By client without attorney's
consent, 6, 855

By infant, 6, 856

By intervener, 6, 856

Nonsuit, 6, 834

Probate courts, 6, 867

Special proceedings, 6, 866

Time when the plaintiff must
act, 6, 835

After amendment, 6, 843

After final adjudication, 6,
835

After final adjudication at
law, 6, 836

After final adjudication in
chancery, 6, 835

After final adjudication in
general, 6, 835

Announcement of judg-
ment, 6, 837

At any time before final de-
cree, 6, 836

Before rendition of verdict
or judgment, 6, 836

Before submission to triers
of fact, 6, 839

Before trial, 6, 842

New England courts, 6, 841

On trial by the court, 6,
841

Special verdict, 6, 838

United States courts, 6, 842

Upon new trial, 6, 842

What constitutes submis-
sion, 6, 840

To what tribunal the right ex-
tends, 6, 866

Under modern practice, 6, 865

When a voluntary termination
cannot be had, 6, 843

After adduction of evidence,
6, 844

After defendant's plea seek-
ing affirmative relief, 6,
847

After direction of issue, 6,
846

After interlocutory deci-
sions, 6, 846

After merger by order to in-
terplead, 6, 852

After order for accounting,
6, 847

After plea of tender or pay-
ment into court, 6, 852

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

Voluntary termination of suit on motion of the plaintiff, *cont'd.*

When a voluntary termination cannot be had, *cont'd.*

After rights acquired by third persons, 6, 846

After withdrawal of a juror, 6, 846

Award made, 6, 845

Defendant's consent, 6, 844

Demurrer, 6, 845

Motion to dismiss by defendant, 6, 845

Nominal plaintiff or trustee, 6, 853

Pending submission of the action to referees, 6, 845

Plaintiff in contempt, 6, 852

When prejudicial to defendant, 6, 843

Without prejudice, 6, 835

Writ of error, 6, 867

Waiver, 6, 962

Adequate remedy at law, 6, 963

By delay, 6, 963

Estoppel, 6, 964

Notice of trial, 6, 964

Of right to dismiss, 6, 962

Of right to nonsuit, 6, 964

Waiver of right to submission by motion of nonsuit for want of evidence, 6, 951

Waiver of waiver, 6, 964

Want of equity, 6, 890

At what time and what stage of cause, 6, 894

By one codefendant, 6, 894

Code procedure, 6, 895

Equity defectively stated, 6, 893

How objection raised, 6, 891

In general, 6, 890

Objection on the hearing, 6, 892

Without prejudice, 6, 994

Want of evidence:

Affirmative disproof, 6, 954

By court of its own motion, 6, 961

Completion of proof of subsequent evidence, 6, 950

Dismissals in chancery, 6, 953

Dismissal under code procedure, 6, 953

Nonsuits, 6, 933

Argued and decided in presence of jury, 6, 952

Completion of proof by subsequent evidence, 6, 950

Effect of motion for nonsuit as an admission, 6, 942

Motion after evidence by defendant, 6, 949

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.*

Want of evidence, *cont'd.*

Nonsuits, *cont'd.*

Motion at the close of plaintiff's case, 6, 949

Motion before submission of cause, 6, 948

Motion during progress of cause, 6, 948

Motion for nonsuit not favored, 6, 941

Motion waives right of submission, 6, 951

Nonsuits at common law, 6, 933

Nonsuits in general, 6, 933

On new trial after reversal, 6, 950

Prevailing rule, 6, 935

Proper time to make motion, 6, 947

Renewal of motion, 6, 950

Reservation of motion, 6, 950

To what tribunals and in what cases applicable, 6, 952

United States courts, 6, 933

When a proper case for nonsuit is presented, 6, 936

When motion properly denied, 6, 943

Pleas taken *pro confesso*, 6, 954

Time for motion, 6, 955

Want of jurisdiction:

Of person, 6, 889

Of subject-matter, 6, 885

Amount in controversy, 6, 889

Extent of rule, 6, 886

Frivolous or fictitious suit, 6, 886

How objection taken at law, 6, 887

How objection taken under code procedure, 6, 887

In general, 6, 885

Of person, 6, 889

Removal to federal court, 6, 886

Time for motion to dismiss, 6, 888

Who may move to dismiss, 6, 888

Without prejudice, 6, 995

Want of prosecution, 6, 904

Affidavit, 6, 916

After commencement of term, 6, 913

After issue joined, 6, 910

After new trial, 6, 913

After verdict, 6, 913

Amendment, 6, 917

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.***Want of prosecution, *cont'd.***

Appearance of plaintiff, 6, 909
 At plaintiff's instance, 6, 914
 Bankruptcy, 6, 917
 Code procedure, 6, 910
 Continuance, 6, 917
 Delay induced by defendant, 6, 916

Dismissal of bill in chancery, 6, 905

Estoppel, 6, 916

Excusable mistake, 6, 916

Failure to serve defendant, 6, 910

Failure to substitute parties, 6, 907

Granting the motion discretionary, 6, 914

Insolvency, 6, 917

Insolvency of defendant, 6, 912

Nature of nonsuit, 6, 909

Nonsuits in actions of law, 6, 907

Notice of the motion, 6, 914

Official negligence, 6, 917

Payment of costs imposed, 6, 915

Scope of the rule, 6, 904

Some of the defendants in default, 6, 912

Special judge, 6, 919

Statement of the rule, 6, 904

Stay of proceedings, 6, 918

Sufficient reply to the motion, 6, 915

Time for nonsuits and dismissals under the code, 6, 913

Time when motion is appropriate, 6, 911

To what proceedings applicable, 6, 904

Undertaking to speed cause, 6, 918

Where the plaintiffs are infants, 6, 907

Without prejudice, 6, 919

Withdrawing juror, 21, 1002

Costs, 21, 1005

Definition, 21, 1002

Effect of withdrawal, 21, 1005

Imposition of terms on granting leave, 21, 1005

Propriety in both civil and criminal cases, 21, 1004

Purpose, 21, 1002

Without prejudice, 6, 994

Amendment of decree, 6, 996

Defeat of parties, 6, 995

Dismissal for want of equity, 6, 994

Facts not in issue, 6, 995

Premature suits, 6, 995

Remedy at law, 6, 995

Res adjudicata, 6, 994

DISMISSAL, DISCONTINUANCE, AND NONSUIT, *cont'd.***Without prejudice, *cont'd.***

Reversible error, 6, 996

Review of dismissal without prejudice, 6, 996

Utility of such dismissal, 6, 994

Voluntary termination of the suit on motion of plaintiff, 6, 835

Want of prosecution, 6, 819

DISORDERLY CONDUCT, 7, 1

See DISORDERLY HOUSES; LEWDNESS.

Abusive and offensive language, 7, 3, 4

Appeals, 7, 5

Commitment, 7, 3

Declaration and complaint, 7, 2

Abusive and offensive language, 7, 3

Complainant, 7, 2

Essentials, 7, 2

Failure to support family, 7, 5

Husband and wife:

Failure to support family, 7, 5

Indictment, 7, 3

Information, 7, 3

Intent, 7, 4

Jurisdiction, 7, 1

Nuisance, 7, 4

Obscenity, see OBSCENITY.

Parent and child:

Failure to support family, 7, 5

Parties, 7, 2

Place, 7, 4

Warrant, 7, 3

DISORDERLY HOUSES, 7, 7

Allegation and proof, 7, 17

Declaration and complaint, 7, 9

Definition, 7, 7

Duplicity, 7, 9, 16

Gaming, see GAMING.

Indictment, 7, 9

Actual concurrence of disorderly acts, 7, 12

Character of frequenters, 7, 15

Charging lessor, 7, 13

Charging offense as a common nuisance, 7, 11

Common-law forms, 7, 9

Duplicity, 7, 16

Gambling house, 7, 10

House of ill fame, 7, 10

In general, 7, 9

Intent or knowledge, 7, 13

Keeping, 7, 12

Leasing, 7, 12

Location of house, 7, 14

Use of certain phrases, 7, 16

Modern forms, 7, 10

Names of frequenters, 7, 15

Particular acts, 7, 15

Statutes, 7, 11, 17

Time, 7, 14

DISORDERLY HOUSES, *cont'd.*

- Instructions, 7, 18
- Intent, 7, 9, 13
- Joinder of offenses, 7, 8
- Joinder of parties, 7, 8
- Judgment, 7, 19
- Keeping, 7, 12
- Landlord and tenant, 7, 12
- Leasing, 7, 12
- Nuisance, 7, 11
- Proof, 7, 17
- Remedies, 7, 8
- Time, 7, 14
- Verdict, 7, 18

DISSOLUTION OF CORPORATIONS, see WINDING UP CORPORATIONS.**DISTRESS, 7, 20****See DISTRINGAS, WRIT OF.**

- Affidavit, 7, 22
 - Counter affidavit, 7, 23
 - Demand, 7, 23
 - Disclaiming bad motive, 7, 23
 - In general, 7, 22
 - Jurisdictional facts, 7, 22
- Amendments, 7, 25
- Appeals, 7, 26
- Avowry, 18, 554
- Demand, 7, 23
- Docketing, 7, 26
- Eminent domain:
 - Enforcement of awards and judgments, 7, 625
- Excessive distress, 7, 29
- Exemption, 7, 31
- Irregular distress, see infra, Remedies for wrongful or irregular distress.*
- Judgment, 7, 26
- Landlord and tenant (see LANDLORD AND TENANT), 12, 862
 - Ordinary attachment and distress distinguished, 12, 907
- Liens, 13, 137
- Nature of distress, 7, 20
- Procedure, 7, 25
- Remedies for wrongful or irregular distress, 7, 27
 - Assumpsit not maintainable, 7, 31
 - Distraining for more rent than is due, 7, 30
 - Distraining where no rent is due, 7, 28
 - Excessive distress, 7, 29
 - Exempt property, 7, 31
 - Failure to have property appraised, 7, 30
 - In general, 7, 27
 - Making a second distress needlessly, 7, 31
 - Refusing a tender of rent, 7, 31
 - Replevin the only remedy, 7, 31

DISTRESS, *cont'd.*

- Replevin, 7, 31
- Tender, 7, 31
- Venue, 22, 791
- Waiver of other remedies, 7, 21
- Warrants, 7, 23
 - Action for rent, 7, 24
 - Citation to the defendant, 7, 24
 - Description of premises, 7, 24
 - Name of state, 7, 24
 - Warrant of distress in general, 7, 23
- Wrongful distress, see infra, Remedies for wrongful or irregular distress.*

DISTRIBUTEES, see EXECUTORS AND ADMINISTRATORS; LEGATEES AND DISTRIBUTEES; SETTLEMENT OF DECEDENTS' ESTATES.**DISTRIBUTION, see EXECUTORS AND ADMINISTRATORS; LEGACIES AND DEVISES; SETTLEMENT OF DECEDENTS' ESTATES.****DISTRICT ATTORNEYS, see PROSECUTING ATTORNEYS.****DISTRINGAS, WRIT OF, 7, 33**

- Answer, 7, 33
- Appearance, 7, 33
- Corporation, 7, 34
- Costs, 7, 36
- Criminal procedure, 7, 35
- Decrees, 7, 35
- Definition, 7, 33
- Judgments, 7, 36
- Order, 7, 35
- Prayer for bill, 7, 34
- Sheriffs, 7, 36
- To enforce judgments for personal property, 7, 36

DISTURBING MEETINGS, 7, 38

- Allegations, 7, 40
- Common law, 7, 38
- Duplicity, 7, 39
- Indictment, 7, 38
 - Allegations of disturbance, 7, 41
 - Allegations of intent, 7, 43
 - Allegations of nature and kind of meeting, 7, 40
 - Allegations of place, 7, 40
 - Duplicity, 7, 39
 - In general, 7, 38
 - Manner and means of disturbance, 7, 42
 - Place of disturbing acts, 7, 40
 - Place of meeting, 7, 41

- Intent, 7, 43
- Jurisdiction, 7, 38
- Place, 7, 40
- Schools, 7, 38; 19, 250
- Statutes, 7, 38

DIVERSION OF WATER, see WATERS AND WATERCOURSES.

DIVIDENDS, see STOCK AND STOCK-HOLDERS.**DIVISION OF OPINION**, 7, 44

Conclusiveness of affirmance, 7, 46

Effect of judgment appealed from, 7, 44

Conclusiveness of affirmance, 7, 46

Effect on motions, 7, 47

General rule, 7, 44

Judgment not a precedent, 7, 47

Practice based on expediency, 7, 46

Equity, 7, 48

Jurisdiction, 7, 48

Motions, 7, 47

Stare decisis, 7, 47

Testimony admissible, 7, 48

DIVORCE, 7, 49

See ALIMONY; MARRIAGE (ANNULMENT).

Abatement, see *infra*, Death.

Adultery, 7, 71

Certainty, 7, 72, 76

Describing particulars, 7, 73

From of allegation, 0, 000

Name of the *particeps criminis*, 7, 73

Particulars, 7, 74

Place, 7, 75

Recrimination, 7, 91

Remedy for indefiniteness, 7, 76

Time, 7, 75

Waiver of objection, 7, 76

Alimony, see ALIMONY.

Amendments, 7, 85, 101

Affidavit of service by publication, 7, 113

After trial, 7, 102

Answer, 7, 88

Discretionary, 7, 101

Extent of amendments, 7, 101

Generally allowable, 7, 101

Premature suit, 7, 102

Verification, 7, 86

Ancillary relief:

Ancillary relief for wife, 7, 59

Joinder of causes, 7, 83

Answer, 7, 86

Admission by failure to deny, 7, 87

Amendment, 7, 88

Collusion, 7, 92

Condonation, 7, 91

Connivance, 7, 93

Contents, 7, 87

Court bound to act for the public, 7, 89

Cruelty, 7, 95

Defenses in general, 7, 88

Delay, 7, 93

Drunkenness, 7, 94

Form, 7, 86

DIVORCE, *cont'd.*Answer, *cont'd.*

Former decree, 7, 96

General denial, 7, 87

Insanity, 7, 94

Misconduct to justify desertion, 7, 95

Plea in abatement, 7, 96

Recrimination, 7, 90

Special defenses, 7, 90

Validity of marriage, 6, 94

Verification, 7, 87

Whether courts are concluded by pleadings, 7, 88

Appeals, 2, 33; 7, 132

Appellant remarrying, 7, 138

Code states, 7, 132

Decision, 7, 137

Effect of death on appeal, 7, 124

Equity cases, 7, 132

Final orders, 7, 134

Indiana, 7, 134

In general, 7, 132

Kentucky, 7, 133

Missouri, 7, 134

Modification, 7, 137

Ohio, 7, 133

Order adjudging the husband guilty of contempt, 7, 136

Order for temporary alimony, 7, 134

Orders as to children and property, 7, 136

Reversal, 7, 137

Review of evidence, 7, 136

Review of evidence where the decree is based on findings of a trial judge or referee, 7, 137

Review of evidence where the lower court saw and heard the parties and their witnesses, 7, 136

Review where evidence is conflicting, 7, 137

Special statutes, 7, 133

Verdict, 7, 137

Appearances, 7, 106

Prosecuting attorney, 7, 66

Attorney and client:

Discontinuances, 7, 117, 118

Bill in equity, see *infra*, Petition and complaint.

Bills of particulars, 3, 548

Certainty in pleadings, 7, 76

Cruelty, 7, 76

Change of venue, 7, 116

Divorce proceedings, 4, 385

Children, see *infra*, Custody and maintenance of children.

Code procedure, 7, 54

Collusion (see *infra*, Condonation), 7, 120

Conduct of court, 7, 120

DIVORCE, *cont'd.*Collusion, *cont'd.*

- Defenses, 7, 92
- Duty of the court, 7, 120, 121
- Facts disclosed which arouse suspicion, 7, 121
- Prevention of collusion, 7, 120

Complaint, *see infra*, Petition and complaint.

Condonation, 7, 91

- Defenses, 7, 91
- Denial of, 7, 69
- General denial, 7, 92
- Misconduct after condonation, 7, 92
- Necessity of pleading, 7, 91

Continuances, 7, 115

- Examples, 7, 115, 116
- In general, 7, 115
- Service void or defective, 7, 115

Conviction of crime, 7, 81

Costs:

- Effect of death on orders for temporary alimony and costs, 7, 123

Counsel fee:

- Discontinuances, 7, 117

Court, 7, 120

- Contrary to verdict, 7, 120
- Facts disclosed which arouse suspicion, 7, 121
- Powers of court, 7, 122
- Prevention of collusion, 7, 120
- Scope of court's inquiry, 7, 120
- Vacating decree, 7, 122

Coverture, 7, 60

Creditor, 7, 59

Criminal conversation, *see* CRIMINAL CONVERSATION.

Criminal law:

- Conviction of crime, 7, 81

Cross-bill or cross-petition, 7, 96

- At what stage, 7, 99
- Both petitions true, 7, 100
- Causes for divorce, 7, 99
- Cross-petitions under the codes, 7, 97
- Denial, 7, 99
- Ecclesiastical practice, 7, 96
- Jurisdictional facts, 7, 98
- Nature and form of cross-bill, 7, 98
- Practice in equity, 7, 97
- Relief obtainable, 7, 99
- Reply, 7, 100

Cruelty, 7, 77

- Acts of cruelty, 7, 79
- Alleging facts with certainty, 7, 78
- Defenses, 7, 95
- Ecclesiastical practice, 7, 77
- General allegation, 7, 77

DIVORCE, *cont'd.*Cruelty, *cont'd.*

- General allegation under codes, 7, 78
- Recrimination, 7, 91
- Remedy for indefiniteness, 7, 78
- Time and place, 7, 79

Custody and maintenance of children, 7, 84, 129

- Amount allowed, 7, 131
- Appeals, 7, 136
- Decree contains no provision, 7, 131
- During suit, 7, 130
- Homestead, 7, 131
- In general, 7, 129
- Order, 7, 130
- Order for maintenance, 7, 131
- Party about to leave state, 7, 130
- Selection of custodian, 7, 130
- Where divorce is refused, 7, 130

Death, 7, 122

- Death after cause submitted, 7, 123
- Death of defendant, 5, 831
- Death of party, 7, 122
- Death of plaintiff, 5, 810
- Effect of death of party in general, 7, 122
- Effect on appeal, 7, 124
- Effect on decree for permanent alimony, 7, 124
- Effect on orders for temporary alimony and costs, 7, 123
- In general, 7, 122
- Suit dies with party, 7, 122

Declaration and complaint, *see infra*, Petition and complaint.Decrees (*see infra*, Defaults; Proceedings to vacate decrees), 7, 125

- Based on pleadings, 7, 126
- Contents, 7, 125
- Cross-petition filed, 7, 126
- Date, 7, 125
- Decree nisi, 7, 128
- Decree of separation, 7, 127
- Decree of separation on suit for divorce, 7, 127
- Default, 7, 126
- Division and restoration of property, 7, 128
- Description of property, 7, 128
- In general, 7, 128
- Recovery of dower on divorce, 7, 129
- Revision of decree, 7, 128
- Duration of separation, 7, 127
- Finality, 7, 125
- Form, 7, 125
- Orders contained in, 7, 126

DIVORCE, *cont'd.*

- Decrees, *cont'd.*
 - Vacation of decrees of separation on reconciliation, 7, 127
- Defaults, 7, 115
 - Decrees, 7, 126
 - Opening defaults, 7, 141
 - Application, 7, 142
 - Counter-affidavits, 7, 142
 - Court's discretion, 7, 141
 - To protect public interests, 7, 141
 - When defendant has no notice, 7, 142
 - Where plaintiff has remarried, 7, 142
- Definiteness and certainty in pleadings, 6, 267; 7, 100
- Delay, 7, 93
- Delirium tremens:
 - Defenses, 7, 94
- Demurrer, 7, 100
 - Causes for, 7, 100
 - Indefiniteness, 7, 100
 - When overruled, 7, 100
- Depositions, 7, 114
- Desertion, 7, 76
 - Allegations of, 7, 76
 - Defenses, 7, 95
 - Desertion without cause, 7, 77
 - Failure to support, 7, 77
 - Misconduct of plaintiff, 7, 95
 - Recrimination, 7, 91
 - Status of innocent party, 7, 77
 - Statutory terms, 7, 76
 - Terms equivalent to those of statute, 7, 77
 - Time of desertion, 7, 77
- Discontinuances, 7, 116
 - After cross-bill has been filed, 7, 117
 - Alimony, 7, 117
 - Counsel fees, 7, 117
 - Husband escaping liability, 7, 118
 - In general, 7, 116
 - Leave of court, 7, 117
 - Rights of attorneys, 7, 118
 - Terms, 7, 117
 - Where marriage is not denied, 7, 117
- Division and restoration of property, 7, 128
 - Appeals, 7, 136
 - Decree, 7, 128
 - In general, 7, 128
 - Recovery of dower on divorce, 7, 129
 - Revision of decree, 7, 128
- Dower:
 - Pleas, 7, 165
 - Recovery of dower on divorce, 7, 129

DIVORCE, *cont'd.*

- Drunkenness, 7, 80
 - Defenses, 7, 94
- Equity, 7, 53
- Evidence, *see infra*, Appeals.
- Ex parte* divorce, 1, 415
- Final judgments and decrees, 2, 67, 72
- Final orders, 7, 134
 - Appeals, 7, 134
- Findings, 7, 119
- Fraud, 7, 144
 - Allegations, 7, 145
 - Applicant, 7, 144
 - Collateral attack, 7, 146
 - Defenses, 7, 146
 - Effect of vacating decree, 7, 147
 - Necessary parties, 7, 146
 - Notice of the application, 7, 146
 - Permanent alimony instead of vacating decree, 7, 147
 - Proceedings to vacate decrees obtained by fraud, 7, 144
 - Showing defense, 7, 146
- General denial:
 - Answer, 7, 87
- Guardians, 9, 931
 - Insanity, 7, 62
 - Right to sue for ward, 7, 61, 62
- Habitual drunkenness, 7, 80
- Imprisonment, 7, 81
- Infants (*see infra*, Custody and maintenance of children), 7, 61
- Insanity, 7, 62
 - Annulment suit, 7, 63
 - Defenses, 7, 94
 - English divorce act, 7, 63
 - Insane defendants, 7, 65
 - Insanity after suit commenced, 7, 66
 - Right of guardian to sue for divorce, 7, 62
 - Statutes, 7, 64, 66
 - Suit for alimony without divorce, 7, 63
 - Whether divorce granted against insane defendants, 7, 65
- Instructions, 7, 119
- Intervention, 7, 59
- Intoxication:
 - Extent of intoxication, 7, 81
- Issues to the jury, 11, 636
 - Adultery, 11, 670
 - Setting aside or disregarding verdict, 11, 707
- Joinder of counts and causes, 1, 199; 7, 82
- Judgments (*see infra*, Decrees; Defaults):
 - Opening, amending, and vacating judgments, 15, 233
- Jury:
 - Trial by jury, 7, 118

DIVORCE, *cont'd.*

- Laches, 7, 93
- Leave of court:
 - Discontinuances, 7, 117
- Lis pendens*, 1, 443
- Maintenance of children, *see infra*,
 - Custody and maintenance of children.
- Marriage, 7, 60
 - Appellant remarrying, 7, 138
 - Date of marriage, 7, 69
 - Facts showing validity, 7, 69
 - Maiden name, 7, 69
 - Necessity of allegation of marriage, 7, 69
 - Opening decree where plaintiff has remarried, 7, 142
 - Place of marriage, 7, 68
- Marriage (annulment):
 - Petition for annulment compared with petition for divorce, 13, 874
 - Similarity of nullity suit to divorce suit, 13, 870
- Nature of divorce suit, 7, 51
 - Alimony, 7, 57.
 - At common law, 7, 51
 - Civil action under the code, 7, 54
 - Ecclesiastical courts, 7, 51
 - Ecclesiastical practice, when followed, 7, 56
 - In equity, 7, 53
 - In general, 7, 51
 - In the United States, 7, 52
- Neglect to provide, 7, 81
- New trials, 7, 140
 - Examples, 7, 140, 141
 - In general, 7, 140
 - When granted, 7, 140
- Nonsuit, 7, 122
- Open and close, 7, 114
- Open court, 7, 113
- Opening, amending, and vacating judgments, 15, 233
- Order of proof, 7, 114
- Orders, *see infra*, Custody and maintenance of children; Decrees.
- Paramour, 9, 59, 60
 - Name of the *particeps criminis*, 7, 3
- Parent and child, *see infra*, Custody and maintenance of children.
- Particeps criminis*, *see infra*, Paramour.
- Parties, 7, 58
 - Ancillary relief for wife, 7, 59
 - Appearance by prosecuting attorney, 7, 66
 - Coverture, 7, 60
 - Creditor, 7, 59
 - Defendants, 7, 58
 - Guardian and ward, 7, 61, 62
 - Infancy, 7, 61

DIVORCE, *cont'a.*

- Parties, *cont'd.*
 - Insane defendants, 7, 65
 - Insanity, 7, 62
 - Intervention, 7, 59
 - Paramour, 7, 59, 60
 - Plaintiffs, 7, 58
 - State as party, 7, 66
- Petition and complaint (*see infra*,
 - Cross-bill or cross-petition), 7, 67
- Adultery, *see infra*, Adultery.
- Allegations of residence, 7, 67
- Cause for divorce, 7, 70
 - Collusion, 7, 69
 - Condonation, 7, 69
 - Conviction of crime, 7, 81
 - Cruelty, 7, 77
 - Defective allegations, 7, 69
 - Denial of condonation, 7, 69
 - Desertion, 7, 79
 - Examples of causes for divorce, 7, 81
 - Habitual drunkenness, 7, 80
 - Joinder of causes for ancillary relief, 7, 83
 - Joinder of causes for divorce, 7, 82
 - Jurisdictional facts, 7, 68
 - Marriage, allegations of, 7, 69
 - Necessity of allegation of marriage, 7, 69
 - Neglect to provide, 7, 81
 - Offense within state or county, 7, 71
 - Place, 7, 70
 - Place of offense and of marriage, 7, 68
 - Prayer, 7, 84
 - Time, 7, 70
 - Verification, 7, 85
- Place:
 - Adultery, 7, 75
 - Causes for divorce, 7, 70
 - Cruelty, 7, 79
 - Offense within place or county, 7, 71
 - Place of marriage, 7, 68
 - Place of offense, 7, 68, 70
- Plea, *see infra*, Answer.
- Plea in abatement, 7, 96
- Prayer for relief, 7, 84
- Proceedings to vacate decrees, 7, 138
 - Application to open default, 7, 142
 - Court's own motion, 7, 139
 - Decrees obtained by fraud, 7, 144
 - Decrees on constructive service, 7, 142
 - Discretion of court as to default, 7, 141
 - In general, 7, 138
 - Opening defaults, 7, 141

DIVORCE, *cont'd.*

Proceedings to vacate decrees, *cont'd.*
 Opening defaults at discretion of court, 7, 141
 Opening defaults to protect public interests, 7, 141
 Opening default where plaintiff has married, 7, 142
 Opening default where plaintiff has no notice, 7, 142
 Statutory prohibition, 7, 139
 Time limit, 7, 139
 Where divorce is obtained by fraud, 7, 139
Process, see *infra*, Summons and process.
Property, see *infra*, Division and restoration of property.
 Prosecuting attorney, 7, 66
 Publication, 17, 44
 Amendment, 7, 113
 By assignment, 7, 108
 Decree on substituted service, 7, 107
 Defendant entering special appearance, 7, 113
 Holding summons until return day, 7, 108
 In general, 7, 107
 Mailing copy of summons and petition, 7, 112
 Notice of publication of summons, 7, 112
 Order for publication, 7, 111
 Order not complying with statute, 7, 111
 Order of court, 7, 109
 Personal notice in addition to publication, 7, 109
 Personal service in another state or county, 7, 108
 Proceedings to vacate decrees on constructive service, 7, 142
 Application of usual statutes, 7, 143
 Code provisions, 7, 143
 In general, 7, 142
 Revision expressly prohibited, 7, 144
 Special statutory provision, 7, 144
 Weight of authority, 7, 144
 Proof of constructive service, 7, 112
 Proof that defendant is nonresident, 7, 110
 Publication without order, 7, 111
 Record, 7, 112
 Rule as to sufficiency, 7, 110
 Service without publication, 7, 109
 Statement of cause of action, 7, 111

DIVORCE, *cont'd.*

Record:
 Publication, 7, 112
 Recrimination, 7, 90
 Adultery, 7, 91
 Cruelty, 7, 91
 Desertion, 7, 91
 How alleged, 7, 90
 In general, 7, 90
 References, 7, 115
Remarriage, see *infra*, Marriage.
 Reply, 7, 101
 Residence, allegations of, 7, 67
Restoration of property, see *infra*, Division and restoration of property.
 Review (see *infra*, Appeals), 18, 994
Revivor, see *infra*, Death.
 Separation, 7, 127
 Decree of separation on suit for divorce, 7, 127
 Duration of separation, 7, 127
 Vacation of decree on reconciliation, 7, 127
 Service of process, 7, 104, 105
 Constructive service, 7, 107
 Amendment, 7, 113
 By assignment, 7, 108
 Decree on substituted service, 7, 107
 Defendant entering a special appearance, 7, 113
 Holding summons until return day, 7, 108
 In general, 7, 107
 Mailing copy of summons and petition, 7, 112
 Notice or publication of summons, 7, 112
 Order for publication, 7, 111
 Order not complying with statute, 7, 111
 Order of court, 7, 109
 Personal notice in addition to publication, 7, 109
 Personal service in another state or county, 7, 108
 Proceedings to vacate decrees on constructive service, 7, 142
 Application of usual statutes, 7, 143
 Code provision, 7, 143
 In general, 7, 142
 Revision expressly prohibited, 7, 144
 Special statutory provision, 7, 144
 Weight of authority, 7, 144
 Proof of constructive service, 7, 112
 Proof that defendant is a nonresident, 7, 110

DIVORCE, *cont'd.*Service of process, *cont'd.*Constructive service, *cont'd.*Publication without order,
7, 111

Record, 7, 112

Rule as to sufficiency, 7, 110

Service without publication,
7, 109Statement of cause of action,
7, 111

Special findings, 7, 119

State:

State as party, 7, 66

Stipulations:

Service of process, 7, 106

Subpoena, see *infra*, Summons and
process.

Summons and process, 7, 104

Code states, 7, 105

Following chancery practice, 7,
105

In general, 7, 104

Nature of relief demanded, 7, 105

Service, 7, 105

Waiver of summons, 7, 106

Supplemental pleadings, 7, 103

By defendant, 7, 104

Necessity for, 7, 103

New cause of action, 7, 103

Support, 7, 81

Survival of actions, 21, 360

Terms:

Discontinuances, 7, 117

Time:

Adultery, 7, 75

Cruelty, 7, 79

Time of offense, 7, 70

Trial, 7, 113

Change of venue, 7, 116

Conduct of court, 7, 120

Continuances, 7, 115

Default, 7, 115

Deposition, 7, 114

Discontinuances, 7, 116

Findings, 7, 119

In general, 7, 113

In open court, 7, 113

Instructions, 7, 119

Nonsuit, 7, 122

Open and close, 7, 114

Order of proof, 7, 114

Reference, 7, 115

Special findings, 7, 119

Trial by jury, 7, 118

Verdict, 7, 119

Where plaintiff is unable to
attend, 7, 113*Vacation of decrees*, see *infra*, Pro-
ceedings to vacate decrees.

Verdict, 7, 119

Conclusiveness of verdict, 7, 120

Effect of verdict on appeal, 7, 137

DIVORCE, *cont'd.*

Verification, 7, 85

Amendment, 7, 86

Answer, 7, 87

Cross-petition, 7, 86

Defective or omitted, 7, 86

In general, 7, 85

Waiver of summons, 7, 106

DOCKETS (see CALENDARS AND TRIAL
DOCKETS):

Appearances:

Entering attorney's name on the
docket, 2, 598**DOCUMENTARY EVIDENCE:**

Bills of exceptions:

Incorporation of documentary
evidence by reference, 3,
430

At common law, 3, 430

Certification, 3, 437

Direction of clerk to insert,
3, 431Identification required, 3,
432Incorporation of reporter's
notes, 3, 436

Longhand manuscript, 3, 438

Narration of the evidence, 3,
439

Record, 4, 435

Skeleton bill, 3, 431

Stenographic bill, 3, 436

Under modern practice, 3,
430

Directing verdict, 6, 675, 688

Extradition, 8, 809

Production of documents, see DIS-
COVERY, INSPECTION, AND PRODUC-
TION OF DOCUMENTS.**DOGS**, see TRESPASSING, VICIOUS, AND
DISEASED ANIMALS.**DOMICIL:**

Guardians, 9, 894

Domicil of deceased parents, 9,
894

Domicil of ward, 9, 984

DOUBLE ASPECT, see COUNTS,
PARAGRAPHS, AND SEPARATE STATE-
MENTS.**DOUBLE COSTS**, see COSTS.**DOUBLE DAMAGES**, see DAMAGES.**DOUBLE REDRESS:**

Contempt, 4, 803

In general, 4, 803

Necessity for election, 4, 804

DOUBT, see CERTIFICATE OF DOUBT.**DOWER, 7, 148**

See HUSBAND AND WIFE.

Actions under codes, 7, 171

Admeasurement of dower, 7, 169

By commissioners, 7, 169

By sheriff, 7, 169

Decrees in equity, 7, 183

DOWER, *cont'd.*

- Answers (see *infra*, Pleas):
 - Summary proceedings, 7, 204
- Answers in equity pleading, 7, 181
 - Bona fide* purchasers, 7, 182
 - In general, 7, 181
 - Legal or equitable defenses, 7, 181
 - Several defenses, 7, 182
- Appeals, 2, 46 7, 207
- Assignment:
 - Application, 7, 198
 - Assignment irrespective of right, 7, 191
 - Assignment, jurisdiction to make, 7, 189
 - Notice by commissioners of the time of assignment, 7, 205
 - Summary proceedings, 7, 189
 - Vacating assignment, 7, 170
 - Where assignment cannot be made by metes and bounds, 7, 193
- Bills in equity, 7, 180
 - Demand, 7, 181
 - Facts essential to right, 7, 180
 - Remedy at law, 7, 180
 - Seizin, 7, 181
 - Title, 7, 181
 - Widowhood, 7, 181
- Bills of particulars, 3, 548
- Codes, actions under, 7, 171
- Commissioners:
 - Confirmation of report, 7, 206
 - Notice by commissioners of the time of assignment, 7, 205
 - Notice of motion to confirm commissioners' report, 7, 205
 - Order appointing commissioners, 7, 204
 - Report of, 7, 205
 - Vacating report, 7, 207
- Complaint*, see *infra*, Declaration and complaint.
- Confirmation of commissioners' report, 7, 206
 - Contradiction or explanation of report, 7, 206
 - In general, 7, 206
 - Objections, 7, 206
- Consent to jurisdiction, 7, 197
- Costs, 7, 171
 - Equity, 7, 185
- Creditors' bills, 5, 451
- Damages:
 - Judgments for seizin and for damages distinct, 7, 168
 - Power of probate courts, 7, 195
 - Writ of inquiry for damages, 7, 170
- Death:
 - Death of plaintiff in action of dower, 5, 804

DOWER, *cont'd.*

- Declaration and complaint, 7, 162
 - Demand, 7, 164
 - Description of property, 7, 163
 - In general, 7, 162
 - Marriage, 7, 163
 - Necessary averments, 7, 162
 - Seizin of husband, 7, 163
 - Several parcels, 7, 163
 - Title of husband, 7, 163
- Decrees (see *infra*, Judgments), 7, 183
 - Decree appointing commissioners, 7, 183
 - Decree not containing specific directions, 7, 184
 - Final decree, 7, 183
 - Right to and admeasurement of dower, 7, 183
 - Sum in lieu of dower, 7, 184
 - Where the commissioners report an allotment, 7, 183
- Demand of dower, 7, 150
 - Bill in equity, 7, 181
 - Claiming too much land, 7, 153
 - Commencement of suit a demand, 7, 154
 - Damages for detention, 7, 151
 - Declaration and complaint, 7, 164
 - Description of land, 7, 152
 - Effect of failure to demand, 7, 151
 - Election in orphans' court a demand, 7, 154
 - Formality, 7, 152
 - Guardian of minor heir, 7, 155
 - Judgment continues good, 7, 155
 - Method of assignment, 7, 152
 - Necessity of demand, 7, 150
 - Oral demand, 7, 152
 - Personal service, 7, 154
 - Place of demand, 7, 153
 - Specifying time, 7, 153
 - Sufficiency of demand, 7, 152
 - Tenant of the freehold, 7, 154
 - Out of state, 7, 155
 - Tenants in common, 7, 154
 - Upon whom demand must be made, 7, 154
 - Who must make demand, 7, 155
 - Written demand, 7, 152
- Disclaimer:
 - Pleas, 7, 164
- Divorce:
 - Pleas, 7, 165
 - Recovery of dower on divorce, 7, 129
- Ejectment, 7, 283
 - Assignee of dower right, 7, 285
 - At common law, 7, 283
 - Divorced widow, 7, 284
 - Modern practice, 7, 284

DOWER, *cont'd.*

- Ejectment, *cont'd.*
 - Parties defendant, 7, 284
 - Remedy of widow, 7, 283
 - Widow joining with heirs, 7, 283
- Eminent domain:
 - Parties, 7, 510
- Equity (see *infra*, Proceedings in equity):
 - Equitable defenses, 7, 194
 - Husband equitable owner, 7, 194
- Essoin, 7, 161
- Grand and petit *cape*, 7, 162
- Guardians:
 - Demand, 7, 155
- Imparlance, 7, 162
- Infants:
 - Demand, 7, 150, 155
- Injunctions, 7, 176
- Inquiry, writ of, 7, 170
- Joint tenants and tenants in common:
 - Demand, 7, 154
- Judgments (see *infra*, Decrees), 7, 167
 - Against whom, 7, 168
 - In general, 7, 167
 - Judgment for seizin and damages distinct, 7, 168
- Jurisdiction*, see *infra*, Proceedings at law; Proceedings in equity; Summary proceedings.
- Landlord and tenant:
 - Tenant as party, 7, 179
- Marriage:
 - Averments, 7, 198
 - Declaration and complaint, 7, 163
- Mortgages, 7, 193
- Multiplicity of suits, 7, 196
- Notice by commissioner of the time of assignment, 7, 205
- Notice of application, 7, 199
 - Collateral attack, 7, 200, 202
 - Executors and administrators, 7, 203
 - Heirs, 7, 204
 - In name of applicant, 7, 202
 - Necessity of notice, 7, 199
 - Notice in name, 7, 202
 - Substitution among commissioners, 7, 202
 - Sufficiency of notice, 7, 201
 - Temporary administrator, 7, 204
 - Tenants of freehold, 7, 204
 - Who should be served without notice, 7, 203
 - Writing, 7, 201
- Notice of motion to confirm commissioners' report, 7, 205
- Order appointing commissioners, 7, 204
- Ouster of jurisdiction, 7, 189

DOWER, *cont'a.*

- Parties, 7, 159
 - Assignee, 7, 160
 - Defendants, 7, 160
 - In equity, 7, 177
 - Creditors of the widow, 7, 178
 - Defendants, 7, 178
 - Heir, 7, 177
 - Of adverse parties, 7, 178
 - Owner of land, 7, 177
 - Parties who have had title, 7, 180
 - Plaintiffs, 7, 177
 - Tenant under lease, 7, 179
 - Where the land has been sold in separate tracts, 7, 179
 - Widow, 7, 177
 - Land in parcels, 7, 161
 - Plaintiffs, 7, 159
 - Present owner, 7, 161
 - Summary proceedings, 7, 197
 - Assignee of other persons interested, 7, 197
 - Defendants, 7, 197
 - Examples, 7, 198
 - Executors and administrators, 7, 197
 - Heirs, 7, 197
 - Plaintiff, 7, 197
 - Tenants of freehold, 7, 160
- Partition:
 - Dowress as party defendant, 15, 797
 - Tenants by dower as parties plaintiff, 15, 790
- Petition*, see *infra*, Bills in equity; Declaration and complaint.
- Pleas (see *infra*, Answers in equity pleading), 7, 164
 - Disclaimer, 7, 164
 - Divorce, 7, 165
 - Generally, 7, 164
 - In abatement, 7, 164
 - In bar, 7, 164
 - Nontenure, 7, 164
 - Pleas *ne unques seisis que dower*, 7, 165
 - Separate tracts, 7, 164
- Possession, writ of, 7, 185
- Præcipe, 7, 158; 16, 770
- Probate court*, see *infra*, Summary proceedings.
- Proceedings at law, 7, 158
 - Admeasurement, 7, 169
 - Costs, 7, 171
 - Declaration, see *infra*, Declaration and complaint.
 - Essoin, 7, 161
 - Grand and petit *cape*, 7, 162
 - Imparlance, 7, 162
 - In general, 7, 158

DOWER, *cont'd.*

- Proceedings at law, *cont'd.*
 - Judgment, 7, 167
 - Parties defendant, 7, 160
 - Parties plaintiffs, 7, 159
 - Præcipe, 7, 158
 - Reassignment of dower, 7, 170
 - Replication, 7, 166
 - Return, 7, 168
 - Summons, 7, 159
 - Trial, 7, 166
 - Vacating assignment, 7, 170
 - Verdict, 7, 167
 - View, 7, 161
 - Writ of error, 7, 159
 - Writ of inquiry for damages, 7, 170
 - Writ of seizin, 7, 168
- Proceedings in equity, 7, 171
 - Admeasurement of dower, 7, 183
 - Answer, 7, 181
 - Bill, 7, 180
 - Concurrent jurisdiction, 7, 173
 - Confirmation of report, 7, 185
 - Costs, 7, 185
 - Decree, 7, 183
 - Early rule, 7, 171
 - Grounds of jurisdiction, 7, 172
 - Injunctions, 7, 176
 - Jurisdiction, 7, 171
 - Parties, 7, 177
 - Petition, 7, 180
 - Report of commissioners, 7, 185
 - Trial, 7, 182
 - Whether confined to direct proceedings, 7, 175
 - Writ of possession, 7, 185
- Real actions:
 - Writs of dower and of right of dower, 17, 670
- Reassignment, 7, 207
 - Equity, 7, 185
- Reassignment of dower, 7, 170
- Replication and reply, 7, 166
- Report of commissioners, 7, 185, 205
 - Confirmation of report, 7, 185, 206
 - In general, 7, 185
 - Notice of motion to confirm commissioners' report, 7, 205
 - Vacating report, 7, 207
- Return, 7, 169
- Security for costs:
 - Assignment of dower, 19, 359
- Seizin, 7, 193
 - Averments, 7, 198
 - Bill in equity, 7, 181
 - Declaration and complaint, 7, 163
 - Judgment for seizin and damages distinct, 7, 168
 - Jurisdiction in probate courts, 7, 192
 - Writ of seizin, 7, 168

DOWER, *cont'd.*

- Signature:
 - Demand, 7, 153
- Summary proceedings, 7, 186
 - Answer, 7, 204
 - Appeal, 7, 207
 - Application, 7, 198
 - Assignment irrespective of right, 7, 191
 - Confirmation of commissioners' report, 7, 206
 - Consent of jurisdiction, 7, 197
 - Equitable defenses, 7, 194
 - Husband equitable owner, 7, 194
 - Jurisdiction, 7, 186
 - Jurisdiction to make assignment and determine right, 7, 189
 - Mortgaged lands, 7, 193
 - Multiplicity of suits, 7, 196
 - Nature and extent of jurisdiction, 7, 188
 - Necessary averments in application, 7, 198
 - Necessity of notice of application, 7, 199
 - Notice of application, 7, 199
 - Notice of motion to confirm commissioners' report, 7, 205
 - Order appointing commissioners, 7, 204
 - Ouster of jurisdiction, 7, 188
 - Parties defendants, 7, 197
 - Parties plaintiffs, 7, 197
 - Pendency of proceedings in another court, 7, 196
 - Power to award damages and mesne profits, 7, 195
 - Probate courts, 7, 188
 - Reassignment, 7, 207
 - Report of commissioners, 7, 205
 - Sufficiency of notice of application, 7, 201
 - Vacating report, 7, 207
 - What courts have jurisdiction, 7, 186
 - Where appellant's right is equitable, 7, 194
 - Where assignment cannot be made by metes and bounds, 7, 193
 - Where the husband did not die seized, 7, 192
 - Where the land has been alienated by the heirs, 7, 193
 - Where the land lies in two or more counties, 7, 196
 - Whether jurisdiction exclusive or concurrent, 7, 187
 - Who may object to jurisdiction, 7, 197
 - Widow's assignee, 7, 194
 - Summons, 7, 157, 159
 - Surrogate, 7, 188

DOWER, *cont'd.*

Surrogate courts, see infra, Summary proceedings.

Survival of actions, 2, 336

Title of husband:

Bill in equity, 7, 181

Declaration and complaint, 7, 163

Trial, 7, 166

Equity, 7, 182

Chancery practice, 7, 182

Where right of dower raised by answer, 7, 182

Venue, 22, 795

Verdict, 7, 167

View, 7, 161

Waste, 22, 1098

Writ of dower, 7, 169

Writ of possession, 7, 185

DRAINAGE, 7, 209

Appeals, 7, 218

Benefits, assessments of, 7, 214

Certiorari, 7, 219

Cases where the writ was used, 7, 219

Discretionary writ, 7, 220

Estoppel, 7, 220

Harmless irregularity, 7, 221

In general, 7, 219

Instances of fatal irregularities, 7, 220

Laches, 7, 220

Petitioner without interest, 7, 221

Proceedings quashed, 7, 219

Separate proceedings, 7, 221

Collateral attack, 7, 210, 241

Drainage district, 7, 210

Examples, 7, 221, 223

In general, 7, 221

Irregularities, 7, 221

Jurisdictional defects, 7, 222

Collection of assessments, 7, 223

Assessment against public highway, 7, 223

Defenses, 7, 225

Lien on railroad, 7, 22

Necessary allegations, 7, 224

Parties plaintiff, 7, 224

Remedy, 7, 223

Commissioners, report of, 7, 214

Costs, 7, 218

Distinguishing features of the various systems, 7, 209

District, 7, 210

Eminent domain, see EMINENT DOMAIN.

Hearing, 7, 212

Jurisdiction, 7, 211

Notice, 7, 212

Laches, 7, 220

Notice, 7, 212

Defective notice, 7, 213

In general, 7, 212

DRAINAGE, *cont'd.*

Notice, *cont'd.*

Notice is jurisdictional, 7, 212

Nunc pro tunc entry, 7, 213

Petition, 7, 211

In general, 7, 211

Jurisdiction, 7, 211

Statutory requirements, 7, 211

Sufficiency, 7, 212

Quo warranto, 7, 210

Remonstrance, 7, 215

Confined to grounds stated, 7, 217

Costs, 7, 218

In general, 7, 215

In Indiana, 7, 215

Irrelevant matters, 7, 217

Remonstrance by two-thirds, 7, 216

Stricti juris, 7, 217

Time for filing, 7, 216

Who may remonstrate, 7, 216

Withdrawal of a joint remonstrant, 7, 217

Report of commissioners, 7, 214

Failure to report in time, 7, 214

Proceedings on contested report, 7, 215

Review of proceedings, 7, 218

Testing legal existence of drainage district, 7, 210

Collateral attack, 7, 210

In general, 7, 210

Quo warranto, 7, 210

DRUGGISTS, 7, 226

See PHYSICIANS AND SURGEONS.

Actions, 7, 226

Civil actions, 7, 226

Contributory negligence, 7, 228

Declaration and complaint, 7, 227

Indictment, 7, 226

Intoxicating liquors, see INTOXICATING LIQUORS.

Joinder of parties, 7, 226

Nature of action, 7, 227

Poison:

Civil actions, 7, 226

Survival of action, 7, 228; 21, 348

DRUNKENNESS, 7, 229

See INTOXICATING LIQUORS.

Amendments, 7, 231

Civil damage acts, see CIVIL DAMAGE ACTS.

Common drunkard, 7, 229

Continuances, 4, 864

Criminal law, 7, 229

Criminal procedure, 7, 229

Declaration and complaint, 7, 229

Divorce:

Defenses, 7, 94

Impeachment of witnesses, 10, 311

Indictment, 7, 230

Amendment, 7, 231

DRUNKENNESS, cont'd.Indictment, *cont'd.*

Former conviction, 7, 230

Generally, 7, 230

Publicity, 7, 230

Jeopardy, 7, 230

DUELLING, 7, 232

Challenge, 7, 232

Homestead, 7, 232

Sending, accepting, or carrying challenge, 7, 232

Carrying challenge, 7, 234

Indictment for leaving the state to fight, 7, 233

Indictment for sending challenge, 7, 233

Jurisdiction, 7, 232

Place of fighting, 7, 234

Requisites of indictment, 7, 233

Settling out challenge, 7, 233

Whether or not there is a challenge a question for jury, 7, 233

DUE PROCESS OF LAW:

Contempt, 4, 771

DUPLICITY, 7, 235

See MULTIFARIOUSNESS; SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER.

Abatement in pleading, 1, 25

Answer, see *infra*, Pleas.

Arrest of judgment, 2, 802

Assigning several breaches, 7, 236

Bribery, 3, 697

Burglary, 3, 786

Conspiracy, 4, 719

Declaration, 7, 237

Facts tending to the same point, 7, 238

General rule, 7, 237

Immaterial matters, 7, 237

Demurrer, 7, 243, 244

Departure, 7, 241

Disorderly houses, 7, 9, 16

Disturbing meetings, 7, 39

Double pleading, see PLEAS AT LAW.

Embezzlement, 7, 446

Escape, 7, 915

Exceptions and objections, 7, 243, 244; 8, 201

Extent, 7, 236

Indictments, see INDICTMENTS.

Inducement, matters of, 7, 241

Intoxicating liquors, 11, 522

Acts constituting distinct offenses, 11, 524

As to liquors sold, 11, 523

As to place, 11, 523

As to time, 11, 522

Cognate acts, 11, 525

Dual character of purchaser, 11, 522

Joint and several sales, 11, 522

Index Pl. & Pr. — 20

DUPLICITY, cont'd.Intoxicating liquors, *cont'd.*

Keeping place and selling, 11, 525

Selling and giving away, 11, 525

Selling at retail to be drunk on premises, 11, 524

Selling on Sunday at retail or without license, 11, 524

Unlawfully sold or caused to be sold, 11, 524

Larceny, see LARCENY.

Leave to plead double, 7, 236

Lewdness, 13, 24

Limitations, 13, 226

Lotteries, 13, 396

Malicious mischief, 13, 416

Mayhem, 13, 936

Motion in lieu of special demurrer, 7, 244

Nature, 7, 236

Negotiable instruments, 14, 689

Objection for duplicity, 7, 243

Obstructing justice, 15, 21

Ordinances, 15, 434

Passengers, 15, 1143

Pleas, 7, 238

Answers in code pleadings, 7, 240

Effect of matters ill pleaded, 7, 239

Facts converging to one point, 7, 240

General rule, 7, 238

Immaterial matters, 7, 241

Matters of inducement, 7, 241

Surplusage, 7, 241

Pleas in abatement, 7, 243

Pleas in equity, 16, 607

Answer instead of duplicitous plea, 16, 607

In general, 16, 607

Several matters tending to one point, 16, 608

Several pleas by leave of court, 16, 608

Rejoinders and subsequent pleadings, 18, 82, 87

Replication and reply, 7, 241; 18, 660, 677

Cumulative denial, 7, 242

Immaterial facts, 7, 242

In general, 7, 241

Pleadings subsequent to replication, 7, 243

Several facts to one point, 7, 242

Statutes permitting double pleading, 7, 236

Surplusage, 7, 241

Vendor and purchaser, 22, 681

Verdict, 22, 944

DURESS, 7, 245

Answers in code pleading, 1, 835

DURESS, *conf'd.*

- Assumpsit, 2, 1013
- Compounding felony, 7, 253
- Effect of plea, 7, 250
- Equity, 7, 247
- Extortion, *see* EXTORTION.
- Findings, 7, 252
- General averments, 7, 250
- Husband and wife, 7, 246
- Imprisonment, 7, 248
- Instructions, 7, 252
- Marriage (annulment):
 - Allegation of duress, 13, 876
- Necessity of special plea, 7, 247
- Negotiable instruments, 14, 652
- Per minas*, 7, 248
- Plea against bond, 7, 249
- Rescission, cancellation, and reformation of contracts, 18, 763, 819
- Setting out facts, 7, 247
- Special plea, 7, 247
- Sufficiency of averments, 7, 250
- Sufficiency of plea, 7, 248
- Suretyship, 7, 246
- Who may plead, 7, 245
 - Examples, 7, 245, 246
 - Husband and wife, 7, 246
 - In general, 7, 245
 - Joint maker, 7, 246
 - Knowledge by sureties of duress, 7, 246

DUTIES, *see* TAXES.**DWELLING HOUSE:**

- Burglary, 3, 747

DYING DECLARATIONS:

- Examination of witnesses:
 - Leading questions, 8, 83

EASEMENTS, 7, 256

- Action based on injury to easement, 7, 256
 - Allegations of damage, 7, 258
 - Allegations of injury, 7, 258
 - By parties in possession, 7, 256
 - Declaration and complaint, 7, 258
 - Description of easement, 7, 258
 - Form of action, 7, 257
 - Private way, 7, 258
 - Reversioner, 7, 257
 - Tenant at will, 7, 256
 - Who may join as plaintiffs, 7, 257
 - Who may maintain action, 7, 256
- Damages:
 - Allegations of damage, 7, 258
- Defense, 7, 258
 - Necessity of defining easement, 7, 259
 - Particularity required, 7, 259
 - To be specially pleaded, 7, 258
- Ejectment, 7, 276
 - Highways, roads, and streets, 7, 276
 - In general, 7, 276

EASEMENTS, *conf'd.***Ejectment, *conf'd.***

- Land subject to easement, 7, 269
 - Highways, roads, and streets, 7, 270
 - In general, 7, 269
- Eminent domain, 7, 602
 - Reservation of easements to owner, 7, 602
- Joinder of parties, 7, 257
- Parties to action, 7, 256
- Street railways, *see* STREET RAILWAYS.
- Ways, *see* WAYS.
- EJECTMENT, 7, 260**
 - Accretions, 7, 268
 - Additional allowances of costs, 1, 230
 - Adverse possession, 7, 343
 - Pleas, 7, 343
 - Agency, 7, 300
 - Aliens, 7, 277
 - Amendments, 1, 561
 - Answer, 1, 562
 - Date, 1, 561
 - Misdescription, 1, 562
 - New demise, 1, 561
 - Term, 1, 561
 - Amount in controversy, 1, 727
 - Answers, *see infra*, Pleas.
 - Answers in code pleading:
 - Equitable defense, 1, 838
 - General denials, 1, 825
 - Abandonment, 1, 825
 - Limitation of actions, 1, 826
 - Paramount title in defendant, 1, 825
 - Statute of frauds, 1, 827
 - What facts may be proved under general denial, 1, 825
- Appearances:
 - Notice to appear, 7, 338
- Arbitration and award, 7, 279
- Assignment for benefit of creditors, 7, 278
- Awards, 3, 132
- Bills of particulars, 7, 334
- Bills of peace, 3, 562
- Buildings, 7, 268
- Cemeteries, 3, 911
- Chapels, 7, 268
- Churches, 7, 268
- Commons, 7, 267
- Conditional verdicts, 7, 349
- Consolidation of actions, 4, 686
- Consolidation of causes, 7, 313
- Coparceners, 7, 312
 - Death of coparceners, 7, 317
- Cornices, 7, 274
- Corporations, 7, 280
 - Foreign corporations, 7, 280
 - In general, 7, 280
 - Land improperly taken by municipality, 7, 282

EJECTMENT, *cont'd.*

- Corporations, *cont'd.*
 - Municipal corporations, 7, 280
 - State, 7, 280
- County, 7, 330
- Courses and distances, 7, 331
- Coveture:
 - General issue, 7, 340
- Curtesy:
 - Ejectment by tenants by curtesy, 7, 299
- Death:
 - Death of defendant, 5, 825
 - Death of one of several defendants in actions of ejectment, 5, 837
 - Death of one of several plaintiffs, 5, 815
 - Death of plaintiff, 5, 803
 - General issue, 7, 340
- Declaration and complaint, 7, 325
 - Accuracy in description of property, 7, 329
 - Allegation for mesne profit, 7, 338
 - Allegation of amount, 7, 332
 - Allegation of tenure, 7, 332
 - At common law, 7, 325
 - Averment of ouster, 7, 336
 - Averment of ownership in fee simple, 7, 333
 - Averment of seizin in fee simple, 7, 334
 - Bill of particulars, 7, 334
 - County, 7, 330
 - Courses and distances, 7, 331
 - Date immaterial, 7, 335
 - Date of demise must be subsequent to right of entry, 7, 327
 - Description must identify, 7, 330
 - Description of property, 7, 328
 - Enabling sheriff to locate property, 7, 329
 - Entitling, 7, 328
 - Evidence of title, 7, 334
 - Extent of plaintiff's interest, 7, 332
 - Filing, 7, 327
 - In general, 7, 325
 - Legal title in plaintiff, 7, 333
 - Location of property, 7, 328
 - Matters of evidence, 7, 334
 - Mesne profits, 7, 338
 - Names of parties, 7, 328
 - Nominal plaintiff, 7, 325
 - Notice to appear, 7, 338
 - Ouster, 7, 336
 - Plaintiff should declare for more than he claims, 7, 332
 - Prayer for judgment, 7, 338
 - Prior possession, 7, 333
 - Right of possession, 7, 335
 - Seizin, 7, 333

EJECTMENT, *cont'd.*

- Declaration and complaint, *cont'd.*
 - Service of declaration, 7, 339
 - State, 7, 330
 - Statement of plaintiff's interest and estate, 7, 332
 - Statutory modification, 7, 327
 - Term of years, 7, 325
 - Title, 7, 333
 - Title expiring before judgment, 7, 326
 - Unauthorized demises, 7, 326
 - Where part of a larger tract is sued for, 7, 331
- Defaults:
 - Judgment by default against casual ejector, 6, 14
- Defenses (see *infra*, Who may be let in to defend):
 - Procedure in defense, 7, 339
- Definition, 7, 264
- Description of property, 7, 328
- Directing verdict, 6, 705
- Disclaimer, 7, 282
- Dower, 7, 283
 - Assignee of dower right, 7, 285
 - At common law, 7, 283
 - Divorced widow, 7, 284
 - Modern practice, 7, 284
 - Parties defendant, 7, 284
 - Remedy of widow, 7, 283
 - Widow joining with heirs, 7, 283
- Easements, 7, 276
 - Highways, roads, and streets, 7, 276
 - In general, 7, 276
 - Land subject to easement, 7, 269
 - Highways, roads, and streets, 7, 270
 - In general, 7, 269
- Eminent domain, 7, 701
 - Appearance, 7, 704
 - Assessment of damages, 7, 705
 - Demand of possession, 7, 705
 - Entry or possession under license from or contract with owner, 7, 704
 - In general, 7, 701
 - Notice to quit, 7, 705
 - Right to condemn notwithstanding ejectment suit, 7, 705
 - Staying execution until assessment and payment of damages, 7, 705
 - Waiver by owner of prepayment of damages, 7, 704
 - When it lies, 7, 701
 - When owner estopped to sue, 7, 703
- Entitling:
 - Declaration, 7, 327
- Equitable defenses, 7, 803

EJECTMENT, *cont'd.*

- Estoppel:
 - Estoppel to deny title, 7, 324
- Execution sales:
 - Purchasers at execution sales, 7, 294
- Executors and administrators (see *infra*, Heirs), 7, 288, 291
- Coexecutors, 7, 294
- Estates *pur autre vie*, 7, 292
- Fraudulent deeds of executor, 7, 288
- Respective rights of heirs and personal representatives, 7, 288
- Rule at common law, 7, 291
- Under statute, 7, 293
- Under the will, 7, 292
- Whether action may be maintained by, 7, 291
- Felons, 7, 278
- Ferries, 7, 275
- Filing:
 - Declaration, 7, 327
- Fisheries, 7, 267
- Fixtures, 7, 269
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Foreign corporations, 7, 280
- For what things the action will lie, 7, 267
 - Accretions, 7, 268
 - Aftermath, 7, 269
 - Buildings, 7, 268
 - Chapels, 7, 268
 - Churches, 7, 268
 - Commons, 7, 267
 - Exceptions, 7, 267
 - Fisheries, 7, 267
 - Fixtures, 7, 269
 - Grass, 7, 269
 - Grazing, 7, 271
 - Herbage, 7, 269
 - Highways, 7, 270
 - In general, 7, 267
 - Land subject to easement, 7, 269
 - Land under water, 7, 272
 - Mines and mining rights, 7, 272
 - Miscellaneous, 7, 274
 - Overhanging roofs and cornices, 7, 274
 - Parts of the buildings, 7, 268
 - Possession must be wholly inconsistent with public easement, 7, 271
 - Relictions, 7, 268
 - Roads, 7, 270
 - Streets, 7, 270
 - Titles, 7, 267
 - Use of road, 7, 271
 - Watercourses, 7, 272
- For what things the action will not lie, 7, 275
 - Easements, 7, 276

EJECTMENT, *cont'd.*

- For what things the action will not lie, *cont'd.*
 - Ferries, 7, 275
 - Incorporeal hereditaments, 7, 275
 - Miscellaneous, 7, 277
 - Party walls, 7, 277
 - Privileges, 7, 275
 - Rights, 7, 275
 - Wharves and wharfage rights, 7, 275
- General issue*, see *infra*, Pleas.
- Good faith, 7, 310
- Guardians, 7, 286
 - Who may be let in to defend, 7, 311
- Heirs (see *infra*, Executors and administrators), 7, 287
 - Action by heir against widow, 7, 287
 - Fraudulent deeds of executors, 7, 288
 - In general, 7, 287
 - Respective rights of heirs and personal representatives, 7, 288
 - Right to maintain the action, 7, 287
 - Widow joining with heirs, 7, 283
- Hereditaments, 7, 275
- Highways, 7, 270, 276
 - In general, 7, 270
 - Lands dedicated to particular purpose, 7, 271
 - Possession wholly inconsistent with public easement, 7, 271
 - Recovery subject to easement, 7, 271
 - Toll road, 7, 270
 - Use of road, 7, 271
- History of the action, 7, 264
- Husband and wife (see *infra*, Dower), 7, 288
 - At common law, 7, 288
 - Modern legislation, 7, 289
 - Who may be let in to defend, 7, 311
 - Who may be sued, 7, 305
 - Homestead, 7, 306
 - In general, 7, 305
 - Where title is in husband, 7, 306
 - Where title is in wife, 7, 305
- Incorporeal hereditaments, 7, 275
- Indians, 7, 278
- Infants, 7, 290, 306
 - Examples, 7, 290, 291
 - Guardians, 7, 286
 - In general, 7, 290
 - Intention to disaffirm, 7, 290

EJECTMENT, *cont'd.*Infants, *cont'd.*

Whether infants may maintain the action, 7, 290

Who may be let in to defend, 7, 311

Insanity:

Ejectment by lunatics, 7, 291

Insolvency and bankruptcy, 7, 278

Issues to the jury, 11, 633

Joinder of counts and causes, 7, 312

Apartments in same building, 7, 313

Consolidation of causes, 7, 313

General rule stated, 7, 312

Uniformity of rule, 7, 313

Joinder of parties, 7, 313

Coparceners, 7, 315

Death of codefendant, 7, 315

Ejectment by mortgagee, 7, 314

Joinder of defendants, 7, 314

Joinder of plaintiffs, 7, 313

Joint tenants, 7, 315

Objection for improper joinder, 7, 315

Person out of possession, 7, 314

Tenants in common, 7, 315

Widow and heirs, 7, 283

Joint tenants and tenants in common, 7, 312; 11, 767

Ejectment for ouster, 7, 318

Joinder of parties, 7, 315

Joinder of parties plaintiff, 7, 315

Suing separately, 7, 316

Tenants in common, 7, 315

Joinder of parties defendant, 7, 317

Joint tenants, 7, 317

Ouster a question for jury, 7, 319

Ouster by force, 7, 319

Possession of one possession of all, 7, 317

Proof of ouster, 7, 318

Judgments (see *infra*, Possession, writ of), 7, 344, 349

Equitable relief against judgments, 11, 1175

Form, 7, 350

Individual findings, 7, 349

Informal judgment, 7, 349

In general, 7, 344, 349

Judgment for entire premises, 7, 349

Where verdict is for defendant, 7, 350

Where verdict is for plaintiff, 7, 350

Landlord and tenant, 7, 298, 307, 325; 12, 867

Historically, 7, 307

Improper admission of defendant, 7, 310

EJECTMENT, *cont'd.*Landlord and tenant, *cont'd.*

Landlord alone, 7, 311

Landlord defending in tenant's name, 7, 311

Meaning of the term landlord, 7, 308

Privy, 7, 309

Right to maintain an ejectment, 7, 298

Technical relation of landlord and tenant, 7, 309

Tenants at sufferance, 7, 299

Tenants at will, 7, 299

What must be shown to court, 7, 310

Who may be let in to defend, 7, 307

Who may be sued, 7, 304

Legatees and devisees, 7, 282

License, 7, 275

Mines and mining claims, 7, 272

Limitations, 13, 189

Pleas, 7, 343

Location of property, 7, 328

Marriage:

General issue, 7, 340

Married women, see *infra*, Husband and wife.

Master and servant:

Who may be sued, 7, 303

Mesne profits, 7, 338

Mines and mining claims, 7, 272

Incorporeal privilege, 7, 273

In general, 7, 272

Oil and oil wells, 7, 273

Where grant a mere license, 7, 272

Modern action of ejectment, 7, 266

Mortgages, 7, 325

Mortgagor and mortgagee, 7, 312

Municipal corporations, 7, 280

Ejectment against county or city, 7, 282

Examples, 7, 280, 282

In general, 7, 280

Lands improperly taken by corporations, 7, 282

Overseers of the poor, 7, 281

When corporation may maintain ejectment, 7, 280

Names of parties, 7, 328

New trials, 7, 355

Application, 7, 358

As a matter of right under statute, 7, 356

Entitled to demand, 7, 356

Form of application, 7, 358

Grounds, 7, 355, 356

In general, 7, 355

May be granted, 7, 355

Notice of application, 7, 359

EJECTMENT, *cont'd.*

- Estoppel:
 - Estoppel to deny title, 7, 324
- Execution sales:
 - Purchasers at execution sales, 7, 294
- Executors and administrators (see *infra*, Heirs), 7, 288, 291
 - Coexecutors, 7, 294
 - Estates *pur autre vie*, 7, 292
 - Fraudulent deeds of executor, 7, 288
 - Respective rights of heirs and personal representatives, 7, 288
 - Rule at common law, 7, 291
 - Under statute, 7, 293
 - Under the will, 7, 292
 - Whether action may be maintained by, 7, 291
- Felons, 7, 278
- Ferries, 7, 275
- Filing:
 - Declaration, 7, 327
- Fisheries, 7, 267
- Fixtures, 7, 269
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Foreign corporations, 7, 280
- For what things the action will lie, 7, 267
 - Accretions, 7, 268
 - Aftermath, 7, 269
 - Buildings, 7, 268
 - Chapels, 7, 268
 - Churches, 7, 268
 - Commons, 7, 267
 - Exceptions, 7, 267
 - Fisheries, 7, 267
 - Fixtures, 7, 269
 - Grass, 7, 269
 - Grazing, 7, 271
 - Herbage, 7, 269
 - Highways, 7, 270
 - In general, 7, 267
 - Land subject to easement, 7, 269
 - Land under water, 7, 272
 - Mines and mining rights, 7, 272
 - Miscellaneous, 7, 274
 - Overhanging roofs and cornices, 7, 274
 - Parts of the buildings, 7, 268
 - Possession must be wholly inconsistent with public easement, 7, 271
 - Relictions, 7, 268
 - Roads, 7, 270
 - Streets, 7, 270
 - Titles, 7, 267
 - Use of road, 7, 271
 - Watercourses, 7, 272
- For what things the action will not lie, 7, 275
 - Easements, 7, 276

EJECTMENT, *cont'd.*

- For what things the action will not lie, *cont'd.*
 - Ferries, 7, 275
 - Incorporeal hereditaments, 7, 275
 - Miscellaneous, 7, 277
 - Party walls, 7, 277
 - Privileges, 7, 275
 - Rights, 7, 275
 - Wharves and wharfage rights, 7, 275
- General issue*, see *infra*, Pleas.
- Good faith, 7, 310
- Guardians, 7, 286
 - Who may be let in to defend, 7, 311
- Heirs (see *infra*, Executors and administrators), 7, 287
 - Action by heir against widow, 7, 287
 - Fraudulent deeds of executors, 7, 288
 - In general, 7, 287
 - Respective rights of heirs and personal representatives, 7, 288
 - Right to maintain the action, 7, 287
 - Widow joining with heirs, 7, 283
- Hereditaments, 7, 275
- Highways, 7, 270, 276
 - In general, 7, 270
 - Lands dedicated to particular purpose, 7, 271
 - Possession wholly inconsistent with public easement, 7, 271
 - Recovery subject to easement, 7, 271
 - Toll road, 7, 270
 - Use of road, 7, 271
- History of the action, 7, 264
- Husband and wife (see *infra*, Dower), 7, 288
 - At common law, 7, 288
 - Modern legislation, 7, 289
 - Who may be let in to defend, 7, 311
 - Who may be sued, 7, 305
 - Homestead, 7, 306
 - In general, 7, 305
 - Where title is in husband, 7, 306
 - Where title is in wife, 7, 305
- Incorporeal hereditaments, 7, 275
- Indians, 7, 278
- Infants, 7, 290, 306
 - Examples, 7, 290, 291
 - Guardians, 7, 286
 - In general, 7, 290
 - Intention to disaffirm, 7, 290

EJECTMENT, *cont'd.***Infants, *cont'd.***

Whether infants may maintain the action, 7, 290

Who may be let in to defend, 7, 311

Insanity:

Ejectment by lunatics, 7, 291

Insolvency and bankruptcy, 7, 278

Issues to the jury, 11, 633

Joinder of counts and causes, 7, 312

Apartments in same building, 7, 313

Consolidation of causes, 7, 313

General rule stated, 7, 312

Uniformity of rule, 7, 313

Joinder of parties, 7, 313

Coparceners, 7, 315

Death of codefendant, 7, 315

Ejectment by mortgagee, 7, 314

Joinder of defendants, 7, 314

Joinder of plaintiffs, 7, 313

Joint tenants, 7, 315

Objection for improper joinder, 7, 315

Person out of possession, 7, 314

Tenants in common, 7, 315

Widow and heirs, 7, 283

Joint tenants and tenants in common, 7, 312; 11, 767

Ejectment for ouster, 7, 318

Joinder of parties, 7, 315

Joinder of parties plaintiff, 7, 315

Suing separately, 7, 316

Tenants in common, 7, 315

Joinder of parties defendant, 7, 317

Joint tenants, 7, 317

Ouster a question for jury, 7, 319

Ouster by force, 7, 319

Possession of one possession of all, 7, 317

Proof of ouster, 7, 318

Judgments (see *infra*, Possession, writ of), 7, 344, 349

Equitable relief against judgments, 11, 1175

Form, 7, 350

Individual findings, 7, 349

Informal judgment, 7, 349

In general, 7, 344, 349

Judgment for entire premises, 7, 349

Where verdict is for defendant, 7, 350

Where verdict is for plaintiff, 7, 350

Landlord and tenant, 7, 298, 307, 325; 12, 867

Historically, 7, 307

Improper admission of defendant, 7, 310

EJECTMENT, *cont'd.***Landlord and tenant, *cont'd.***

Landlord alone, 7, 311

Landlord defending in tenant's name, 7, 311

Meaning of the term landlord, 7, 308

Privity, 7, 309

Right to maintain an ejectment, 7, 298

Technical relation of landlord and tenant, 7, 309

Tenants at sufferance, 7, 299

Tenants at will, 7, 299

What must be shown to court, 7, 310

Who may be let in to defend, 7, 307

Who may be sued, 7, 304

Legatees and devisees, 7, 282

License, 7, 275

Mines and mining claims, 7, 272

Limitations, 13, 189

Pleas, 7, 343

Location of property, 7, 328

Marriage:

General issue, 7, 340

Married women, see *infra*, Husband and wife.

Master and servant:

Who may be sued, 7, 303

Mesne profits, 7, 338

Mines and mining claims, 7, 272

Incorporeal privilege, 7, 273

In general, 7, 272

Oil and oil wells, 7, 273

Where grant a mere license, 7, 272

Modern action of ejectment, 7, 266

Mortgages, 7, 325

Mortgagor and mortgagee, 7, 312

Municipal corporations, 7, 280

Ejectment against county or city, 7, 282

Examples, 7, 280, 282

In general, 7, 280

Lands improperly taken by corporations, 7, 282

Overseers of the poor, 7, 281

When corporation may maintain ejectment, 7, 280

Names of parties, 7, 328

New trials, 7, 355

Application, 7, 358

As a matter of right under statute, 7, 356

Entitled to demand, 7, 356

Form of application, 7, 358

Grounds, 7, 355, 356

In general, 7, 355

May be granted, 7, 355

Notice of application, 7, 359

EJECTMENT, *cont'd.*New trials, *cont'd.*

- Order will not issue before judgment, 7, 358
- Payment of costs as condition precedent, 7, 357
- Power of court to impose conditions, 7, 357
- Procedure, 7, 358
- When application must be made, 7, 358
- When granted, 7, 357

Not guilty, 7, 340

Notice to appear, 7, 338

Notice to quit:

- Distinction between notice to quit and demand for possession, 7, 323

Vendor and purchaser, 7, 321

Occupation, see infra, Who may be sued.

Oil, 7, 273

Ouster, 7, 336

Averment of ouster, 7, 336

Date need only be subsequent to plaintiff's title, 7, 337

Joint tenants and tenants in common:

Coparceners, 7, 318

Substantial averment of ouster sufficient, 7, 336

Parceners:

Ejectment for ouster, 7, 318

Ouster a question for jury, 7, 319

Ouster by force, 7, 319

Possession of one possession of all, 7, 317

Proof of ouster, 7, 318

Parties (see TRUSTS AND TRUSTEES; and see *infra*, Joinder of parties; Who can maintain the action; Who may be let in to defend; Who may be sued):

Names of parties, 7, 328

Partnership, 7, 279

Action by single partner, 7, 279

In general, 7, 279

Surviving partner, 7, 279

Party walls, 7, 277

Personal representatives, see infra,

Executors and administrators.

Pleas, 7, 340

General issue, 7, 340

Comprehensive, 7, 341

Coverture of plaintiff, 7, 340

Death of plaintiff, 7, 340

Default by defendant, 7, 341

Defense for part only, 7, 342

Equitable defense, 7, 341

In general, 7, 340

Not guilty, 7, 340

Scope and application, 7, 340

EJECTMENT, *cont'd.*Pleas, *cont'd.*General issue, *cont'd.*

Special pleas unnecessary, 7, 241

Statutes, 7, 340

Title, 7, 340

Special answers, 7, 342

Adverse possession, 7, 343

Averment of title in defendant, 7, 342

Disclaimer, 7, 343

In general, 7, 342

Limitation of actions, 7, 373

Puis darrein continuance, 7, 344Possession (see *infra*, Possession, writ of; Who may be sued):

Right of possession, 7, 335

Possession, writ of (see POSSESSION, WRIT OF), 7, 350

Alias writ, 7, 352

Dispossession must be immediately or soon after delivery of possession, 7, 352

Duty and liability of plaintiff, 7, 353

Duty and liability of sheriff, 7, 354

Execution for damages and costs, 7, 350

In general, 7, 350

Method of execution, 7, 353

Name and form, 7, 251

Peaceable entry without writ, 7, 251

Plaintiff must point out and locate property, 7, 353

When to issue and when to be executed, 7, 351

Writ returned unexecuted, 7, 352

Prayer for judgment, 7, 338

Privilege, 7, 275

Privity, 7, 309

Procedure in defense, 7, 339

Public officers:

Who may be sued, 7, 303

Puis darrein continuance, 7, 344

Receivers, 7, 295, 306; 17, 686

Redemption, 17, 945

Relictions, 7, 268

Remaindermen:

Who may be sued, 7, 307

Remainders:

Ejectment by remaindermen, 7, 295

Rent charge.

Grantee or holder of rent charge, 7, 285

Restitution:

Writ of restitution, 7, 354

Reversioners, 7, 295

Assignees of reversion, 7, 297

EJECTMENT, *cont'd.*Reversioners, *cont'd.*Breach of condition subsequent
in deed, 7, 296

Ejectment by reversioners, 7, 295

Entry or demand, 7, 296

Rights, 7, 275

Roads, 7, 276

Roofs, 7, 274

Security for costs, 19, 358

Seizin:

Allegation of seizin, 7, 333

Service of process:

Service of declaration, 7, 339

Special answers, see *infra*, Pleas.*Special verdicts*, see *infra*, Verdict.

Splitting causes of action, 1, 162

State, 7, 330

Streets, 7, 270, 276

Substitution of parties, 20, 1040

Survival of actions, 21, 335

Tenants, see *LANDLORD AND TENANT*.Title and ownership of property, 7,
267Allegation of seizin or title, 7,
333Estoppel to deny title to prop-
erty, 7, 324

Pleas, 7, 340, 342

Towns and townships, 7, 300

Trespass:

Joinder, 21, 802

Trover and conversion, 21, 1014

Trusts and trustees, 22, 138

By *cestui que trust*, 22, 139

By trustee, 22, 138

Parties, 22, 184

After trust is partly satisfied
or executed, 22, 186Beneficiary cannot maintain
ejectment, 22, 184

In general, 22, 184

Instances where presump-
tion of legal title cannot
be presumed, 22, 188Joinder of trustee and *cestui
que trust*, 22, 187

Satisfied trusts, 22, 188

Surrender of legal estate
presumed, 22, 187

Trustee proper party, 22, 185

When trustees do and when
they do not take the legal
estate, 22, 187Trustees and *cestui que trust*, 7,
299

United States:

Who may be sued, 7, 303

Vendor and purchaser, 7, 319

Action by vendee, 7, 324

Action by vendor, 7, 319

Agreement operating as clause
of re-entry, 7, 322**EJECTMENT, *cont'd.***Vendor and purchaser, *cont'd.*Distinction between notice to
quit and demand for posses-
sion, 7, 323

Estoppel to deny title, 7, 324

In general, 7, 319

Notice to quit, 7, 321

Relation of vendor and vendee,
7, 321

Vendee not in default, 7, 323

Vendor's remedies, 22, 662

Venue, 7, 330: 22, 777, 795

Verdict, 7, 344

General for the entire premises,
7, 345

Joint answer, 7, 345

May be general, 7, 344

Not sustained by evidence, 7, 345

Partial verdict, 7, 346

Property in question, 7, 345

Should specify for different par-
ties, 7, 345

Special verdicts, 7, 346

Description should identify
land awarded, 7, 347Equivocal and conditional
verdicts, 7, 349

In general, 7, 346

Insufficient verdicts, 7, 347

Limited to the land sued
for, 7, 346Power to annex condition, 7,
349

Reasonable certainty, 7, 347

Specification of estate, 7, 348

Sufficiently certain verdicts,
7, 347

Trial by the court, 7, 348

Verdict for estate not de-
clared for, 7, 348

Specifying land recovered, 7, 344

Water and watercourses, 7, 272

Wharves and wharfage, 7, 275

Who can maintain the action 7, 277

Aliens, 7, 277

Assignees of bankrupt or insolv-
ent debtors, 7, 278

Copartners, 7, 279

Corporations, see *infra*, Corpora-
tions.

Devisees, 7, 282

Dower, see *infra*, Dower.

Felons, 7, 278

Grantee or holder of rent charge,
7, 285

Guardians, 7, 286

Heirs, see *infra*, Heirs.*Husband and wife*, see *infra*,
Husband and wife.

Indians, 7, 278

Infants, 7, 290

In general, 7, 277

EJECTMENT, *cont'd.*Who can maintain the action, *cont'd.*

Legatees, 7, 282

Lunatics, 7, 291

Miscellaneous, 7, 300

Owners of land improperly taken under condemnation proceedings, 7, 291

Personal representatives, see infra, Executors and administrators.

Purchasers at execution sales, 7, 294

Receivers, 7, 295

Remaindermen, 7, 295

Reversioners, see infra, Reversioners.

Tenants by curtesy, 7, 299

Tenants for years, life, tail, or fee, 7, 298

Trustees and *cestui que trust*, 7, 299

Under award of arbitrators, 7, 279

Widows, 7, 299

Who cannot maintain the action, 7, 301

Execution debtor, 7, 301

Persons in possession, 7, 301

Tenant ejected, 7, 301

Who may be let in to defend, 7, 707

After judgment against tenant, 7, 311

General principles, 7, 309

Good faith, 7, 310

Historically, 7, 307

Husband and wife, 7, 311

Improper admission of defendant, 7, 310

Infants, 7, 311

Landlord, 7, 307

Landlord alone, 7, 311

Landlord defending in tenant's name, 7, 311

Meaning of the term landlord, 7, 308

Mortgagee and mortgagor, 7, 312

Privity, 7, 309

Reception of rents, 7, 309

Technical relation of landlord and tenant, 7, 309

Tenants in common, joint tenants, and coparceners, 7, 312

Title subsequently acquired, 7, 309

What must be shown to court, 7, 310

Who may be sued (*see infra*, Who may be let in to defend), 7, 301

In general, 7, 301

Where premises are actually occupied, 7, 301

Claimants under recorded tax title, 7, 302

Employees, 7, 303

EJECTMENT, *cont'd.*Who may be sued, *cont'd.*Where premises are actually occupied, *cont'd.*

General rule, 7, 301

Landlord and tenant, 7, 304

Personal occupancy unnecessary, 7, 302

Person in possession, 7, 304

Public officers, 7, 303

Servants, 7, 303

United States officers, 7, 303

Where premises are not actually occupied, 7, 305

Administrators, 7, 305

Corporations, 7, 305

Husband and wife, 7, 305

Infants, 7, 306

Miscellaneous, 7, 307

Receivers, 7, 306

Remaindermen, 7, 307

Widows, 7, 299

Writ of restitution, 7, 354

ELECTION OF REMEDIES, 7, 360

Alternative remedies, 7, 361

Conversion, 7, 370

Amendments, 7, 368

Another suit pending, 1, 751

Equity, 1, 752

Inconsistent defense, 1, 860

Assignment for benefit of creditors, 7, 364

Assumpsit:

Waiver of tort, 2, 1022

Capacity to elect, 7, 366

Case made on appeal, 3, 881

Certiorari:

Contested election cases, 4, 107

Chattel mortgages:

Attachment, 4, 517

Independent and concurrent remedies, 4, 516

Waiver of tort, 4, 514

Classes of action subject to election, 7, 361

Codes, 7, 362

Conspiracy:

To prevent from voting, 4, 733

Contempt, 4, 804

Conversion, 7, 368

Alternative remedy, 7, 370

Assumpsit, 7, 371

Cumulative remedy, 7, 373

English rule, 7, 369

Exclusive remedy, 7, 372

Original remedies, 7, 368

Replevin, 7, 368

Statutory remedy, 7, 372

Trespass, 7, 368

Trover, 7, 368

Creditors' bill:

Attachment and garnishment, 5, 431

ELECTION OF REMEDIES, *cont'd.*

- Cumulative remedy, 7, 373
- Definition, 7, 361
- Detinue, 6, 649
- Embezzlement:
 - Joinder between counts, 7, 450
- Eminent domain:
 - Landowner's rights, 7, 691
 - In general, 7, 691
 - When statutory remedy exclusive, 7, 692
 - When statutory remedy not exclusive, 7, 694
- Equity:
 - Election between law and equity, 7, 374
- Error, and not appeal, 7, 854
 - Effect of waiver, 7, 855
 - Error and not appeal, 7, 854
 - Prosecuting remedy simultaneously, 7, 854
 - Where appeal has been taken, 7, 854
- Escape, 7, 927
 - After surrender, 7, 928
 - Decision of election, 7, 928
 - Effect on bond for jail limits, 7, 928
 - Effect upon liability as bail, 7, 928
 - In general, 7, 927
 - Sheriff's return, 7, 928
- Exclusive remedies, 7, 361
 - Conversion, 7, 372
- False representations and deceit, 8, 894
 - Effect, 8, 894
 - Necessity, 8, 894
 - Offer to restore, 8, 895
- Finality of election, 7, 364
 - Exceptions, 7, 365
 - General rule, 7, 364
 - Ignorance of material facts, 7, 366
 - Mistaken remedy, 7, 366
 - Premature action, 7, 365
 - Want of jurisdiction, 7, 365
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Fraud:
 - Sale induced by fraud, 7, 363
- Guaranty:
 - Action by surety against principal, 16, 953
- Ignorance of material facts, 7, 366
- Inconsistent remedies, 7, 362
 - Application of test of inconsistency, 7, 363
 - In general, 7, 362
 - Sale induced by fraud, 7, 363
- Infants:
 - Election of infant, 10, 590

ELECTION OF REMEDIES, *cont'd.*

- Intoxicating liquors:
 - Election as to counts or offenses, 11, 575
- Judgments, 11, 1089
 - Action and execution concurrent and cumulative, 11, 1089
 - Action lies though execution might issue, 11, 1089
 - Action not necessary, 11, 1091
 - Actions on judgments not favored, 11, 1091
 - Execution a cumulative remedy, 11, 1090
 - Necessity of action caused by plaintiff's default, 11, 1093
 - When necessity of a separate action exists, 11, 1092
- Jurisdiction:
 - Want of jurisdiction, 7, 365
- Law:
 - Election between law and equity, 7, 374
- Mistake:
 - Ignorance of material facts, 7, 366
 - Mistaken remedy, 7, 366
- Nuisances*, see NUISANCES.
- Official bonds, 15, 162
- Opening, amending, and vacating judgments, 15, 262
- Premature action, 7, 365
- Public officers*, see PUBLIC OFFICERS.
- Replevin*, see *infra*, Conversion.
- Sales*, see SALES.
- Set-off, recoupment, and counterclaim*, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.
- Simultaneous action*, see SIMULTANEOUS ACTION.
- Specific performance, 20, 398
 - In general, 20, 398
 - Judgment at law, 20, 399
 - Prosecuting claims at law, 20, 398, 399
- Statutory remedies:
 - Conversion, 7, 372
- Stock and stockholders (see STOCK AND STOCKHOLDERS):
 - Enforcement of subscriptions or calls, 20, 680
- Subject to which the doctrine has been applied, 7, 368
 - Conversion, 7, 368
 - In general, 7, 368
- Taxation, 21, 434
- Trespass*, see *infra*, Conversion.
- Trial of the right of property*, see RIGHT OF PROPERTY, TRIAL OF.
- Trover and conversion (see *infra*, Conversion; and see TROVER AND CONVERSION):

ELECTION OF REMEDIES, *cont'd.*Trove and conversion, *cont'd.*Action for breach of contract, 21,
1002Breach of express contract,
21, 1024Conversion of money, 21,
1024Conversion of note, 21, 1025
In general, 21, 1022Where property has not been
converted into money, 21,
1023

Confusion of goods, 21, 1026

Detinue, 21, 1025

Effect of exercise of election, 21,
1030Remedies concurrent with trover,
21, 1022

Replevin, 21, 1025

Several actions against several
defendants, 21, 1030

Statutory remedies, 21, 1029

Suit in equity, 21, 1029

Trespass *de bonis asportatis*, 21,
1027

Trespass on the case, 21, 1027

Trespass *quare clausum fregit*,
21, 1028Trespass *vi et armis*, 21, 1027

Trusts and trustees:

Following trust funds or prop-
erty, 22, 199

Usury, 22, 482

Election to plead or bring suit,
22, 421Set-off, recoupment, and counter-
claim, 22, 501

Venditioni exponas, 22, 644

Vendor and purchaser:

Concurrent remedies of vendor,
22, 664

Purchaser's remedies, 22, 666

What acts determine election, 7, 367

Commencement of action, 7, 368

In general, 7, 367

Judicial exercise of power to
amend, 7, 368

Mere words not sufficient, 7, 367

Property acquired or a benefit
received, 7, 368

Words equivalent to acts, 7, 367

When the elective principle applies,
7, 362**ELECTIONS, 7, 376**Actions for penalties and damages,
7, 396

Allegations, 7, 396

Corrupt motives, 7, 397

Effect of refusal, 7, 397

Form of action, 7, 396

Malice, 7, 397

Qualified voter, 7, 396

ELECTIONS, *cont'd.*Actions for penalties and damages,
cont'd.

Remedy, 7, 396

Who may maintain, 7, 396

Allegations, see infra, Petition, com-
plaint, or notice.

Amendments, 7, 389

Amending answer, 7, 390

At what time, 7, 389

In general, 7, 389

Introducing new matter, 7, 390

When allowed, 7, 389

Answer, see infra, Plea or answer.**Appeals, 7, 394**

Reversal, 7, 396

Review, 7, 395

Right to appeal, 7, 394

Betting on election, 7, 404

Amount of bet, 7, 404

In general, 7, 404

Joinder, 7, 405

Person with whom bet is made,
7, 405

Time of making bet, 7, 404

Bribery, 7, 402

Complaint, see infra, Petition, com-
plaint, or notice.*Criminal law, see infra*, Offenses
against election laws.**Damages:**

Actions for damages, 7, 396

Declaration and complaint (*see infra*,
Petition, complaint, or notice), 7,
378Definiteness and certainty in plead-
ing, 7, 382

Departure, 7, 388

Discontinuance, 7, 393

Exclusiveness of statutory remedy,
7, 377**Fraud:**

Frauds of election officers, 7, 406

Fraudulent registration, 7, 403

Petition, complaint, or notice, 7,
382**Grounds of contest:**Petition, complaint, or notice, 7,
382*Illegality, see infra*, Offenses against
election laws; Petition, complaint,
or notice.**Illegal voting, 7, 398**

Authority for election, 7, 399

Authority of officers, 7, 400

Averment of place, 7, 401

Averment of time, 7, 401

Description of intent, 7, 399

Designation of offense, 7, 398

Names of candidates, 7, 400

Purpose of election, 7, 400

Refusing legal and accepting
illegal votes, 7, 401

ELECTIONS, *cont'd.*Illegal voting, *cont'd.*

Voting in name of another, 7, 399

Voting more than once, 7, 399

Indictment, see *infra*, Offenses
against election laws.*Intoxicating liquors*, see INTOXICATING
LIQUORS.

Introductory statement, 7, 377

Joinder of counts and causes, 7, 403

Betting on election, 7, 405

Joinder of parties, 7, 380

Offenses against election laws, 7,
408

Jurisdiction, 7, 378

Jury and jury trials, 7, 393

Mandamus:Relator's pleading in proceed-
ings relating to elections,
13, 695

Examples, 13, 695, 696

Relator's qualifications, 13,
695

Right to office, 13, 696

Return or answer, 13, 738

What is a sufficient private in-
terest, 13, 639**Mistake:**Petition, complaint, or notice, 7,
382**New trial, 7, 393***Notice*, see *infra*, Petition, complaint,
or notice.**Oath:**Petition, complaint, or notice, 7,
386**Offenses against election laws, 7, 397**

Accepting illegal votes, 7, 401

Authority for election, 7, 399

Authority of officers, 7, 400

Averment of place, 7, 401

Averment of time, 7, 401

Betting on election, 7, 404

Description of intent, 7, 399

Designation of offense, 7, 398

Frauds of election officers, 7, 406

Fraudulent registration, 7, 403

Giving or accepting bribes, 7,
402

Illegal voting, 7, 398

Intent, 7, 399

Interfering with election officers,
7, 408

Interfering with voters, 7, 402

Joinder of counts and causes, 7,
403

Joinder of defendants, 7, 408

Names of candidates, 7, 400

Neglect or refusal to perform
official duty, 7, 405

Purpose of election, 7, 400, 401

Refusing legal votes, 7, 401

Right to vote, 7, 401

ELECTIONS, *cont'd.***Offenses against election laws, *cont'd.***

Sufficient description, 7, 400

Voting in name of another, 7,
399

Voting more than once, 7, 399

Want of proper qualification, 7,
398What indictment must show, 7,
398**Parties, 7, 379**

Defendants, 7, 380

Joinder, 7, 380

Plaintiffs, 7, 379

Penalties:

Actions for penalties, 7, 396

Petition, complaint, or notice (see
infra, Time of filing notice,
petition, or complaint), 7, 378,
380Acceptance of legal or rejection
of illegal votes, 7, 383

Allegations, 7, 380

Amendments, 7, 389

Certainty, 7, 382

Contestant a candidate, 7, 381

Disqualification to hold office, 7,
385

Effect on election, 7, 385

Facts constituting illegality, 7,
385

Fraud, 7, 382

Grounds of contest, 7, 382

How defects in reached, 7, 387

In general, 7, 380

Mistake, 7, 382

Names of voters, 7, 383

Number of voters, 7, 384

Oath, 7, 386

Right of contestant to maintain
contest, 7, 381

Service, 7, 392

Signature, 7, 386

Sufficiency of allegations, 7,
381

Time of election, 7, 380

Verification, 7, 386

Plea or answer, 7, 388

Amendments, 7, 390

Departure, 7, 388

Examples, 7, 388

In general, 7, 388

Remedy for insufficient answer,
7, 388**Quo warranto, see QUO WARRANTO.****Rehearing, 7, 393****Remedy, 7, 378****Reply, 7, 388****Review, 7, 395****Service of process, 7, 392****Signature:**Petition, complaint, or notice, 7,
386

ELECTIONS, *cont'd.*

Statement (see *infra*, Petition, complaint, or notice), 7, 378

Statutory contests, 7, 377

Exclusiveness of statutory remedy, 7, 377

Stock and stockholders, see STOCK AND STOCKHOLDERS.

Sunday:

Time of filing notice, petition, or complaint, 7, 392

Time, computation of, 7, 391

Time of election:

Petition, complaint, or notice, 7, 380

Time of filing notice, petition, or complaint, 7, 390

Computation of time, 7, 391

In general, 7, 390

Time of day, 7, 392

When last day is Sunday, 7, 392

Time of trial, 7, 393

Trial, 7, 393

New trial, 7, 393

Rehearing, 7, 393

Right to jury trial, 7, 393

Time of trial, 7, 393

Verification:

Petition, complaint, or notice, 7, 386

ELEGIT, 7, 409

Definition, 7, 409

Extent, see EXTENT.

Practically obsolete, 7, 409

Scire facias:

To levy residue of debt after eviction from possession under *elegit*, 19, 291

ELEVATED RAILROADS, see STREET RAILWAYS.**EMBEZZLEMENT, 7, 410**

Agent:

Partnership, 7, 419

Assumpsit, 2, 1023

Bailment:

Character of the bailment, 7, 420

Banknotes:

Description of property, 7, 429

Banks and banking, 3, 257

Jurisdiction, 3, 261

Bonds:

Description of property, 7, 429

Carriers, 7, 422

Coin:

Description of property, 7, 426

Consent:

Want of owner's consent, 7, 440

Conversion, see *infra*, Indictment or information.

Corporations:

Ownership, 7, 436

County, see *infra*, Venue.

Currency, 7, 429

EMBEZZLEMENT, *cont'd.*

Demand:

Demand and refusal to pay, 7, 440

Description of property (see *infra*, Indictment or information):

Variance, 7, 453

Duplicity, 7, 446

Election of remedies:

Joinder between counts, 7, 450

False pretenses:

Joinder, 7, 450

Feloniously, 7, 442

Fiduciary relationship, 7, 418

Agent of partner, 7, 419

Carriers, 7, 422

Character of the bailment, 7, 420

Defendant's receipt of property in fiduciary character, 7, 422

Description of clerk as agent, 7, 419

Facts showing, 7, 418

Nature and scope of employment, 7, 419

Particulars concerning defendant's fiduciary capacity, 7, 418

Porters, 7, 422

Proof of defendant's fiduciary capacity, 7, 452

Public officers, 7, 420

Receiving embezzled property, 7, 422

Should be distinctly charged, 7, 418

Indictment or information, 7, 414

Agent of partnership, 7, 419

Allegations as to value of property, 7, 432

Necessity to charge value, 7, 432

Sufficiency of averments, 7, 433

Value of separate items, 7, 432

Where money is described, 7, 432

Averment contained in indictments for larceny, 7, 417

Averment of statutory constituents, 7, 415

Carriers, 7, 422

Character of bailment, 7, 420

Charging the offense in the language of the statute, 7, 416

Choice between indictment and information, 7, 414

Constitutionality of statute, 7, 418

Defendant's receipt of property embezzled, 7, 422

Description of property, 7, 424

Banknotes, 7, 429

Bills, 7, 429

EMBEZZLEMENT, *cont'd.*

- Indictment or information, *cont'd.*
- Description of property, *cont'd.*
 - Bonds, 7, 429
 - Coin, 7, 426
 - Embezzlement by public officers, 7, 430
 - Examples, 7, 425
 - Excuse for failure to give more particular description, 7, 425
 - Identical money mentioned in the indictment, 7, 428
 - Inability of grand jury to particularize, 7, 426
 - In general, 7, 424
 - Lawful money of the United States, 7, 428
 - Money, 7, 426
 - Officers of private corporations, 7, 430
 - Particularity required in indictments for larceny, 7, 425
 - Public money, 7, 431
- Duplicity and misjoinder, 7, 446
- Election between counts, 7, 450
- Embezzlement and false pretenses, 7, 450
- Embezzlement and larceny, 7, 449
- In general, 7, 446
- Successive acts constituting one offense, 7, 447
- When the copulative may be used, 7, 448
- Facts showing the fiduciary relation, 7, 418
- Fiduciary relation, 7, 418
- Method by which conversion was accomplished, 7, 438
- Acts inconsistent with trusts, 7, 438
- Appropriation to own use, 7, 439
- Demand and refusal to pay, 7, 440
- Embezzlement by mere agent or servant, 7, 439
- Failure to pay over money to defendant's successor, 7, 443
- Feloniously, 7, 442
- In general, 7, 438
- Intent, 7, 441
- Peculiar averments in indictments against public officers, 7, 442
- Receiving embezzled property, 7, 444
- Statutes dispensing with particulars, 7, 439

EMBEZZLEMENT, *cont'd.*

- Indictment or information, *cont'd.*
- Method by which conversion was accomplished, *cont'd.*
- Want of owner's consent, 7, 440
- Words used in describing embezzlement or conversion, 7, 438
- Nature and scope of employment, 7, 419
- Ownership, 7, 433
 - Continued ownership of property, 7, 436
 - Harmless misnomers, 7, 437
 - In general, 7, 433
 - Money belonging to particular fund, 7, 436
 - Municipal corporations, 7, 437
 - Necessity to allege, 7, 433
 - Ownership by corporation, 7, 436
 - Ownership of public money, 7, 436
 - Partial ownership, 7, 434
 - Partnership as owner, 7, 437
 - Qualified ownership, 7, 434
 - Sufficiency of averments, 7, 435
- Particulars concerning defendant's fiduciary capacity, 7, 418
- Porters, 7, 422
- Public officers, 7, 420
- Receiving embezzled property, 7, 422
- Requisite averments, 7, 415
- Surplusage, 7, 415
- Technical words, 7, 415
- Time of commission of offense, 7, 444
- In general, 7, 444
- Time as laid, 7, 445
- Time of receiving property, 7, 445
- Venue, 7, 445
 - Averments as to venue, 7, 445
 - Indictment for receiving embezzled property, 7, 445
 - Words of equivalent import to statutory words, 7, 416
- Information, see *infra*, Indictment or information.
- Instructions, 7, 456
 - Distinctions between embezzlement and larceny, 7, 457
 - In general, 7, 456
 - Intent, 7, 458
 - Reasonable doubt, 7, 459
- Intent, 7, 441
 - Charging indictment, 7, 441
 - Feloniously, 7, 442
 - Instruction to jury, 7, 458

EMBEZZLEMENT, *cont'd.*Intent, *cont'd.*

- Intent to deprive owner of property, 7, 442
- Necessary averments, 7, 441
- Introductory, 7, 411
- Joinder of counts and causes, 7, 446
 - Election between counts, 7, 450
- Embezzlement and false pretenses, 7, 450
- Embezzlement and larceny, 7, 449
- In general, 7, 446
- Larceny and embezzlement, 7, 456
- Successive acts constituting one offense, 7, 447
- When the copulative may be used, 7, 448

Jurisdiction, see *infra*, Venue.

Larceny, 12, 1010

- Averments contained in indictments for larceny, 7, 417
- Distinction between embezzlement and larceny, 7, 457
- Indictment for embezzlement and conviction for larceny, and *vice versa*, 7, 455
- Instructions on distinction between embezzlement and larceny, 7, 457
- Joinder, 7, 449
- Particularity required in indictments for larceny, 7, 425

Misjoinder, 7, 446

Misnomers, 7, 436, 437

Money:

- Description of money, 7, 453
- Description of property, 7, 426
- Value, 7, 432
- Variance, 7, 453

Municipal corporations, 7, 437

Officers of private corporation:

- Description of money or funds, 7, 430

Ownership, see *infra*, Indictment or information.

Variance, 7, 454

Partnership:

- Agent, 7, 419
- Partnership as owner, 7, 437

Pleadings and proof, 7, 451

Public money, 7, 431

Ownership, 7, 436

Public officers, see PUBLIC OFFICERS.

Qualified ownership, 7, 434

Reasonable doubt, 7, 459

Receipt of property, 7, 422

- Receipt of property from other than master, 7, 424

Receiving stolen goods, see RECEIVING STOLEN GOODS.

Sentence, 7, 459

EMBEZZLEMENT, *cont'd.*

Statutes:

- Charging the offense in the language of the statute, 7, 416
- Venue, 7, 413

Suretyship, see *infra*, Fiduciary relationship.

Surplusage, 7, 415

Technical words, 7, 415

Time, 7, 452

- Proof of, 7, 452
- Proving time as laid, 7, 445
- Time of commission of offense, 7, 444
- Time of receiving property, 7, 445

Value of property, 7, 432

Variance:

- Description of money, 7, 453
- Embezzlement and larceny, 7, 455
- Fiduciary capacity, 7, 452
- In general, 7, 451
- Property embezzled, 7, 453
- Ownership of property, 7, 454
- Statutes, 7, 456
- Time, 7, 452

Venue, 7, 412

- Averments as to venue, 7, 445
- County in which defendant's duties were to be performed, 7, 413

County in which misappropriation took place, 7, 412

County in which property was intrusted and in which defendant failed to account, 7, 412

In general, 7, 412

Statutory provisions, 7, 413

Verdict, 7, 459

EMBRACERY (see BRIBERY; JURIES):

Jury, 12, 661

Allegation as to attempt, 12, 662

Indictment, 12, 661

In general, 12, 661

Summoning and impaneling of juror, 12, 663

EMINENT DOMAIN, 7, 460

Abandonment, 7, 673

Abandonment as to part of the land, 7, 674

Abandonment leaves parties *in statu quo*, 7, 684

After confirmation, 7, 676

At what stage of proceedings the right ceases, 7, 674

Compensation too large, 7, 673

Constructing road over other lands, 7, 682

Costs, 7, 690

Distinguished from nonsuit, 7, 684

Effect of abandonment, 7, 684

EMINENT DOMAIN, *cont'd.*Abandonment, *cont'd.*

- Examples of what amounts to abandonment, 7, 682, 684
- Experimental proceedings, 7, 674
- Failure to pay award and take possession, 7, 681
- Landowner's right to damages on abandonment, 7, 686
 - After entry upon land under bond, 7, 688
 - Reinstitution of the proceedings, 7, 689
 - Statutory provisions, 7, 689
 - Unreasonable delay, 7, 688
 - What damages recoverable include, 7, 689
 - What may be considered in reduction of damages, 7, 690
 - When company liable in damages, 7, 686
- Prior to confirmation of report or award, 7, 675
- Recondemn, 7, 685
- Recover back the money paid, 7, 685
- Restitution to landholder, 7, 690
- Retaining possession, 7, 684
- Right to abandon or discontinue, 7, 673
- Right to withdraw deposit, 7, 685
- Selection of another route, 7, 685
- Statutory provisions, 7, 679
- Subsequent rights of company, 7, 684
- Trespasser *ab initio*, 7, 685
- What amounts to an abandonment or discontinuance, 7, 680
- Where the rights become vested and absolute, 7, 674
- Actions (see *infra*, Remedies of the landowner):
 - Action on awards and judgments, 7, 625
- Additional allowances of costs, 1, 225; 7, 671
- Address:
 - Petition or complaint, 7, 514
- Adjournment, 7, 564
 - Notice of adjournment, 7, 492
- Affidavits:
 - Certiorari, 7, 664
- Affinity, see *infra*, Relationship.
- Affirmance, 7, 657
- Agency:
 - Notice, 7, 488
 - Station agent, 7, 490
- Agreement with owner, 7, 476
 - Alleging inability to agree with owner, 7, 529
 - Cured by amendment, 7, 530
 - Examples, 7, 529, 530

EMINENT DOMAIN, *cont'd.*Agreement with owner, *cont'd.*

- Alleging inability to agree with owner, *cont'd.*
 - In general, 7, 529
 - Necessity of the allegation, 7, 529
 - Reasons for nonagreement, 7, 531
 - Sufficiency, 7, 530
- In general, 7, 476
 - Necessity of attempt, 7, 476
 - Raising objection, 7, 476
 - Sufficiency of attempt, 7, 477
- Alternative awards, 7, 588, 603
- Amendments, 7, 540
 - Appeal, 7, 656
 - Bonds, 7, 644
 - Judgment, 7, 623
 - Power to allow, 7, 540
 - Report of commissioners, 7, 606
 - What allowable, 7, 541
- Answer, see *infra*, Plea or answer.
- Appeal bonds and undertakings, 7, 643
- Appeals, 2, 136; 7, 628
 - Affirmance, 7, 657
 - Amendments, 7, 656
 - Appeal to court of last resort, 7, 637
 - Bill of exceptions, 7, 641
 - Certiorari, 7, 662
 - Consolidation of appeals, 7, 656
 - Construction of statutes, 7, 629
 - Corporations, 7, 635
 - Costs on appeal, 7, 668
 - Apportionment of costs, 7, 669
 - Company's appeal, 7, 669
 - In general, 7, 668
 - Interest, 7, 669
 - Owner's appeal, 7, 669
 - Where owner fails to secure increased award, 7, 669
- Determination, 7, 646
- Discretionary matters, 7, 634
- Effect of appeal while pending, 7, 659
 - Effect as a waiver of irregularities below, 7, 661
 - Effect on petitioner's right to enter, 7, 660
 - In general, 7, 659
 - Payment of fees, 7, 660
 - Stay, 7, 659, 660
 - When it vacates judgment appealed from, 7, 660
- Entry, 7, 660
- Errors that are ground for reversal, 7, 649
- Errors that may be disregarded, 7, 650

EMINENT DOMAIN, *cont'd.***Appeals, *cont'd.***

- Errors waived or cured below, 7, 651
- Errors cured below, 7, 651
- Examples, 7, 651
- Waiver of errors, 7, 651

Estoppel, 7, 632

Evidence, 7, 652

Facts, 7, 652

Filing exceptions, 7, 641

Harmless errors, 7, 650

Hearing, 7, 646

Intendments, 7, 647

Interlocutory orders, 7, 634

Joinder of parties, 7, 640

Judgment, 7, 633

Jurisdiction on appeal, 7, 637

Jury on appeal after trial without jury, 7, 647

Mandamus, 7, 665

Mortgagor and mortgagee, 7, 636

Notice of appeal, 7, 642

Filing, 7, 642

Necessity, 7, 642

Serving, 7, 642

Sufficiency, 7, 642

Waiver of notice, 7, 642

Objections not properly taken below, 7, 652

Orders, 7, 633

Parties, 7, 640

Power of legislature to restrict or take away right, 7, 629

Presumption in favor of award of damages, 7, 648

Presumption of regularity, 7, 647

Prohibition, 7, 665

Records, 7, 645

Evidence, 7, 645

Examples, 7, 645, 646

What the record must show, 7, 645

Reversal, 7, 649, 657

In general, 7, 657

Rendering proper judgment on reversal, 7, 658

Restitution, 7, 658

Reversal in part, 7, 658

Reviewing the evidence or the facts, 7, 652

Review of amount awarded, 7, 653

Conflict of evidence, 7, 654

Inadequacy of damages, 7, 655

In general, 7, 653

Owner not benefited, 7, 654

Power of court, 7, 653

Reducing excessive damages, 7, 655

View, 7, 655

When the award will not be disturbed, 7, 653

EMINENT DOMAIN, *cont'd.***Appeals, *cont'd.***

Right of appeal, 7, 628

Security, 7, 643

Amendment, 7, 644

Approval, 7, 644

Filing, 7, 644

Necessity, 7, 643

Sufficiency, 7, 644

Statutes making decision of tribunal to assess damages final and conclusive, 7, 630

Statutes silent as to how appeal should be taken, 7, 639

Taking and perfecting an appeal, 7, 638

Time in which to appeal, 7, 639

Vendor and vendee, 7, 636

Waiver of notice, 7, 498

What errors are ground for reversal, 7, 649

Admission of improper evidence, 7, 649

Erroneous findings, 7, 650

Erroneous instruction, 7, 649

Erroneous verdict, 7, 650

Exclusion of proper evidence, 7, 649

In general, 7, 649

What is appealable, 7, 633

What questions are up for review, 7, 646

Who may appeal, 7, 635

Writ of error, 7, 665

Appearances, 7, 478, 704

Limited appearance, 7, 498

Special appearance, 7, 498

Waiver of notice, 7, 497

Application (see *infra*, Objections and defenses; Petition or complaint), 7, 472

Agreement with landowner, 7, 476

Courts to determine, 7, 474

Determining questions of necessity and propriety, 7, 473

Determining whether use is a public one, 7, 475

Effort to agree with landowner, 7, 476

In general, 7, 472

Legislature to determine, 7, 474

Notice of attempt to agree with landowner, 7, 476

Recording, 7, 473

Sufficiency of attempt to agree with owner, 7, 477

Time to apply, 7, 473

Who may institute it, 7, 472

Appraisers, 7, 560

Oath, 7, 568

Report of, 7, 615

Arbitration and award, 7, 562

Assessment by arbitrators, 7, 562

EMINENT DOMAIN, *cont'd.*

- Arbitration and award, *cont'd.*
 - Award of arbitrators, 7, 618
 - Oath, 7, 569
 - Qualifications of arbitrators, 7, 562
- Argument of counsel, 7, 591
- Assessment by appraisers or viewers (see *infra*, Juries), 7, 560
- Appointment, 7, 560
 - In general, 7, 560
 - Powers and duties, 7, 561
 - Qualifications, 7, 561
- Assessment by commissioners (see *infra*, Commissioners), 7, 555
 - Application for appointment, 7, 557
 - Disqualification of interest, 7, 559
 - Filling vacancies, 7, 557, 558
 - Freeholders, 7, 559
 - Mandamus to compel appointment, 7, 558
 - Order of appointment, 7, 558
 - Power to appoint, 7, 555
 - Prerequisites of appointment, 7, 555
 - Qualifications, 7, 559
 - Relationship, 7, 560
 - Residents, 7, 559
 - Stockholders, 7, 560
 - Time of application for appointment, 7, 557
 - What questions are to be considered, 7, 557
 - When commissioners should be appointed, 7, 555
- Assessment where appraisers or viewers report of, 7, 615
 - Assessing damages, 7, 616
 - Concurrence, 7, 615
 - Description, 7, 615
 - In general, 7, 615
 - Location, 7, 615
 - Reappraisal, 7, 617
 - Review, 7, 616
 - Setting aside, 7, 617
 - Signing, 7, 615
- Attorney's fees, 7, 672, 991
- Award (see *infra*, Enforcement of awards and judgments):
 - Appraisers, viewers, surveyors, etc., 7, 615
- Award of arbitrators, 7, 618
- Bill in equity:
 - Injunction, 7, 713
- Bill of exceptions, 7, 641
- Bonds:
 - Actions on awards and judgments, 7, 627
 - Appeal, 7, 643
- Burden of proof:
 - Title, 7, 577
- Cemeteries, 3, 910
- Index Pl. & Pr. — 21

EMINENT DOMAIN, *cont'd.*

- Certiorari, 7, 662
 - Affidavits, 7, 664
 - Assessment of damages, 4, 122
 - Depositions, 7, 664
 - Errors committed by the jury, 7, 662
 - Errors of commissioners, 7, 662
 - Hearing, 7, 664
 - Petition by owners of land taken, 4, 173
 - Return, 7, 663
 - What questions may be considered, 7, 664
 - When it lies, 7, 662
- Change of venue, 4, 387; 7, 563
- Charter, see *infra*, Statutes.
- Collateral attack on proceedings, 7, 718
 - Applications of the rule, 7, 719
 - Exceptions, 7, 719
 - General rule, 7, 718
- Commissioners (see *infra*, Appeals; Assessment by commissioners; Questions of law and fact; Report of commissioners):
 - Certiorari, 7, 662
 - Compensation, 7, 612
 - Conduct of trial, 7, 562
 - Entertaining commissioners, 7, 612
 - Oath, 7, 567
 - Necessity, 7, 567
 - Sufficiency, 7, 567
 - What the record must show, 7, 568
 - Questions to be passed upon by commissioners, 7, 570
 - Consent of owner, 7, 571
 - Corporate existence, 7, 571
 - Crossings, 7, 571
 - In general, 7, 570
 - Quantity, 7, 570
 - Right to condemn, 7, 571
 - Title, 7, 571
 - Right to swear witnesses and hear evidence, 7, 576
- Complaint, see *infra*, Petition or complaint.
- Conditional awards, 7, 588, 602, 603
- Conduct of trial, 7, 562
 - Functions and powers of officers presiding over jury, 7, 571
 - Submission of similar issue to same jury, 7, 569
- Confirmation (see *infra*, Report of commissioners):
 - Right to abandon, 7, 675, 676
- Consanguinity, see *infra*, Relationship.
- Consent of owner, 7, 571
- Consolidation of appeals, 7, 656

EMINENT DOMAIN, *cont'd.*

Constitutional law:

Jury trial, see *infra*, Juries.*Construction of statutes*, see *infra*, Statutes.

Continuances, 7, 564

Costs, 7, 666

Abandonment, 7, 690

Allowances in addition to costs, 7, 671

Appeal, 7, 668

Apportionment of costs, 7, 669

Company's appeal, 7, 669

In general, 7, 668

Interest, 7, 669

Owner's appeal, 7, 669

Where owner fails to secure increased award, 7, 669

Compelling allowances, 7, 670

Compelling payments, 7, 670

Counsel fees, 7, 672

Discretionary powers of court, 7, 667

Effect of tender or offer of judgment, 7, 668

Expenses, 7, 672

Fees, 7, 672

Juror's fee, 7, 672

Landowner's right to costs, 7, 666

Necessity of the statute, 7, 666

When the owner's default is opened, 7, 667

Witnesses' fees, 7, 672

Counsel fees, 7, 672, 691

Courts (see *infra*, Tribunal to assess damages):

Determining the necessity, 7, 474

Cross-petition, 7, 539

Damages (see *infra*, Assessment by commissioners; Tribunal to assess damages):

Appraisers, viewers, surveyors, etc., 7, 616

Assessment by arbitrators, 7, 562

Ejectment, 7, 705

Excessive damages, 7, 593

Excessive damages on appeal, 7, 655

Excessive damages, setting aside report, 7, 613

Finding of jury on question of damages, 7, 586

Alternative awards, 7, 588

Conditional awards, 7, 588

Effect of uncertainty, 7, 586

In general, 7, 586

Itemizing damages, 7, 587

Joint and several awards, 7, 588

Requisite certainty, 7, 586

Inadequate damages, 7, 594

EMINENT DOMAIN, *cont'd.*Damages, *cont'd.*

Inadequate damages on appeal, 7, 655

Inadequate damages, setting aside report, 7, 613

Injunction, 7, 714

Injunction for nonpayment of damages, 7, 708

Itemizing damages, 7, 587, 616

Joint and several awards, 7, 588

Landowner's right to damages on abandonment, 7, 686

After entry upon land under bond, 7, 688

Reinstitution proceedings, 7, 689

Statutory provisions, 7, 689

Unreasonable delay, 7, 688

What damages recoverable include, 7, 689

What may be considered in reduction of damages, 7, 690

When company liable in damages, 7, 686

Mere damages without taking property, 7, 477

Presumption in favor of award of damages, 7, 648

Report of commissioners, 7, 599

Effect of silence as to damages, 7, 599

Finding on question of damages, 7, 599

Itemizing the damages, 7, 600

Reviewing the amount awarded, 7, 653

Conflict of evidence, 7, 654

Inadequacy of damages, 7, 655

In general, 7, 653

Owner not benefited, 7, 654

Power of court, 7, 653

Reducing excessive damages, 7, 655

View, 7, 655

When the award will not be disturbed, 7, 653

Showing nature of the injury or damage, 7, 529

Statutes making provision to assess damages final and conclusive, 7, 630

Death:

Death of party, 7, 505

Debt:

Action on awards and judgments, 7, 627

Declaration, see *infra*, Petition or complaint.

EMINENT DOMAIN, *cont'd.*

Defenses, see *infra*, Objections and defenses.

Definiteness and certainty in pleadings:

Description of premises, 7, 520

Definitions, 7, 466

Demand of possession, 7, 705

Demurrer, 7, 539

Cross-petition, 7, 539

Depositions:

Certiorari, 7, 664

Description of property (see *infra*, Petition or complaint; Verdict):

Judgment, 7, 621

Notice, 7, 493

Report of commissioners, 7, 597

Report or award of appraisers, viewers, surveyors, etc., 7, 616

Discontinuances (see *infra*, Abandonment), 7, 659

Dismissal, 7, 659

Distress:

Enforcement of awards and judgments, 7, 625

Dower:

Parties, 7, 510

Easements, 7, 602

Reservation of easements to owner, 7, 602

Ejectment, 7, 701

Appearance, 7, 704

Assessment of damages, 7, 705

Demand of possession, 7, 705

Entry or possession under license from or contract with owner, 7, 704

In general, 7, 701

Notice to quit, 7, 705

Right to condemn notwithstanding ejectment suit, 7, 705

Staying execution until assessment and payment of damages, 7, 705

Waiver by owner of prepayment of damages, 7, 704

When it lies, 7, 701

When owner estopped to sue, 7, 703

Election of remedies:

Landowner's rights, 7, 691

In general, 7, 691

When statutory remedy exclusive, 7, 692

When statutory remedy not exclusive, 7, 694

Elevated railroads, see *STREET RAILWAYS*.

Enforcement of awards and judgments, 7, 624

Action, 7, 625

Action on bond, 7, 627

EMINENT DOMAIN, *cont'd.*

Enforcement of awards and judgments, *cont'd.*

Debt, 7, 627

Distress, 7, 625

Enforcement generally, 7, 264

Execution, 7, 624

Necessity of payment or its equivalent to passing of title, 7, 624

Pleadings, 7, 626

Precept, 7, 625

Right of action, 7, 625

Specific performance, 7, 628

Who liable to action, 7, 626

Entry:

Appeal, 7, 660

Errors, see *infra*, Appeals.

Error, writ of, 7, 665

Estoppel:

Appeals, 7, 632

Ejectment, 7, 703

Evidence (see *infra*, View):

Right to swear witnesses and hear evidence, 7, 576

Exceptions and objections (see *infra*, Objections and defenses), 8, 300

Objections not properly taken below, 7, 652

Execution:

Enforcement of awards and judgments, 7, 624

Executors and administrators:

Heirs and personal representatives, 7, 512

Notice, 7, 489

Ex parte communications, 7, 611

Fees, see *infra*, Costs.

Filing:

Petition or complaint, 7, 516

Report of commissioners, 7, 596

Findings, see *infra*, Verdict.

Former proceedings to condemn, 7, 537

Fraud, 7, 610

Injunction, 7, 708

Freeholders:

Commissioners, 7, 559

Juries, 7, 551

General nature of condemnation proceedings, 7, 467

Exclusiveness of charter remedy, 7, 471

Exclusiveness of statutory remedy, 7, 470

General rule as to statute authorization, 7, 467

Must be authorized by statute, 7, 467

Power must be given in express terms, 7, 468

Special proceedings, 7, 467

EMINENT DOMAIN, *cont'd.*

General nature of condemnation proceedings, *cont'd.*

Strict compliance with statute essential, 7, 468

Substantial compliance with statute, 7, 470

Good cause, 7, 609

Grantee, 7, 505

Grantor, 7, 505

Harmless errors, 7, 650

Hearing, 7, 565

Heirs, 7, 512

Householders:

Juries, 7, 551

Husband and wife:

Parties, 7, 510

Impaneling jury, 7, 549

Incorporation:

Controverting legal incorporation, 7, 533

Infants:

Notice, 7, 489

Parties, 7, 512

Waiver of notice, 7, 498

Injunction, 7, 706

Acquiescence of owner, 7, 710

Adequate remedy at law, 7, 709

Appropriation without condemnation, 7, 707

Bill, 7, 713

Complaint, 7, 713

Damages, 7, 714

Decree, 7, 714

Dissolving, 7, 714

Fraud, 7, 708

Future damages, 7, 715

In general, 7, 706

Irregularity, 7, 708

Issue of *quantum damnificatus*, 7, 715

Jurisdiction, 7, 712

Laches of owner, 7, 711

Landowner's rights, 7, 706

Matters of defense, 7, 714

Nonpayment of damages, 7, 708

No sufficient injury or damage shown, 7, 710

Owner's consent, 7, 710

Petition, 7, 713

Pleading, 7, 712

Sufficiency of bill, 7, 713

United States courts, 7, 712

Unlawful acts during condemnation proceedings, 7, 708

Vacation, 7, 714

When not proper remedy, 7, 709

When proper remedy, 7, 706

Writ unavailing, 7, 709

Interest:

Jurors, 7, 552

Interlocutory orders:

Appeals, 7, 634

EMINENT DOMAIN, *cont'd.*

Intervention, 7, 504

Joinder of parties:

Appeals, 7, 640

Defendant, 7, 503

Parties plaintiff, 7, 501

Joint tenants, 7, 511

Judgment (see *infra*, Appeals:

Enforcement of awards and judgments), 7, 619

Action by landowner, 7, 700

Amendment, 7, 623

Certainty as to description of property, 7, 621

Conclusiveness, 7, 622

Duty of court to enter, 7, 619

Effect to pass title, 7, 623

Finality, 7, 622

Form, 7, 619

Ownership of property, 7, 621

Relief in equity, 7, 623

Requisites, 7, 619

Special judgment, 7, 620

Trespass, 7, 718

What provisions are proper, 7, 620

Juries (see *infra*, Verdict):

Certiorari, 7, 662

Fees, 7, 672

Functions and powers of officers presiding over jury, 7, 571

Misconduct of jurors, 7, 592

Oath of juror, see *infra*, Jurors.

Questions to be considered by jury, see *infra*, Questions of law and fact.

Right to swear witnesses and hear evidence, 7, 577

Right to trial by jury, 7, 545

Affinity, 7, 553

Appearance as waiver, 7, 548

Application for jury, 7, 548

Bias, 7, 552

Challenges, 7, 553

Citizens, 7, 552

Common-law jury, 7, 546

Consanguinity, 7, 553

Disqualification of interest or bias, 7, 552

Drawing jury, 7, 551

Freeholders, 7, 551

Grounds of challenge, 7, 553

Householder, 7, 551

How application for jury determined, 7, 549

Impaneling jury, 7, 551

In general, 7, 545

Interest, 7, 552

Jurors in former proceedings, 7, 553

Jury of county, 7, 546

Jury on appeal after trial without jury, 7, 547

EMINENT DOMAIN, *cont'd.***Juries, *cont'd.*****Right to trial by jury, *cont'd.***

Number of jury, 7, 551
 Number to be summoned,
 7, 550

Peremptory challenges, 7,
 554

Qualifications, 7, 551

Stockholders, 7, 553

Summoning jury, 7, 549

Taxpayers, 7, 552

Territory within which to
 obtain jurors, 7, 550

Time to apply for jury, 7,
 549

Waiver of challenges, 7, 554

Waiver of jury, 7, 548

Warrant for jury, 7, 550

Submission of similar issue to
 same jury, 7, 569

Jurisdiction, 7, 477

Appeals, 7, 637

Appearance, 7, 478

Averments of jurisdictional facts
 in petition or complaint, 7,
 517

Determining the necessity, 7,
 474

In general, 7, 477

Injunction, 7, 712

Judge out of court, 7, 478

Jurisdiction of particular courts,
 7, 479

Mere damage where no property
 is taken, 7, 477

Notice, 7, 485

Objections to jurisdiction, 7, 478

State courts, 7, 479

Sufficiency of petition to confer
 jurisdiction, 7, 531

Term time or vacation, 7, 477

United States courts, 7, 479

Venue, 7, 478

Jurors:

Oath, 7, 566

Form, 7, 566

Necessity, 7, 566

Sufficiency, 7, 566

What the record must show,
 7, 567

Laches:

Injunction, 7, 712

Landlord and tenant:

Notice, 7, 489

Parties, 7, 507

Lessee, 7, 507**Lessor, 7, 507****License:**

Joinder of parties holding li-

cense, 7, 503

Licensee as party, 7, 507

Mailing notice, 7, 494**EMINENT DOMAIN, *cont'd.***

Mandamus, 7, 665

Appointment of commissioners,
 7, 558

Landowner's rights, 7, 715

Maps, plans, profiles, and surveys,
 7, 524, 542

Effect, 7, 544

Examples, 7, 542, 544

Necessity of filing, 7, 542

Necessity of production, 7, 542

Sufficiency, 7, 543

Married women, 7, 510

Mills and milldams, see MILLS AND
MILLDAMS.

Mistake, 7, 592, 610

Mortgages:

Appeals, 7, 636

Notice, 7, 489

Parties, 7, 508

Examples, 7, 508, 509

Mortgagee releases his right,
 7, 509

Mortgagor, 7, 509

Mortgagor and mortgagee,
 7, 508

Whether the mortgagee is a
 necessary party, 7, 508

Near, 7, 523

Necessity:

Agreement with landowners, 7,
 476

Alleging necessity of taking, 7,
 528

Denying necessity, 7, 535

Determining questions of neces-
 sity and propriety, 7, 473

Courts to determine, 7, 474

In general, 7, 473

Legislature to determine, 7,
 474

Meaning of necessary, 7, 473

Preliminary question, 7, 473

Questions for the jury, 7,
 575

Report of commissioners, 7,
 599

Verdict, 7, 585

Necessity of notice, 7, 481

Nonresidents, 7, 503

Nonsuit, 7, 565, 684

Notice, 7, 481

Adjournment, 7, 492

Agents, 7, 488

Appearances, 7, 497

Describing the location or im-
 provement, 7, 492

Describing the property, 7, 493

Doctrine that no notice is re-
 quired, 7, 483

Doctrine that owner must have
 notice, 7, 481

Effect of actual notice, 7, 499

EMINENT DOMAIN, *cont'd.***Notice, *cont'd.***

- Executors and administrators, 7, 498
- Facts constituting due notice set out in record, 7, 487
- Formal requisites, 7, 490
- Form of notice, 7, 490
- Giving of notice must appear on record, 7, 487
- Implied necessity, 7, 483, 486
- Infants, 7, 489
- Lessees, 7, 489
- Mailing, 7, 494
- Mortgagee, 7, 489
- Necessity in general, 7, 481
- Necessity of notice implied, 7, 486
- Necessity of notice implied in statute, 7, 483
- New proceedings, 7, 492
- Notice although not required by statute, 7, 485
- Notice of adjournment, 7, 492
- Notice unnecessary, 7, 483
- Occupants, 7, 488
- Owners, 7, 488
- Personal service, 7, 493
- Persons interested, 7, 488
- Place of notice, 7, 492
- Posting, 7, 494
- Process, 7, 499
- Proof of service, 7, 496
- Publication, 7, 494
- Purchasers, 7, 490
- Reasonable notice, 7, 490
- Recital that due notice was given, 7, 487
- Service, 7, 493
- Station agent, 7, 490
- Statutory notice is jurisdictional, 7, 485
- Sufficiency of notice, 7, 490
- Time of notice, 7, 492
- Time of publication, 7, 495
- To whom given, 7, 488
- Unknown owners, 7, 489
- Waiver of notice, 7, 497
- What notice should contain, 7, 491
- Who are owners, occupants, or persons interested, 7, 488
- Who bound by publication, 7, 496

Notice of appeal, see infra, Appeals.

Notice to quit, 7, 705

Oath:

- Appraisers, 7, 568
- Arbitrators, 7, 569
- Commissioners, 7, 567
- Necessity, 7, 567
- Sufficiency, 7, 567
- What the record must show, 7, 568

EMINENT DOMAIN, *cont'd.***Oath, *cont'd.***

- Jurors, 7, 566
 - Form, 7, 566
 - Necessity, 7, 566
 - Sufficiency, 7, 566
 - What the record must show, 7, 567
- Right to swear witnesses and hear evidence, 7, 576
- Viewers, 7, 569
- Objections and defenses (*see infra*, Plea or answer), 7, 532
- Contesting petitioner's power to condemn, 7, 534
- Controverting legal incorporation, 7, 533
- Defaults, 7, 533
- Defenses to proceedings instituted by owners, 7, 537
- Denying public character of use, 7, 535
- Denying the necessity of taking, 7, 535
- Former proceedings to condemn, 7, 537
- In general, 7, 532
- Motion to dismiss application, 7, 533
- Necessity of taking, 7, 535
- Noncompliance with statutory conditions, 7, 536
- Prior occupation, 7, 536
- Public use, 7, 535
- Questioning petitioner's legal status and power to condemn, 7, 533
- Time and manner of raising objections, 7, 533
- Occupants, 7, 488
- Open and close, 7, 578; 15, 193
 - Condemning party, 7, 579
 - Discretion of court, 7, 578
 - Landowner, 7, 578
 - Right to open and close in general, 7, 578
- Orders:
 - Appeals, 7, 633
 - Appointment of commissioners, 7, 558
 - Confirmation, 7, 605
- Owners, 7, 488
- Parties, 7, 499
 - Action by landowner, 7, 696
 - Husband and wife, 7, 697
 - Joinder of plaintiffs, 7, 697
 - Parties defendant, 7, 697
 - Proper parties plaintiff, 7, 696
 - Tenant, 7, 697
 - Appeals, 7, 640
 - Curing defect of parties, 7, 504
 - Defect of parties, 7, 504

EMINENT DOMAIN, *cont'd.***Parties, *cont'd.***

- Designating the parties and persons interested in petition or complaint, 7, 519
 - Dower interest, 7, 510
 - Effect of commission of proper party, 7, 504
 - Executory contracts, 7, 507
 - General rule, 7, 499
 - Grantor and grantee, 7, 505
 - Heirs and personal representatives, 7, 512
 - Husband and wife, 7, 510
 - Improper parties defendant, 7, 503
 - Infants, 7, 512
 - Intervention, 7, 504
 - Joinder of parties defendant, 7, 503
 - Joinder of parties plaintiff, 7, 501
 - Lessee, 7, 507
 - Lessor, 7, 507
 - Lessor and lessee of railroad, 7, 500
 - Licensee, 7, 503, 507
 - Life tenant and remainderman, 7, 511
 - Mortgagee, 7, 508
 - Mortgagor, 7, 508
 - Necessary parties defendant, 7, 501
 - New parties, 7, 504
 - Nonresidents, 7, 503
 - Particular application, 7, 505
 - Parties complainant, 7, 499
 - Parties defendant, 7, 501
 - Partners, 7, 501
 - Personal representatives, 7, 512
 - Petition or complaint, 7, 519
 - Purchasers, 7, 505
 - Right of landowner to begin proceedings, 7, 500
 - Substitution, 7, 505
 - Tenants in common, 7, 511
 - Towns, 7, 513
 - Trespass, 7, 716
 - Trustees, 7, 513
 - Unnecessary parties defendant, 7, 503
 - Vendor and purchaser, 7, 505
 - Who may institute the proceeding, 7, 472
- Partnership:**
- Joinder of parties, 7, 501
- Pending appeal, 7, 509**
- Persons interested, 7, 488**
- Petition or complaint (see *infra*, Objections and defenses), 7, 513**
- Address, 7, 514
 - Allegation of quantity and value, 7, 525

EMINENT DOMAIN, *cont'd.***Petition or complaint, *cont'd.***

- Alleging inability to agree with owner, see infra*, Agreement with owner.
- Alleging the necessity of taking, 7, 528
- Authority, 7, 517
- Averments as to title when landowner petitions, 7, 528
- Averments of jurisdictional facts, 7, 517
- Cases within statute, 7, 516
- Cross-petition, 7, 539
- Description of premises, 7, 520
 - Effect of imperfect description, 7, 524
 - General description, 7, 520
 - Highway and drain condemnations, 7, 521
 - Insufficient descriptions, 7, 523
 - Land injured or not taken, 7, 521
 - Location, 7, 521
 - Necessity, 7, 520
 - Particularity, 7, 520, 521
 - Railroad condemnation, 7, 521
 - References to maps, schedules, etc., 7, 524
 - Sufficiency, 7, 520
 - Termini, 7, 521, 522
 - What descriptions are sufficient, 7, 522
- Designating persons interested, 7, 519
- Designating the parties, 7, 519
- Exactness of averments as to title, 7, 529
- Filing, 7, 516
- Grade, 7, 517
- Immaterial errors, 7, 516
- In general, 7, 513
- Injunction, 7, 713
- Irrigation purposes, 7, 526
- Manner in which the land is to be used, 7, 527
- Material matters must be directly alleged, 7, 516
- Necessity, 7, 513
- Preliminary steps, 7, 518
- Public use, 7, 525
- Quantity, 7, 525
- Railroad purposes, 7, 526
- Requisites, 7, 514
- Showing nature of injury or damage, 7, 529
- Signing, 7, 515
- Stating the purpose, 7, 525
- Sufficiency, 7, 516
- Sufficiency of petition to confer jurisdiction, 7, 531

EMINENT DOMAIN, *cont'd.*Petition or complaint, *cont'd.*

Two uses or purposes, 7, 527

Value, 7, 525

Verification, 7, 515

What facts must be set out, 7, 516

Where not required by statute, 7, 513

Writing, 7, 514

Place of notice, 7, 492

Place of trial, 7, 562

Plans, see *infra*, Maps, plans, profiles, and surveys.*Pleadings*, see *infra*, Petition or complaint.

Plea or answer, 7, 538

Examples, 7, 538, 539

Necessity, 7, 538

Sufficiency, 7, 538

Where no special damage is claimed, 7, 538

Posting notice, 7, 494

Power to condemn, see *infra*, Right to condemn.

Præcipe, 16, 770

Precept:

Enforcement of awards and judgments, 7, 625

Prior occupation, 7, 536

Process, see *infra*, Notice.*Profiles*, see *infra*, Maps, plans, profiles, and surveys.

Prohibition, 7, 665

Landowner's rights, 7, 715

Property, see *infra*, Description of property.

Publication, 7, 494

Due process of law, 7, 494

Examples, 7, 494, 496

In general, 7, 494

Notice, 7, 494

Time of publication, 7, 495

Who bound, 7, 496

Public use:

Denying public character of use, 7, 535

Determining whether use is a public one, 7, 475

Courts, 7, 475

Legislature, 7, 475

Preliminary proceedings 7, 475

Stating public use in petition or complaint, 7, 525

In general, 7, 525

Irrigation, 7, 526

Particular manner, 7, 527

Railroad purposes, 7, 526

Two uses or purposes, 7, 527

Purchaser, 7, 490, 505

Quantity, 7, 525

EMINENT DOMAIN, *cont'd.*

Questions of law and fact:

Functions and powers of officers presiding over jury, 7, 571

Questions to be considered by jury, 7, 572

Amount of compensation, 7, 573

Matters covered by award of commissioners, 7, 572

Necessity of the taking, 7, 575

Power to condemn, 7, 574

Question of title, 7, 574

Questions to be submitted, 7, 573

Route, 7, 576

Title, 7, 575

Whether amount of commissioners' award binding on jury, 7, 574

Railroads:

Injunctions, 17, 513

Street railways, 17, 513

Ratification:

Report of commissioners, 7, 603

Reappraisal, 7, 617

Reasonable notice, 7, 490

Recording acts:

Company's certificate of incorporation, 7, 473

Records:

Appeals, 7, 645

Evidence, 7, 645

Examples, 7, 645, 646

What the record must show, 7, 645

Notice, 7, 487

Relationship:

Commissioners, 7, 560

Jurors, 7, 553

Remaindermen:

Life tenant and remainderman, 7, 511

Remanding, 7, 658

Remedies of the landowner, 7, 691

Action for damages, 7, 695

Answer, 7, 700

Averment of ownership, 7, 698

Claim of damages, 7, 700

Defenses, 7, 696

Ejectment, see *infra*, Ejectment.

Election of remedies, 7, 691

Exclusiveness of statutory remedy, 7, 692

In general, 7, 691

Injunctions, see *infra*, Injunction.

Judgment, 7, 700

Mandamus, 7, 715

Parties, 7, 696

Pleadings, 7, 698

Prohibition, 7, 715

EMINENT DOMAIN, *cont'd.*

- Remedies of the landowner, *cont'd.*
 - Rights of action, 7, 695
 - Setting out the character of the injury, 7, 699
 - Statutory remedy, 7, 692
 - Sufficiency of plaintiff's pleadings, 7, 698
 - Trespass*, see *infra*, *Trespass*.
 - When statutory remedy not exclusive, 7, 694
- Removal of causes (see **REMOVAL OF CAUSES**), 18, 173
- Report of appraisers, 7, 615
- Report of commissioners, 7, 594
 - Alternative awards, 7, 603
 - Conclusiveness, 7, 603
 - Conditional awards, 7, 603
 - Confirmation, 7, 604
 - Agreement as to compensation, 7, 612
 - Amendment of report, 7, 605
 - Application to set aside, 7, 607
 - Conclusiveness on motion to confirm, 7, 604
 - Entertaining commissioners, 7, 612
 - Error of judgment, 7, 610
 - Excessive damages, 7, 613
 - Ex parte* communications to commissioners, 7, 611
 - Good cause to set aside, 7, 609
 - Grounds to set aside, 7, 609
 - How application to set aside is made, 7, 607
 - Inadequate damages, 7, 613
 - In general, 7, 604
 - Insufficient evidence, 7, 610
 - Irregularities, 7, 610
 - Laches, 7, 608
 - Misconduct of commissioners, 7, 610
 - Mistake, 7, 610
 - Order of confirmation, 7, 605
 - Ratification, 7, 603
 - Recommittal of report, 7, 605
 - Rulings on evidence, 7, 609
 - Setting aside order of confirmation, 7, 605
 - Time and manner of objecting to report, 7, 614
 - Validity and effect in order of confirmation, 7, 605
 - Waiver, 7, 608
- Description of land taken, 7, 597
- Effect, 7, 603
- Examples, 7, 594, 596
- Filing, 7, 596
- Finding as to necessity of the taking, 7, 599

EMINENT DOMAIN, *cont'd.*

- Report of commissioners, *cont'd.*
 - Finding on question of damages, 7, 599
 - Formal requisites, 7, 594
 - In general, 7, 594
 - Itemizing damages, 7, 600
 - Naming the owners of property taken, 7, 601
 - Necessity of description of land, 7, 597
 - Ratification, 7, 603
 - Reservation of easements to owner, 7, 602
 - Right of majority to act or decide, 7, 596
 - Sealing, 7, 596
 - Sufficiency of description, 7, 598
- Report of surveyors, 7, 615
- Report of viewers, 7, 615
- Report or award of appraisers, viewers, surveyors, etc., 7, 616
- Reports*, see *infra*, *Enforcement of awards and judgments*.
- Residents:
 - Commissioners, 7, 559
- Restitution, 7, 658
 - Abandonment, 7, 690
- Return:
 - Certiorari, 7, 663
- Reversal*, see *infra*, *Appeals*.
- Review*, see *infra*, *Appeals*.
- Right to condemn, 7, 571
 - Contesting the power to condemn, 7, 534
 - Question for jury, 7, 574
- Route:
 - Question for jury, 7, 576
- Schedules, 7, 524
- Sealing:
 - Report of commissioners, 7, 596
- Security*, see *infra*, *Appeals*.
- Separate trials, 7, 565
- Service of process (see *infra*, *Notice*):
 - Appeal, 7, 642
- Setting aside:
 - Report or award of appraisers, viewers, surveyors, etc., 7, 617
- Setting aside report of commissioners*, see *infra*, *Report of commissioners*.
- Setting aside verdict*, see *infra*, *Verdict*.
- Signing:
 - Petition or complaint, 7, 515
- Special proceedings, 7, 467
- Specific performance:
 - Action on awards and judgments, 7, 628

EMINENT DOMAIN, *cont'd.*

Statutes:

Appeals:

Construction of statutes, 7, 629

Statutes making decision of tribunal to assess damages final and conclusive, 7, 630

Charter or general law, 7, 472

Choice of act, 7, 472

Condemnation proceedings must be authorized by statute, 7, 467

Construction of statute as to appeal, 7, 629

Exceptions to the rule as to exclusiveness of statutory remedy, 7, 471

Exclusiveness of charter remedy, 7, 471

Exclusiveness of statutory remedy, 7, 470

Noncompliance with statutory conditions, 7, 536

Notice, see *infra*, Notice.

Power must be given in express terms, 7, 468

Previous charter provisions abrogated, 7, 470

Strict compliance with statute essential, 7, 468

Substantial compliance with statute, 7, 470

Stockholders:

Commissioners, 7, 560

Juries, 7, 553

Street railways, see STREET RAILWAYS.

Substitution, 7, 505

Supersedeas and stay of proceedings, 7, 659

Surveyors, report of, 7, 615

Surveys, see *infra*, Maps, plans, profiles, and surveys.

Survival of actions, 21, 337

Telegraphs and telephones, 21, 502

Tenants in common, 7, 511

Tender:

Costs, 7, 668

Time of notice, 7, 492

Time of publication, 7, 495

Time of trial, 7, 562

Title, 7, 571

Averments as to title, 7, 528

Exactness, 7, 529

In general, 7, 528

Landowner's petition, 7, 528

Petition, 7, 528

Burden of proof as to title, 7, 577

Judgment, 7, 621

Questions for jury, 7, 575

Towns:

Parties, 7, 513

Trespass, 7, 716

Judgment, 7, 718

EMINENT DOMAIN, *cont'd.*Trespass, *cont'd.*

Landowner's rights, 7, 716

Parties, 7, 716

Parties defendant, 7, 717

Plaintiff's pleadings, 7, 717

Pleadings, 7, 717

Plea or answer, 7, 718

Right of action, 7, 716

Statutory remedy, 7, 716

Title or possession necessary in plaintiff, 7, 717

When trespass will lie, 7, 716

Who may sue, 7, 716

Trial of issue, 7, 565

Tribunal to assess damages (see *infra*, Assessment by appraisers or viewers; Assessment by commissioners), 7, 544

Affinity, 7, 553

Application for jury, 7, 548

Assessment by arbitrators, 7, 562

Challenges, 7, 553

Citizens and taxpayers, 7, 552

Common-law jury, 7, 547

Consanguinity, 7, 553

Disqualification of interest or bias, 7, 552

Drawing jury, 7, 551

Freeholders, 7, 551

Grounds for challenge, 7, 553

Householders, 7, 551

Impaneling jury, 7, 551

Jurors in former proceedings, 7, 553

Jury on appeal after trial without jury, 7, 547

Number of jury, 7, 551

Peremptory challenges, 7, 554

Powers of the legislature, 7, 544

Qualifications, 7, 551

Right to jury trial, 7, 545

Statutes making decision to assess damages conclusive, 7, 630

Stockholders, 7, 553

Summoning jury, 7, 549

Waiver of challenge, 7, 554

Waiver of jury, 7, 548

Warrant for jury, 7, 550

Trusts and trustees:

Parties, 7, 513; 22, 184

United States courts, 22, 310

Injunctions, 7, 712

Jurisdiction, 7, 479

Use, see *infra*, Public use.

Vacancies:

Commissioners, 7, 557

Value, 7, 525

Vendor and purchaser:

Appeals, 7, 636

Parties, 7, 505

Executory contracts, 7, 507

EMINENT DOMAIN, *cont'd.*Vendor and purchaser, *cont'd.*Parties, *cont'd.*

General rule, 7, 505

Owner of property, 7, 505

Time of conveyance, 7, 505,

506

Time of estimating dam-

ages, 7, 505

Venue, 7, 478

Verdict (see *infra*, Appeals), 7, 584

Alternative awards, 7, 588

Conclusiveness, 7, 589

Conditional awards, 7, 588

Description of property taken or

damaged, 7, 584

Excessive damages, 7, 593

Finding as to necessity of the

taking, 7, 585

Finding on question of damages,

7, 586

Grounds for setting aside, 7, 591

Improper argument, 7, 591

Inadequate damages, 7, 593

Interpretation, 7, 589

Itemizing the damages, 7, 587

Joint and several awards, 7, 588

Misconduct of jurors, 7, 592

Mistake, 7, 592

Mode of arrival at verdict, 7, 584

Motion to set aside, 7, 590

Objections, 7, 590

Power to set aside, 7, 590

Practice on motion to set aside,

7, 590

Reversal of erroneous verdict, 7,

650

Verdict against weight of evi-

dence, 7, 592

Verification:

Petition or complaint, 7, 515

View (see *infra*, Viewers), 7, 579

Appeal, 7, 655

Conduct of view, 7, 580

Conflicting evidence, 7, 583

Discretion of court to order, 7, 580

Effect of view, 7, 581

Effect of view to determine

weight of conflicting evidence,

7, 583

Evidence of witnesses not to be

disregarded, 7, 583

In general, 7, 579

Knowledge obtained to be used

in connection with other evi-

dence, 7, 581

Power of court to order, 7, 580

Presumption in favor of verdict

of commissioners, 7, 655

Time of view, 7, 580

Viewers (see *infra*, View), 7, 560

Oath, 7, 568

Report of, 7, 615

EMINENT DOMAIN, *cont'd.*

Waiver:

Fraud or mistake, 7, 608

Of challenges to jurors, 7, 554

Of errors, 7, 651

Of irregularities below, 7, 661

Of jury, 7, 548

Of notice, 7, 497

Of right to appeal, 7, 632

Water companies and waterworks,

22, 1137

Witnesses (see *infra*, View):

Fees, 7, 672

Right to swear witnesses and

hear evidence, 7, 576

Writing:

Petition or complaint, 7, 514

EMPANELING JURY, see JURIES.**EMPLOYEES (see MASTER AND SERV-****ANT):***Death by wrongful act, see DEATH BY**WRONGFUL ACT.***ENGINEERS:**

Conditions precedent:

Certificate of engineers, 4, 643

ENGLISH LANGUAGE, 7, 720

Affidavits, 1, 323

Development, 7, 720

Numerical figures, 7, 722

Old practice, 7, 720

Practice in the United States, 7,

721

Provisions, 7, 721

Publication, 17, 102

Technical legal expressions, 7, 722

ENGROSSING, see MONOPOLIES.**ENLARGEMENT OF TIME, see****TIME TO PLEAD.****ENTERING, see BURGLARY.****ENTERING APPEARANCE, see****APPEARANCES.****ENTRIES (see DECREES; DEFAULTS;****FORCIBLE ENTRY AND DETAINER;****JUDGMENTS; ORDERS; RECORDS;****RENDITION AND ENTRY OF JUDG-****MENT):**Appeals (see **APPEALS**):

Entry of judgment as waiver of

right, 2, 180

*Decrees, see DECREES.**Defaults, see DEFAULTS.***ENTRY AND DETAINER, see****FORCIBLE ENTRY AND DETAINER.****ENTRY OF APPEAL:**

Appeals, 2, 321

ENTRY OF JUDGMENTS, see**RENDITION AND ENTRY OF JUDG-****MENTS.****ENTRY, WRIT OF, 7, 723**

Alternative command, 7, 728

Amendments, 7, 728

Declaration and complaint, 7, 726

Definition, 7, 724

ENTRY, WRIT OF, *cont'd.*

Foreclosure of mortgages (see FORECLOSURE OF MORTGAGES), 7, 728

In general, 7, 728

Nature of writ, 7, 729

Notice, 7, 729

Parties, 7, 729

Form of writ, 7, 725

Nontenure, 7, 727

Nul disseisin, 7, 727

Parties, 7, 725

Foreclosure of mortgages, 7, 729

Pleas, 7, 727

Possessory title, 7, 724

Title, 7, 724

When the writ lies, 7, 724

EQUITABLE ASSIGNMENTS, 7, 730

See ASSIGNMENTS.

Acceptance of order, 7, 759

Action by real party in interest, 7, 749

Assignee as real party, 7, 752

Assignment for purposes of collection, 7, 753

Effect of legislation, 7, 751

Holder of commercial paper, 7, 752

Legal title in assignor, 7, 750

Necessity of promise by or notice to debtor, 7, 758

Possession of non-negotiable instrument, 7, 752

Reasons for the assignment, 7, 753

United States courts, 7, 754

Who is such a party, 7, 749

Amendments, 7, 775

Answer, see *infra*, Pleading.

Assignments made without the state, 7, 762

Choses in action, see *infra*, Rights of assignees in courts of law.

Collateral security, 7, 765

Compromise, 7, 774

Conflict of laws:

Assignments made without the state, 7, 762

Conversion:

Assignment of claims for conversion of property, 7, 757

Costs:

Assignment *pendente lite*, 7, 772

Courts, see *infra*, Rights of assignees in courts of law.

Declaration and complaint, see *infra*, Pleading.

Defenses, see *infra*, Pleading.

Effect of form of assignment, 7, 756

Ex contractu and *ex delicto*:

Assignment of cause of action arising in tort, 7, 757

Express promise, 7, 760

EQUITABLE ASSIGNMENTS, *con.*

Foreclosure of mortgages:

Mortgagee as party, 7, 771

Foreign assignments, 7, 762

Form of assignment, 7, 756

Implied promise, 7, 760

Injuries to property, 7, 757

Insurance policies:

Suit by assignee in name of assignor, 7, 736

Interest, see *infra*, Action by real party in interest.

Law, see *infra*, Rights of assignees in courts of law.

Mandatory statutes, 7, 754

Manner of assignment, 7, 756

Mortgages, 7, 744

Mutual insurance companies, 7, 761

Necessity of promise by or notice to debtor, 7, 758

Notice of assignment, 7, 761

Notice to debtor, 7, 758

Partial assignments, 7, 763

Assignee recovering in his own name, 7, 763

Choses in action, 7, 765

Equity, 7, 764

In general, 7, 763

Insurance companies, 7, 764

Law, 7, 764

Splitting up cause of action, 7, 763

Parties (see *infra*, Action by real party in interest; Rights of assignees in courts of law), 7, 766

Absolute assignment, 7, 769

Amendments, 7, 775

Assignee as party, 7, 771

Assignor as party, 7, 766

Compromise, 7, 774

Costs, 7, 774

Development of the doctrine, 7, 770

Effect of assignment *pendente lite*, 7, 772

In general, 7, 766

Interest remaining in assignor, 7, 768

Judgment, 7, 768

Mortgage foreclosure, 7, 771

Plaintiff *pendente lite* parting with all interest, 7, 772

Scintilla juris, 7, 768

Patent, 7, 774

Pendente lite:

Parties, 7, 772

Permissive statutes, 7, 754

Pleading, 7, 775

Assignment in writing, 7, 778

Consideration of assignment, 7, 779

Delivery, 7, 778

EQUITABLE ASSIGNMENTS, *con.*

- Pleading, *cont'd.*
 - Denial of fact of assignment, 7, 781
 - Denial of right to maintain action, 7, 783
 - Denial of validity of assignment, 7, 782
 - Execution, 7, 778
 - Fact of assignment, 7, 776
 - General requirements, 7, 775
 - Manner and form of assignment, 7, 778
 - Nature of plaintiff's title, 7, 779
 - Necessary allegations, 7, 776
 - Notice to debtor, 7, 780
 - Pleading and proof, 7, 785
 - Pleading defenses, 7, 781
 - Promise to pay assignee, 7, 780
- Pleas*, see *infra*, Pleading.
- Proof, 7, 785
- Questions of law and fact, 7, 786
- Real party in interest*, see *infra*, Action by real party in interest.
- Remedy at law, 7, 741
- Right of assignee in equity, 7, 740
 - Assignee of mortgage, 7, 744
 - Assignee of patent, 7, 744
 - Effect of assignee not being able to sue in his own name, 7, 743
 - Legal remedy, 7, 741
 - No remedy at law, 7, 740
 - Specific performance, 7, 741
 - Suit in whose name, 7, 740
- Right of assignee to sue in his own name, 7, 744
 - Abolition of distinction between law and equity, 7, 746
 - Assignability of subject-matter as test, 7, 747
 - Covenant for payment of rent, 7, 746
 - Effect of statutes, 7, 748
 - Generally, 7, 744
- Rights of assignees in courts of law, 7, 731
 - Control of suit, 7, 739
 - Recognition and protection of equitable rights, 7, 731
 - Suit by assignee in name of assignor, 7, 733
 - Assignment of a debt secured by mortgage, 7, 736
 - Death of assignor, 7, 737
 - Effect of right of assignee to sue in his own name, 7, 734
 - In general, 7, 733
 - Insurance policies, 7, 736
 - Judgment, 7, 735
 - Particular choses in action, 7, 735

EQUITABLE ASSIGNMENTS, *con.*

- Rights of assignees in courts of law, *cont'd.*
 - Suit by assignee in name of assignor, *cont'd.*
 - Rationale and consequences of the rule, 7, 737
 - Rights acquired by assignee, 7, 738
 - Scope of article, 7, 731
 - Specific performance, 7, 741
 - Splitting cause of action, 7, 763
 - Statutes:
 - Permissive and mandatory statutes, 7, 754
 - Suit by assignee in name of assignor*, see *infra*, Rights of assignees in courts of law.
 - Torts:
 - Assignment of cause of action arising in tort, 7, 757
 - United States courts:
 - Real party in interest, 7, 754
 - Variance, 7, 785
- EQUITABLE ATTACHMENT, 7, 787**
- See GARNISHMENT.
 - Abatement, 7, 796
 - Affidavits, 7, 794
 - Bill in equity (see *infra*, Frame of bill):
 - Defense to bill, 7, 796
 - Bond, 7, 795
 - Code system, 7, 789
 - Defense to bill, 7, 796
 - Delivery bond, 7, 795
 - Frame of bill, 7, 793
 - Affidavit, 7, 794
 - Allegations, 7, 793
 - Amount of indebtedness, 7, 794
 - Grounds of attachment, 7, 793
 - Nature of estate sought to be reached, 7, 794
 - Prayer, 7, 794
 - Garnishment, 7, 788
 - Grounds of attachment:
 - Bill, 7, 793
 - Indemnity bond, 7, 795
 - Introductory statements, 7, 787
 - Joinder of parties, 7, 793
 - Lien, 7, 796
 - Motion for damages, 7, 798
 - Multifariousness, 7, 793
 - Nature of the proceeding, 7, 788
 - Order for sale and distribution, 7, 797
 - Parties, 7, 792
 - Defendants, 7, 792
 - How defendants brought in, 7, 792
 - Joinder of plaintiffs, 7, 793
 - Multifariousness, 7, 793
 - Necessary and proper parties, 7, 792

EQUITABLE ATTACHMENT, *con.*

- Trustee process, 7, 788
- When attachment in equity lies, 7, 789
 - Allegation and proof, 7, 791
 - Code system, 7, 789
 - Existence of grounds, 7, 791
 - General rule, 7, 789
 - Nature of debtor's estate and creditor's claims, 7, 789
 - Prior judgment at law, 7, 791
- Wrongful attachment, 7, 798

EQUITABLE DEFENSES, 7, 799

- Burden of proof, 7, 811
- Common law, 7, 800
- Definition, 7, 799
- Disposition of equities on the trial, 7, 810
- Dissolution of attachment, 7, 797
- Ejectment, 7, 803
- Justice of the peace, 7, 802
- Limitation of actions, 7, 802
- Naked defenses, affirmative relief in addition to, 7, 804
- Naked defense under general denial, 7, 806
- Naked defense without prayer for relief, 7, 807
- Pleading equitable defenses, 7, 805
 - Effect of failure to plead upon subsequent litigation, 7, 808
 - Effect of pleading as concluding the defendant, 7, 710
 - How equitable defenses should be pleaded, 7, 807
- Naked defense under general denial, 7, 806
- Naked defense without prayer for relief, 7, 807
- Necessity for setting up equities, 7, 805
- Prayer for relief, 7, 807
- Set-off and counterclaim, 7, 809
- Prayer for relief, 7, 807
- Reformation of instrument, 7, 804
- Replications, 7, 805
- Right to plead equitable defense (see *infra*, Statutes), 7, 800
- Set-off, recoupment, and counterclaim, 7, 809
- Sham and frivolous pleadings, 20, 30
- Specific performance, 7, 804
- Statutes, 7, 801
 - Affirmative relief in addition to naked defense, 7, 804
 - Effect of want of interested parties, 7, 805
 - Effect of want of interested parties when affirmative relief is sought, 7, 805
 - Effect of want of interested parties when naked defense is pleaded, 7, 805

EQUITABLE DEFENSES, *cont'd.*

- Statutes, *cont'd.*
 - Equitable title in ejectment, 7, 803
 - Equity in party unconnected with the pleader, 7, 804
 - General rule as to right to plead, 7, 801
 - In England, 7, 803
 - Reformation of deed, 7, 804
 - Replications, 7, 805
 - Right to plead under statute, 7, 801
 - Specific performance, 7, 804
 - Statutes of limitations, 7, 802
- United States courts, 7, 801

EQUITY (see ABATEMENT IN PLEADING; AFFIDAVITS OF MERITS OR DEFENSE; APPEALS; BILL IN EQUITY; EQUITY PLEADING AND PRACTICE):

- Accord and satisfaction, 1, 82
- Accounting*, see ACCOUNTS AND ACCOUNTING.

Actions:

- Whether an action is equitable or legal under the codes, 1, 146

***Amendments*, see AMENDMENTS.**

- Another suit pending, 1, 752
- Continuance, 1, 768
- Pendency of action at law, 1, 752
- Suit pending in equity, 1, 751

Answers in equity pleading*, see ANSWERS IN EQUITY PLEADING.*Appeals (see APPEALS):**

- Chancery appeal, 2, 31
- Decision of equitable nature, 2, 30
- Interlocutory appeals, 2, 88

Appearances, 2, 591***Assignment for benefit of creditors*, see ASSIGNMENT FOR BENEFIT OF CREDITORS.****Assignment of errors:**

- Necessity of assignment, 2, 930

Assignments*, see EQUITABLE ASSIGNMENTS.**Attachment*, see EQUITABLE ATTACHMENT.****Bankruptcy:**

- Equitable character of proceedings, 22, 343

Bills de bene esse*, see BILLS DE BENE ESSE.**Bills in equity*, see BILLS IN EQUITY.*****Bills of particulars*, see BILLS OF PARTICULARS.*****Bills to enforce decrees*, see BILLS TO ENFORCE DECREES.*****Bills to impeach decrees and judgments*, see BILLS TO IMPEACH DECREES AND JUDGMENTS.**

EQUITY, *cont'd.*

Boundaries and fences, 3, 673
Cancellation, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
Consolidation of actions, see CONSOLIDATION OF ACTIONS.
 Continuances, 4, 826
Corporations, see WINDING UP CORPORATIONS.
Costs, see COSTS.
Creditors' bills, see CREDITORS' BILLS.
Decrees, see DECREES.
Defenses, see EQUITABLE DEFENSES.
 Definiteness and certainty in equity pleadings, 6, 283
Demurrers, see DEMURRERS IN CHANCERY.
Disclaimers, see DISCLAIMERS.
Discontinuance, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
Discovery, see DISCOVERY.
Dismissal, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
 Division of opinion, 7, 48
 Divorce (see DIVORCE), 7, 53
Dower, see DOWER.
Election of remedies, see ELECTION OF REMEDIES.
Equitable defenses, see EQUITABLE DEFENSES.
Executors and administrators, see EXECUTORS AND ADMINISTRATORS.
 Exhibits, 8, 737
Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.
Forma pauperis, 16, 676
 Former adjudication, 9, 616
Forthcoming and delivery bonds, see FORTHCOMING AND DELIVERY BONDS.
Fraud, see FRAUD.
Guardians, see GUARDIANS.
Heirs and devisees, see HEIRS AND DEVISEES.
Infants, see INFANTS.
Informations in equity, see INFORMATION IN EQUITY.
Injunctions, see INJUNCTIONS.
Insane persons, see INSANE PERSONS.
Issues to the jury, see ISSUES TO THE JURY.
Joinder, see JOINDER OF COUNTS AND CAUSES.
Judgments, see JUDGMENTS.
Laches, see LACHES.
Liens, see LIENS.
Limitations, see LIMITATIONS.
 Mandamus, 13, 499
 Common-law or equitable remedy, 13, 491
Marshaling assets, see MARSHALING ASSETS.

EQUITY, *cont'd.*

Mechanics' liens, see MECHANICS' LIENS.
Mistake, see MISTAKE.
 Multiplicity of suits, 14, 217
Ne exeat, see NE EXEAT.
Negotiable instruments, see NEGOTIABLE INSTRUMENTS.
Nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
Nuisances, see NUISANCES.
 Official bonds, 15, 90
 Open and close, 15, 186
Ordinances, see ORDINANCES.
Parties to actions, see PARTIES TO ACTIONS.
Partition, see PARTITION.
Partnership, see PARTNERSHIP.
Patents, see PATENTS.
Peace, see BILLS OF PEACE.
Petitions, see PETITIONS.
Pleas in equity, see PLEAS IN EQUITY.
Pledges, see PLEDGES.
Prayers for relief, see PRAYERS FOR RELIEF.
Premature suits, see PREMATURE SUITS.
Production of documents, see DISCOVERY, INSPECTION, AND PRODUCTION OF DOCUMENTS.
Prohibition, see PROHIBITION.
Quieting title, see QUIETING TITLE.
Receivers, see RECEIVERS.
References, see REFERENCES.
Reformation, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
Rehearing, see REHEARING.
Remedy at law, see REMEDY AT LAW.
Removal of cloud, see QUIETING TITLE.
Replications and replies, see REPLICATIONS AND REPLIES.
 Repugnancy, 18, 740
Rescission, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
 Revival of judgments, 18, 1058
Scandal and impertinence, see SCANDAL AND IMPERTINENCE.
Sequestration, see SEQUESTRATION.
Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.
Specific performance, see SPECIFIC PERFORMANCE.
Street railways, see STREET RAILWAYS.
Subrogation, see SUBROGATION.
Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.
Survival of actions, see SURVIVAL OF ACTIONS.
 Theory of the case:
 Whether action is at law or in equity, 21, 662

EQUITY, *cont'd.*

Trusts and trustees, see TRUSTS AND TRUSTEES.

United States courts, see UNITED STATES COURTS.

Usury, see USURY.

Variance, see VARIANCE.

Vendor's liens, see VENDOR'S LIENS.

Venue, see VENUE.

Verification, see VERIFICATION.

Waste, see WASTE.

Waters and watercourses, see WATERS AND WATERCOURSES.

Wills, see WILLS.

Winding up corporations, see WINDING UP CORPORATIONS.

EQUITY OF REDEMPTION:

Creditors' bills, 5, 451

Judicial sales, 12, 56

EQUITY PLEADING AND PRACTICE, 7, 812

Construction of pleadings, 4, 762

Construction of statutes regulating practice, 7, 815

Source of equity pleading and practice, 7, 813

ERRORS (see APPEALS; ARREST OF JUDGMENT; ASSIGNMENT OF ERRORS; ERROR, WRIT OF.

New trial, see NEW TRIAL.

ERROR, WRIT OF, 2, 26, 53; 7, 817

See APPEALS; CERTIORARI; CORAM NOBIS AND CORAM VOBIS.

Abatement (*see infra*, Death), 7, 846

Actions, 7, 826

Agreed case, 1, 403; 7, 846

Alleging diminution of the record, 7, 893

Allowance of the writ, 7, 883

By whom allowed, 7, 886

Capital cases, 7, 884

Civil cases, 7, 883

Criminal cases, 7, 884

How allowance shown, 7, 887

Implied allowance, 7, 887

Meaning of allowance, 7, 883

Necessity for, 7, 883

Statutory requirements, 7, 883

Time of allowance, 7, 887

Where allowed, 7, 885

Amendments, 7, 908

Amendment affecting parties, 7, 910

Amendment based on record, 7, 911

Amendment discretionary, 7, 910

Application, 7, 881

At common law, 7, 908

Describing party by partnership name, 7, 911

Examples, 7, 908, 910

How discretion exercised, 7, 910

Insertion of names, 7, 910

ERROR, WRIT OF, *cont'd.***Amendments, *cont'd.***

Return day, 7, 911

Striking out names, 7, 910

Teste, 7, 911

Under statute, 7, 908

Variance between scire facias and writ, 7, 909

What defects amendable, 7, 908

Where amendment unnecessary, 7, 912

Another suit pending, 1, 756

Stay of proceedings, 1, 769, 770

Writ of error subsequently sued out, 1, 753

Appeals, 2, 26

Appropriate method of review, 2, 26

Attachment, 2, 28

Decision of equitable nature, 2, 30

Effect of statutes authorizing appeal, 7, 852

Effect of statutory appeal, 2, 18

Equity, 2, 30

Exclusiveness of remedy, 7, 851

Exclusive remedy, 2, 29

In *coram nobis*, 2, 27

Judgment in appellant's favor, 2, 27

Judgment of courts of record, 2, 27

Justices of the peace, 2, 29

Probate, 2, 30

Questions of fact, 2, 27

Statutory judgment, 2, 28

Tribunal unknown to courts of common law, 2, 28

Where statutes do not provide uniform methods of appellate procedure, 2, 26

Application for the writ, 7, 878

Amendment, 7, 881

Contents, 7, 878

Effect of application, 7, 881

In general, 7, 878

Motion for rehearing, 7, 880

Names of parties, 7, 880

Omission of name of party, 7, 880

Pleadings, 7, 881

Residence, 7, 880

Specific averments, 7, 879

Appropriate method of review, 2, 26

Arbitration and award, 7, 837

Arrest of judgment, 2, 821; 7, 835

Assignment of errors (*see* ASSIGNMENT OF ERRORS), 7, 850

Attachments, 2, 28

Attorneys:

Authority of attorney, 7, 857

Audita querela, 3, 119

Bail, 7, 858

Bankruptcy, 7, 869

ERROR, WRIT OF, *cont'd.*

- Bastardy, 3, 315; 7, 859
- Bill of exceptions, 7, 872
- Bond, 7, 826
- Brief:
 - Dismissal or quashal, 7, 904
- Brought, 7, 877
- Capital cases, 7, 884
- Case made on appeal:
 - Substitute for writ of error, 3, 881
- Certificate:
 - Dismissal, 7, 904
- Certified cases, 3, 926
- Certiorari:
 - Error, writ of, distinguished from certiorari, 7, 821
 - Substitute for writ of error, 4, 46
 - Where writ of error may be obtained, 4, 86
 - Whether certiorari will be granted where parties may have writ of error, 4, 72
- Character of the proceeding, 7, 823
 - As a new action, 7, 823
 - As writ of right, 7, 826
 - Construction of general statutes affecting actions, 7, 826
 - Effect on judgment, 7, 825
 - Effect on subject-matter, 7, 825
 - Lis pendens*, 7, 825
 - New parties, 7, 825
 - New pleadings, 7, 825
 - New process, 7, 825
 - Substitution of attorneys, 7, 825
- Confession of judgment, 7, 870
- Consent, 7, 870
- Contempt*, see **CONTEMPT**.
- Contents, 7, 878, 881
- Contents and sufficiency of process, 7, 898
- Continuance, 7, 902
- Coram nobis* and *coram vobis*, see **CORAM NOBIS AND CORAM VOBIS**.
- Corporations, 7, 858
- Costs, 5, 196
 - Discontinuance, 7, 907
- Courts*, see *infra*, To what tribunal the writ lies.
- Criminal procedure, 7, 840, 884
 - Allowance of the writ, 7, 884
 - Exclusiveness of remedy, 7, 853
 - Final judgment, 7, 840
 - Statutes authorizing appeal, 7, 863
 - What judgments may be reviewed on writ, 7, 840, 842
 - Who entitled to writ, 7, 858
 - Bastardy proceedings, 7, 859
 - Defendant, 7, 860
 - Jeopardy, 7, 858
 - State, 7, 858
 - Statutory changes, 7, 859
 - Writ of right, 7, 827
- Index Pl. & Pr. — 22

ERROR, WRIT OF, *cont'd.*

- Cross-writs of error, 7, 855
- Death, 5, 794; 7, 866
 - Bankruptcy, 7, 869
 - Death after assignment of error, 7, 868
 - Death before writ issues, 7, 868
 - Death of defendant pending appeal or writ of error, 5, 823
 - Death pending appeal or writ of error, 5, 794
 - Death of joint plaintiff or defendant in error, 7, 868
 - Death of one of several defendants, 5, 836
 - Death of one of several plaintiffs, 5, 815
 - Death of plaintiff pending writ of error, 5, 800
 - Death of sole defendant, 7, 866
 - Death of sole plaintiff, 7, 866
 - In general, 7, 866
 - Legal representatives, 7, 866
- Decisions of equitable nature, 2, 30
- Definition, 7, 820
- Diminution of the record, 7, 893
 - Alleged generally, 7, 893
 - Diminution contrary to the record, 7, 894
 - Upon what writs, 7, 894
 - When diminution to be alleged, 7, 894
- Disbarment and suspension of attorneys, 6, 718
- Discontinuance*, see *infra*, Dismissal, quashal, or discontinuance.
- Discretionary matters, 7, 844
- Dismissal, discontinuance, and nonsuit, 6, 867, 908
- Dismissal, quashal, or discontinuance, 7, 901
 - Application to set aside, 7, 902
- Brief, 7, 904
- Certificate, 7, 904
- Continuance, 7, 902
- Coplaaintiff, 7, 906
- Costs, 7, 907
- Dismissal on court's own motion, 7, 907
- Effect of dismissal for want of evidence, 7, 907
- Filing record, 7, 906
- Formal defects, 7, 902
- Hearing on motion, 7, 906
- Involuntary dismissal, 7, 901
- Misjoinder of parties, 7, 904
- Nominal party, 7, 907
- Notice of motion, 7, 905
- Premature suit, 7, 903
- Right to sue, 7, 902
- Specific grounds, 7, 902
- Time of making motion, 7, 905
- Voluntary dismissal, 7, 906

ERROR, WRIT OF, *cont'd.*

Dismissal, quashal, or discontinuance, *cont'd.*

Want of jurisdiction, 7, 903

Want of necessary parties, 7, 903

Want of prosecution, 7, 903

Where affirmance proper, 7, 902

Effect of dismissal, 7, 907

Effect of statutory appeal, 2, 18

Effect of writ of error, 2, 323; 7, 899

Election of remedies, 7, 854

Effect of waiver, 7, 855

Error and not appeal, 7, 854

Prosecuting remedies simultaneously, 7, 854

Where appeal has been taken, 7, 854

Eminent domain, 7, 665

Equity, 2, 30

Errors, assignment of, see ASSIGNMENT OF ERRORS.

Estoppel:

Dismissal, 7, 902

Exclusive, 2, 29

Exclusiveness of remedy, 7, 850

Actions at law, 7, 850

Chancery appeal, 7, 851

Criminal cases, 7, 853

Effect of statutes authorizing appeal, 7, 852

Election of remedies, 7, 854

Mandamus, 7, 851

Suits in equity, 7, 851

Waiver, 7, 855

Executions:

Relief against writ, 8, 457

Executors and administrators, 7, 857

Revival of action, 7, 866

Feigned issue, 7, 843

Filing:

Discontinuance, 7, 906

Filing of return, 7, 891

Final judgments, 2, 53; 7, 832

In general, 7, 832

Interlocutory judgments, 7, 842

What constitutes final judgment, 7, 834

Writ applicable only where judgment is final, 7, 832

Form, 7, 881

Form at common law, 7, 881

Form under statutes, 7, 882

Forthcoming and delivery bonds:

Judgment on motion to quash forthcoming bond, 9, 662

Writ of error to original judgment, 9, 663

For what error the writ lies, 7, 846

Abatement, 7, 846

Agreed case, 7, 846

Agreed statement of facts, 7, 849

Assignment of errors, 7, 850

Criminal cases, 7, 848

ERROR, WRIT OF, *cont'd.*

For what error the writ lies, *cont'd.*

Curable defects, 7, 846

Error apparent on face of record, 7, 847

Facts reported by judge, 7, 849

In general, 7, 846

Mixed questions of law and fact, 7, 849

Questions of fact, 7, 848

Questions of law, 7, 847

Guardians *ad litem*, 10, 628

Habeas corpus:

Review by writ of error or appeal, 9, 1072

Appellate practice and procedure, 9, 1081

Death of party pending appeal, 9, 1084

Exceptions and objections, 9, 1080

General appellate regulations, 9, 1079

Independent of statutory provisions, 9, 1072

Parties entitled to appeal or error, 9, 1081

Party regaining liberty pending appeal, 9, 1084

State courts, 9, 1072

Statement of facts, 9, 1079

Status of party not affected by determination, 9, 1083

Statutory provisions, 9, 1072

Supersedeas and stay of proceedings, 9, 1080

Transcript, 9, 1079

Trial and examination, 9, 1082

United States courts, 9, 1074

Heirs, 7, 857

Homicide, 10, 188

Husband and wife, 7, 862

Implied allowance, 7, 887

In *coram nobis*, 2, 27

Infants, 7, 858

Inquests and inquiries, 10, 1163

Insane persons:

Review of proceedings, 10, 1207

Interlocutory judgments, 7, 842

Issuance of the writ, 7, 887

Failure to serve, 7, 889

How service shown, 7, 889

Office of clerk, 7, 888

Service generally, 7, 889

To whom directed, 7, 888

Whence issued, 7, 888

Where brought, 7, 887

Issues to the jury, 11, 739, 743

Jeopardy, 7, 858

Joinder of parties, 7, 860

Amendments, 7, 864

Defendants, 7, 865

ERROR, WRIT OF, *cont'd.*

- Joinder of parties, *cont'd.*
 - Dismissal or quashal, 7, 904
 - Effect of nonjoinder or misjoinder, 7, 864
 - Formal parties, 7, 863
 - General rule, 7, 860
 - Husband and wife, 7, 862
 - Reason for rule, 7, 861
 - Separate interests, 7, 863
 - Summons and severance, 7, 862
 - When joinder unnecessary, 7, 863
- Judgment in appellant's favor, 2, 27
- Judgment of courts of record, 2, 27
- Judgments (see *infra*, To what judgments the writ lies):
 - Effect on judgment, 7, 825
 - Whether technical judgment required, 7, 834
- Jurisdiction, 7, 822
 - Dismissal for want of jurisdiction, 7, 903
 - Effect on jurisdiction of person or subject-matter, 7, 900
- Justices of the peace, 2, 29
- Limitation of actions, 7, 872; 13, 187
 - Before end of term, 7, 873
 - Bill of exceptions, 7, 872
 - Computation of time, 7, 877
 - Exception to operation of statutes, 7, 874
 - Extension, 7, 876
 - How statute availed of, 7, 877
 - Motion, 7, 877
 - Motion in error, 7, 873
 - Part excepted, 7, 876
 - Retroactive legislation, 7, 874
 - Rule stated, 7, 872
 - Statutes governing, 7, 873
 - What may be waived, 7, 874
 - When statute begins to run, 7, 876
 - When writ considered brought, 7, 877
- Lis pendens*, 7, 825
- Mandamus (see MANDAMUS):
 - Mandamus as substitute, 7, 851
 - Mandamus instead of appeal or error, 13, 530
 - In general, 13, 530
 - When appeal or error inadequate, 13, 533
- Mandate, see MANDATE.
- Marriage, 7, 869
- Ministerial power, 7, 845
- Necessity, 7, 822
 - Cannot be waived, 7, 822
 - Divested jurisdiction, 7, 822
 - In general, 7, 822
 - Motion of court, 7, 823
- New action, 7, 825
- New parties, 7, 825

ERROR, WRIT OF, *cont'd.*

- New pleadings, 7, 825
- Next friend, 14, 1058
- Notice of application, 7, 827
- Opening, amending, and vacating judgments:
 - Error *coram nobis*, 15, 253
 - Issues not reopened, 15, 254
 - Not substitute for writ of error, 15, 213, 217
 - Writ superseded by other proceedings, 15, 254
- Ordinances, see ORDINANCES.
- Parties, 7, 856
 - Abatement, 7, 866
 - Artificial persons, 7, 858
 - Authority of attorney, 7, 857
 - Bail, 7, 858
 - Criminal cases, 7, 858
 - Defendants, 7, 865
 - Description of parties, 7, 866
 - Dismissal or quashal, 7, 903
 - Effect of misjoinder, 7, 864
 - Effect of nonjoinder, 7, 864
 - General rule, 7, 856
 - Heirs, 7, 857
 - Husband and wife, 7, 862
 - Infants, 7, 858
 - Joinder, 7, 860
 - Joinder of defendants, 7, 865
 - Joinder unnecessary, 7, 863
 - New parties, 7, 825
 - Personal representatives, 7, 857
 - Plaintiffs, 7, 856
 - Principal, 7, 858
 - Privies, 7, 857
 - Summons and severance, 7, 862
 - Who entitled to writ, 7, 856
- Patents, see PATENTS.
- Plural writs of error, 7, 855
 - Cross-writs of error, 7, 855
 - To several judgments, 7, 855
- Præcipe, 16, 770
- Privies, 7, 857
- Probate and contest of wills, 2, 230; 16, 1060
- Process in error, 7, 894
 - Alias scire facias*, 7, 898
 - Contents and sufficiency of process, 7, 898
 - In general, 7, 894
 - Scire facias *ad audiendum errores*, 7, 895
 - Waiver, 7, 899
- Purposes, 7, 821
- Quashal, see *infra*, Dismissal, quashal, or discontinuance.
- Questions of law and fact:
 - Mixed questions of law and fact, 7, 849
 - Questions of fact, 2, 27; 7, 848
 - Questions of law, 7, 847

ERROR, WRIT OF, *cont'd.*

- Records:
 - Alleging diminution of the record, 7, 893
- Referees, 7, 836
- Release of error, 7, 869
 - Confession of judgment, 7, 870
 - Consent, 7, 870
 - Construction of plea, 7, 871
 - Effect of release, 7, 870
 - Execution of release, 7, 870
 - Formal release, 7, 869
 - How issue tried, 7, 872
 - How release pleaded, 7, 871
 - In general, 7, 869
 - Objections to plea, 7, 871
 - Voluntary acts of plaintiff in error, 7, 870
- Report of referees, 7, 836
- Restitution*, see **RESTITUTION**.
- Retroactive legislation, 7, 874
- Return day, 7, 882
 - Amendment, 7, 911
- Return of writ, 7, 889
 - At what term, 7, 891
 - Filing the return, 7, 892
 - How return shown, 7, 893
 - In general, 7, 889
 - Necessity for return, 7, 890
 - On what day of term, 7, 892
 - Original writ to be returned, 7, 890
 - Practice in different states, 7, 890
 - Refusal to return, 7, 890
 - Signature, 7, 890
 - What return consists of, 7, 890
 - When returnable, 7, 891
- Revival of judgments, 18, 1087
- Scire facias:
 - Alias* scire facias, 7, 898
 - Scire facias *ad audiendum errores*, 7, 895
 - How directed, 7, 895
 - How tested, 7, 895
 - In general, 7, 895
 - Irregular service, 7, 898
 - Necessity for service, 7, 896
 - Notification of time for appearance, 7, 895
 - Of what court a process, 7, 895
 - Served by sheriff, 7, 895
 - Service, 7, 896
 - Signature, 7, 895
 - Time of service, 7, 896
 - Upon whom served, 7, 897
 - Whence issued, 7, 895
 - When returnable, 7, 895
- Seal, 7, 883
 - Amendment, 7, 911
- Second writ of error, 7, 900
 - After case has been decided, 7, 900

ERROR, WRIT OF, *cont'd.*

- Second writ of error, *cont'd.*
 - Examples, 7, 900, 901
 - In general, 7, 900
- Service of process, 7, 889
 - Failure to serve, 7, 889
 - Generally, 7, 889
 - How shown, 7, 889
 - Scire facias *ad audiendum errores*, 7, 896
 - Irregular service, 7, 898
 - Necessity for service, 7, 896
 - Several defendants, 7, 897
 - Time of service, 7, 896
 - Upon whom served, 7, 897
 - Where defendants are partners, 7, 897
- Setting out return day, 7, 882
- Signature, 7, 882
 - Return, 7, 890
- Specific averments, 7, 879
- Statutes affecting actions or suits, 7, 826
- Statutory judgment, 2, 28
- Substitution of attorneys, 7, 825
- Suits, 7, 826
- Summons and severance, 2, 155
- Supersedeas and stay of proceedings*, see **SUPERSEDEAS AND STAY OF PROCEEDINGS**.
- Term:
 - Return, 7, 891
- Teste, 7, 882
 - Amendment, 7, 911
- Time of allowance, 7, 887
- Time of making motion for dismissal, 7, 905
- Time to sue out the writ, 7, 872
 - Before end of term, 7, 873
 - Bill of exceptions, 7, 872
 - Computation of time, 7, 877
 - Exception to operation of statutes, 7, 874
 - Extension, 7, 876
 - How statute availed of, 7, 877
 - Motion, 7, 877
 - Motion in error, 7, 873
 - Part excepted, 7, 876
 - Retroactive legislation, 7, 874
 - Rule stated, 7, 872
 - Statutes governing, 7, 873
 - What may be waived, 7, 874
 - When statute begins to run, 7, 876
 - When writ considered brought, 7, 877
- To what judgments the writ lies (see *infra*, Final judgments):
 - Technical judgment not required, 7, 834
 - Arrest or stay of judgment, 7, 835
 - Award of arbitrators, 7, 837

ERROR, WRIT OF, *cont'd.*To what judgments the writ lies, *con.*Technical judgment not required, *cont'd.*

Criminal cases, 7, 840

Decisions peculiar to various jurisdictions, 7, 837

Discretion, 7, 844

Examples of cases in which writ does not lie, 7, 842, 844

Exercise of discretion, 7, 844

Interlocutory judgments, 7, 842

Judgment in favor of plaintiff in error, 7, 837

Ministerial powers, 7, 845

Report of referees, 7, 836

Void judgment, 7, 835

When writ not applicable, 7, 842

To what tribunal the writ lies, 7, 828, 832

Applications of the rule, 7, 830

Examples, 7, 830, 832

In general, 7, 828

Probate courts, 7, 830

Quasi-legal tribunals, 7, 832

Trial *de novo*, 7, 832

Tribunal unknown to courts of common law, 2, 28

United States courts, 22, 309

Void judgments, 7, 835

Waiver of process, 7, 899

What is brought up by the writ, 7, 899

By one party, 7, 899

Consolidated actions, 7, 899

In general, 7, 899

Proceedings by sheriff, 7, 899

Where statutes do not provide a uniform method of appellate procedure, 2, 26

Writ of right, 7, 826

At common law, 7, 826

Bond, 7, 826

Legislative conditions, 7, 827

Modern practice, 7, 827

Notice of application unnecessary, 7, 827

ESCAPE, 7, 913

Accessory, 7, 915

Actions, *see infra*, What action lies.

Aiders and abettors, 7, 915

Appeals:

Dismissal of appeal, 2, 337

Effect on pending appeal, 7, 924

Case decided without knowledge of escape, 7, 925

Conditional dismissal, 7, 927

Dismissal of appeal, 7, 925

Dismissal without notice to plaintiff or attorney, 7, 926

ESCAPE, *cont'd.*Appeals, *cont'd.*Effect on pending appeal, *cont'd.*

In general, 7, 924

Return or recapture before dismissal, 7, 927

Summary dismissal, 7, 925

Waiver of right of appeal, 2, 182

Arraignment and trial, 7, 922

Bail, 7, 928

Bills of particulars, 3, 552

Civil proceedings, 7, 927

Election of remedies, 7, 927

What action lies, 7, 929

Criminal procedure, see infra, Indictment or information; Escape and recapture.

Arraignment and trial, 7, 922

Effect on pending appeal, 7, 924

Summary proceedings, 7, 923

Debt, 7, 929

Declaration and complaint, 7, 933

Arrest and custody, 7, 934

Escape from custody, 7, 934

Sufficiency, 7, 933

Variance, 7, 935

Defenses, 7, 936

Action after bail, 7, 937

Collateral attack, 7, 938

Discharge, 7, 937

Excuse for failure to recapture, 7, 937

Voluntary return or recapture, 7, 936

Definition, 7, 914

Duplicitv, 7, 915

Election of remedies, 7, 927

After surrender, 7, 928

Decision of election, 7, 929

Effect on bond for jail limits, 7, 928

Effect upon liability as bail, 7, 928

In general, 7, 927

Sheriff's return, 7, 928

Escape and recapture:

New award of execution, 7, 924

Plea of non-identity, 7, 924

Executions against the body and arrest in civil cases, 8, 648

Indictment or information, 7, 914

Aiding felon, 7, 916

Contract of service to secure payment of fine, 7, 915

Duplicitv, 7, 918

Essential elements, 7, 916

For aiding an escape, 7, 915

For the escape itself, 7, 914

Necessary averments, 7, 918

Prison breaking, 7, 919

Rescue, 7, 920

Several counts, 7, 917

Suffering an escape, 7, 917

Variance, 7, 919

ESCAPE, *cont'd.*

Information, see infra, Indictment or information.

Jail limits, 7, 928

Judgment, 7, 938

Negligent escape, 7, 939

Non-identity, 7, 924

Nonsuit, 7, 939

Officer's remedies, 7, 939

Parties, 7, 932

After rescue, 7, 933

Defendant, 7, 932

Election to sue old or new

sheriff, 7, 933

Joinder of sheriff with debtor,

7, 932

Plaintiff, 7, 932

Pending trial, 7, 923, 924

Pleading in defense, 7, 936

Recapture, 7, 924, 936

Defenses, 7, 936

Rescue:

Parties, 7, 933

Sheriff, 7, 932, 933

Officer's remedies, 7, 939

Special findings, 7, 938

Summary proceedings, 7, 923

Supersedeas and stay of proceedings, 7, 940

Trespass, 7, 929

Variance, 7, 919, 935

Venue, 7, 936; 22, 783

Verdict, 7, 938

Voluntary escape, 7, 939

Voluntary return, 7, 936

What action lies, 7, 929

Abolition of forms of action under the code, 7, 930

Action of debt cumulative, 7, 931

At common law, 7, 929

Case, 7, 929

Case or debt, 7, 929

Debt on bond, 7, 931

Difference between debt and case, 7, 930

Escape on mesne process, 7, 930

Negligent escape, 7, 930

Summary proceedings, 7, 931

Under statutes, 7, 929

Voluntary escape, 7, 930

ESCHEAT, 8, 1

Declaration and complaint, 8, 3

Information, 8, 3

Nature of proceedings, 8, 2

Necessity of proceedings to vest title, 8, 1

Petition, 8, 3

Traverse of proceedings, 8, 3

Who may bring proceedings, 8, 2

Writ of, 8, 2

ESSOIN:

Dower, 7, 161

ESTOPPEL, 8, 5

See ADMISSIONS.

Accord and satisfaction, 1, 82

Agreed case, 1, 390

Answers in equity pleading, 1, 915

Appeal bonds and undertakings:

Denying jurisdiction of the court, 1, 991

Sureties, 1, 1020

Appeals, 2, 246, 516

Error occurring through consent of appellant, 2, 516

Estoppel to complain of error, 2, 516

Failure to object, 2, 518

Instruction given at appellant's request, 2, 523

Invited error, 2, 519

Judgment by consent, 2, 516

Obtaining admission or exclusion of testimony, 2, 522

Recognized validity of error, 2, 517

Request of court, 2, 519

Appearances:

Ratification of attorney's appearance, 2, 692

Appearing on face of pleadings, 8, 9

Bills in equity, 3, 355

Certiorari:

Objections not raised below, 4, 295

Continuances:

Justices of the peace, 4, 898

Corporations:

Denying corporate existence, 5, 72

Demurrers to evidence:

Effect of demurrer, 6, 446

Dismissal, discontinuance, and nonsuit, 6, 874, 989

Want of prosecution, 6, 916

Effect of pleading estoppel unsuccessfully, 8, 13

Ejectment:

Estoppel to deny title, 7, 324

Eminent domain:

Appeals, 7, 632

Ejectment, 7, 703

Error, writ of:

Dismissal, 7, 902

Estoppel *in pais*:

Answers in code pleading, 1, 835, 843

Infants:

Fraudulent representations as to age, 10, 692

Joinder of counts and causes, 8, 10

Jury:

Waiver of right to jury trial, 12, 267

Manner of pleading estoppel, 8, 9

Estoppel by deed, 8, 12

ESTOPPEL, *cont'd.*

Manner of pleading estoppel, *cont'd.*
 Estoppel by record, 8, 12
 Estoppel *in pais*, 8, 10
 Form of plea, 8, 12
 Generally, 8, 9
 Inference, if any, against the
 estoppel, 8, 10
 Joinder of plea with general de-
 nial, 8, 10

Matter, 8, 6

Nature of plea, 8, 5

Necessity of pleading estoppel, 8, 6

Code system, 8, 7

Common law, 8, 6

Estoppel by deed, 8, 9

Estoppel by record, 8, 8

Estoppel *in pais*, 8, 6

Exceptions, 8, 8

Replication not allowed, 8, 8

Suits to recover real property,
 8, 8

Redemption, 17, 955

Replication and replies:

Matter of estoppel, 18, 647

Usury, 22, 421

Waiver, 8, 13

Illustrations, 8, 14

In general, 8, 13

Waiver of objection to defective
 plea of estoppel, 8, 14

Where an estoppel cannot be
 pleaded, 8, 14

Who may plead, 8, 6

ESTRAYS, 8, 16

See TRESPASSING, VICIOUS, AND DIS-
 EASED ANIMALS.

Civil actions, 8, 18

Criminal procedure, 8, 16

Failure to pursue statutory defi-
 nition of offense, 8, 17

Identification of offense, 8, 16

In general, 8, 16

Venue, 8, 18

Larceny:

Allegation of ownership, 12, 966

Venue, 8, 18

ESTREPEMENT, see WASTE.

EVENT, see ABIDING THE EVENT.

**EVICION (see LANDLORD AND TEN-
 ANT):**

Possession, writ of, see POSSESSION,
 WRIT OF.

EVIDENCE, 8, 19; 10, 395

See AMENDMENTS; APPEALS; BILLS
 OF PARTICULARS; DEATH BY
 WRONGFUL ACT; DOCUMENTARY
 EVIDENCE; INJUNCTIONS; INSTRUC-
 TIONS; NEWLY DISCOVERED EVI-
 DENCE; QUESTIONS OF LAW AND
 FACT; WITNESSES.

Admiralty, see ADMIRALTY.

Admissions, see ADMISSIONS.

EVIDENCE, *cont'd.*

Affidavits, see AFFIDAVITS.

Agreed case, see AGREED CASE.

Alimony, see ALIMONY.

Amendments, see AMENDMENTS.

Answers in code pleading, see AN-
 SWERS IN CODE PLEADING.

Answers in equity pleading, see AN-
 SWERS IN EQUITY PLEADING.

Appeals, see APPEALS.

Arguments of counsel, see ARGUMENTS
 OF COUNSEL.

Assignment of errors, see ASSIGNMENT
 OF ERRORS.

Bills de bene esse, see BILLS DE BENE
 ESSE.

Bills of exceptions, see BILLS OF EX-
 CEPTIONS.

Bills of particulars, see BILLS OF
 PARTICULARS.

Certiorari, see CERTIORARI.

Contempt:

Contempt in court's presence, 4,
 775

Written evidence, 4, 772

Continuances, see CONTINUANCES.

*Court's control over introduction of
 evidence*, see TRIAL.

Criminal procedure:

Pleadings as evidence, 8, 31

Cross-bills, see CROSS-BILLS.

Cross-complaints, 5, 686

Cumulative evidence, 15, 393, 394

De bene esse, see BILLS DE BENE ESSE.

Declaration and complaint, 4, 612

As evidence, 8, 20, 31

Demurrers to evidence, see DEMUR-
 RERS TO EVIDENCE.

Depositions, see DEPOSITIONS.

Directing verdict, see DIRECTING
 VERDICT.

Discovery, see DISCOVERY.

Eminent domain, see EMINENT DO-
 MAIN.

Examination of parties before trial, see
 EXAMINATION OF PARTIES BEFORE
 TRIAL.

Examination of witnesses, see EXAM-
 INATION OF WITNESSES.

Exceptions and objections, see EXCEP-
 TIONS AND OBJECTIONS.

Exhibits, see EXHIBITS.

Expert witnesses, see EXPERT WIT-
 NESSES.

False imprisonment:

Indictment as evidence, 8, 31

Foreclosure of mortgages, see FORE-
 CLOSURE OF MORTGAGES.

Grand juries, see GRAND JURIES.

Habeas corpus, see HABEAS CORPUS.

Hearing, 10, 17

Impeachment of witnesses, see IM-
 PEACHMENT OF WITNESSES.

EXAMINATION OF PARTIES BEFORE TRIAL, *cont'd.*Extent of examination, *cont'd.*

Production of books and papers, 8, 57

Scope co-extensive with cross-examination, 8, 55

Testimony tending to destroy adversary's case, 8, 55

To ascertain cause of action or defense, 8, 55

Vain or curious inquiry, 8, 55

Good faith, 8, 43

Information and belief, 8, 51

Leading questions, 8, 122

Nature of proceedings, 8, 36

Confusion of statutes, 8, 38

Statutes governing, 8, 37

Statutory proceedings, 8, 36

Substitute for bill of discovery 8, 26

Time of filing interrogatories, 8, 37

United States practice, 8, 37

Nature of the right, 8, 38

Absolute, 8, 39

Discretion, 8, 39

In general, 8, 38

Statutes, 8, 38

Nonresidents, 8, 50

Nonsuit, 8, 63, 66

Notice of examination, 8, 65

Default or nonsuit, 8, 66

In general, 8, 65

Opportunity to amend, 8, 60

Service upon attorney, 8, 65

Subpœna, 8, 65

Order:

When granted, 8, 43

Parties to the examination, 8, 58

Corporations, 8, 58

In general, 8, 58

Party in default, 8, 59

Party in interest, 8, 59

Suit for another's benefit, 8, 59

Perpetuation of testimony, see PERPETUATION OF TESTIMONY.

Proceedings at the trial, 8, 66

Production of documents, 8, 57

How enforced, 8, 58

Party not a corporation 8, 58

Right, 8, 57

Recalling witnesses:

In general, 8, 129

Residents, 8, 50

Scope of answers, 8, 61

Second examination, 8, 60

Self-crimination, see *infra*, *Criminating testimony*.

Statutes:

Absolute or resting in discretion, 8, 39

Confusion of statutes, 8, 38

EXAMINATION OF PARTIES BEFORE TRIAL, *cont'd.*Statutes, *cont'd.*

Nature of the right, 8, 38

Statutes governing, 8, 37

Statutory proceedings, 8, 36

Time of filing interrogatories, 8, 37

United States courts, 8, 37

Witness, examining party as, 8, 67

EXAMINATION OF WITNESSES, 8, 70

See EXAMINATION OF PARTIES BEFORE TRIAL; IMPEACHMENT OF WITNESSES.

Account books, 8, 144

Affidavit:

Examination of party, 0, 000

Answers must be responsive to questions, 8, 134

Appeals:

Leading questions, 8, 84

Assuming facts neither admitted nor proved, 8, 77

Application of the rule, 8, 77

Cross-examination, 8, 78

Expert witnesses, 8, 78

Facts not disputed, 8, 78

Facts that have been proved, 8, 78

In general, 8, 77

Attorneys:

Exclusion from court room, 8, 93

Bill of exceptions, 8, 145

Bill of particulars, 8, 145

Check book, 8, 145

Conclusion as to merits, 8, 80

Conclusions of law and fact, 8, 78

Constitutional law:

Self-crimination, 8, 147

Contempt:

Exclusion from court room, 8, 93

Control by the court, 8, 74

Indecent evidence, 8, 75

In general, 8, 74

Interruption of witness, 8, 75

Method of testifying, 8, 75

Protracted examinations, 8, 74

Repetition, 8, 74

Showing materiality, 8, 76

Copies:

Refreshing the memory, 8, 140

Court room, exclusion from, 8, 92

Courts (see *infra*, Control by the court; Cross-examination; Examination by court; Leading questions; Propriety of questions; Refreshing the memory):

Exclusion from the court room, 8, 92

Court's power to examine, 21, 990

Criminal procedure, 8, 147

California, 8, 150

EXAMINATION OF WITNESSES, EXAMINATION OF WITNESSES,*cont'd.*Criminal procedure, *cont'd.*

Complete waiver of privilege, 8, 151

Constitutional privilege, 8, 147

Criminating himself, 8, 147

Cross-examination as to commission of crime, 8, 117, 147

Defendant's account of his doings, 8, 148

Direct examination, 8, 147

Disclosure of confidential communications, 8, 152

Discretion of court, 8, 148

Examination by the court, 8, 73

Extent of privilege, 8, 147

Harmless error, 8, 150

Point not touched upon direct examination, 7, 149

Questions tending to discredit the witness, 8, 116

Self-crimination, 8, 147

Subject opened by direct examination, 8, 149

Testing reliability of witness, 8, 113

Unimportant matters, 8, 150

Waiver of privilege, 8, 147

Criminating testimony, 8, 147

Cross-examination, 8, 98

Appeals, 2, 555

Waiver of objection to evidence, 2, 523

Assumption of facts, 8, 78

Criminal procedure, 8, 147

California, 8, 150

Complete waiver of privilege, 8, 151

Constitutional privilege, 8, 147

Defendant's account of his doings, 8, 148

Disclosure of confidential communications, 8, 152

Extent of privilege, 8, 147

Harmless error, 8, 150

Point not touched upon direct examination, 8, 149

Subject opened by direct examination, 8, 149

Unimportant matter, 8, 150

Waiver of privilege, 8, 147

Depositions, see DEPOSITIONS.

Discretion of court, 8, 109

In general, 8, 109

Limiting extent of cross-examination, 8, 110

Protection of witnesses, 8, 111

Requiring completion of cross-examination where commenced, 8, 111

*cont'd.*Cross-examination, *cont'd.*

Examination of adverse party, 8, 122

Expert witnesses (see EXPERT WITNESSES), 8, 749

How far limited to scope of direct examination, 8, 101

American rule, 8, 102

Application of the rule, 8, 105

Calling witness as party's own witness, 8, 103

English rule, 8, 102

Exact fact named, 8, 105

Examples, 8, 102, 109

Giving credit to a hostile witness called by the opposing party, 8, 104

No strict limitation, 8, 105

Only a portion of transaction or conversation given, 8, 105

Very day, 8, 105

Impeachment of witnesses, see IMPEACHMENT OF WITNESSES.

Inquests and inquiries, 10, 1150

Leading in cross-examination, 8, 121

Memorandum, 8, 121

Order of proof, 15, 386

Party charged with fraud, 8, 111

Questions tending to discredit the witness, 8, 116

Commission of crime, 8, 117

Contradictory statements, 8, 116

Criminal case, 8, 117

Discrepancies, 8, 116, 117

Examination as to collateral matters, 8, 118

Hostility, 8, 120

Interest, 8, 120

Recross-examination, 8, 129

Redirect examination, 8, 124

Right to cross-examine, 8, 98

Admission of irrelevant matter, 8, 101

Death of witness after examination in chief, 8, 99

Exclusion of direct testimony, 8, 99, 100

Necessity of witness being sworn in chief, 8, 98

Witness not sworn, 8, 98

Witness sworn and giving evidence, 8, 98

Witness sworn by mistake, 8, 98

Upon written instruments, 8, 121

Waiver:

Objection to evidence, 2, 523

EXAMINATION OF WITNESSES,*cont'd.*Cross-examination, *cont'd.*

Witnesses:

Testing reliability of witness, 8, 112

Bias and ill-will, 8, 113

Criminal cases, 8, 113

Discretion of court, 8, 113

Experimenting with witness's eyesight, 8, 113

In general, 8, 112

Interest, 8, 113

Of witness to reputation, 8, 115

Value of property, 8, 114

Witnesses who testify to value, 8, 114

Written instruments, 8, 121

Deaf and dumb, 8, 96

Death:

Death of witness after examination in chief and before opportunity to cross-examine, 8, 99

Discrediting witness, see *infra*, Cross-examination.Discretion of court (see *infra*, Courts):

Testing reliability of witness, 8, 113

Dying declarations:

Leading questions, 8, 83

Evasive witness:

Leading questions, 8, 87

Examination by court, 8, 71

Criminal cases, 8, 73

In general, 8, 71

Recalling witness, 8, 72

Witness not called by party, 8, 72

Exceptions and objections:

To answers, 8, 246

Appeal, 8, 246

Method of raising objection, 8, 246

Specificness of objection, 8, 247

To questions, 8, 244

Application of the rule, 8, 245

Hypothetical questions, 8, 244

Necessity for exceptions, 8, 246

Necessity for objections, 8, 244

Stating grounds of objection, 8, 245

Time of making objection, 8, 245

Exclusion from the court house, see TRIAL.**EXAMINATION OF WITNESSES,***cont'd.*

Exclusion of direct testimony where there is no opportunity to cross-examine, 8, 99, 100

Expert witnesses, see EXPERT WITNESSES.

Fraud:

Cross-examination of party charged with fraud, 8, 111

General rules, 8, 71

Hearing apart, see TRIAL.

Hostile witness, 8, 104

Leading questions, 8, 86

Hostility:

Cross-examination, 8, 120

Identification of prisoner:

Leading questions, 8, 92

Identity:

Leading questions, 8, 92

Impeaching interpreter, 8, 96

Indecent evidence, 8, 75

Insulting questions, 8, 111

Interest:

Cross-examination, 8, 113, 120

Interpreters, 8, 95

Deaf and dumb witness, 8, 96

Impeaching interpreter, 8, 96

In general, 8, 95

Witness unable to speak the English language intelligibly, 8, 95

Interruption of witness, 8, 75

Leading questions, 8, 80

Cross-examination, 8, 121

Cross-examination of adverse party, 8, 122

Dates, 8, 91

Discretion as to leading questions, 8, 83

Doctrine allowing leading questions to witness called to contradict another, 8, 89

Doctrine excluding leading questions to witness called to contradict another, 8, 88

Dying declaration, 8, 83

Evasive witness, 8, 87

Examination of party as witness, 8, 87

Examples of questions held objectionable as leading, 8, 81

Hostile witness, 8, 86

Identification of the prisoner, 8, 92

In general, 8, 80

Numerous items, 8, 91

Persons of weak or immature mind, 8, 90

Preliminary questions, 8, 92

Questions answerable by yes or no not necessarily leading, 8, 81

EXAMINATION OF WITNESSES, EXAMINATION OF WITNESSES,*cont'd.***Leading questions, *cont'd.***

Questions suggesting the answer, 8, 81

Rejection of answers, 8, 85

Suggesting answers, 8, 80

Suggestions in aid of memory, 8, 91

Testimony at a former hearing, 8, 91

What is a leading question, 8, 80

When leading questions harmless, 8, 83

When necessary to assist the witness, 8, 81

Whether discretion of court is reviewable, 8, 84

Witness called to contradict another, 8, 88

Letters, 8, 145

Materiality:

Court requiring counsel to show materiality, 8, 76

Cross-examination, 8, 101

Propriety of questions, 8, 76

Memorandum, see *infra*, Refreshing the memory.*Memory*, see *infra*, Refreshing the memory.

Memory, suggestions in aid of, 8, 91

Order of examination, 8, 71

Parties:

Cross-examination of adverse party, 8, 122

Exclusion from court room, 8, 93

Leading questions, 8, 87

Preliminary examination, see **PRELIMINARY EXAMINATION.**

Privileged communications, 8, 152

Propriety of questions, 8, 76

Assuming facts neither admitted nor proved, 8, 77

Conclusion as to merits, 8, 80

Conclusion of facts, 8, 78

Conclusion of law, 8, 78

Discretion of court, 8, 77

Exclusion by court, 8, 76

Exclusion from court room, 8, 92

Indefiniteness, 8, 76

In general, 8, 76

Interpreters, 8, 95

Leading questions, see *infra*, Leading questions.

Materiality of the answer, 8, 70

Questions calling for conclusions, 8, 78

Protection of witnesses, 8, 111

Protracted examinations, 8, 74

Putting witnesses under rule, see **TRIAL.**

Rebuttal and surrebuttal, 8, 131

Anticipating defense, 8, 132

*cont'd.***Rebuttal and surrebuttal, *cont'd.***

Cumulative evidence, 8, 132

Evidence in surrebuttal, 8, 132

In general, 8, 131

Testimony in rebuttal, 8, 132

Recalling witnesses, 8, 129

For examination touching new matter, 8, 129

For re-examination of matter already gone into, 8, 130

To explain prior statement, 8, 130

To lay foundation for impeachment, 8, 130

Recross-examination, 8, 129**Redirect examination, 8, 123**

Collateral matters, 8, 127

Explaining contradictions, 8, 125

Explanation of cross-examination, 8, 124

Extent, 8, 123

Introduction of immaterial testimony to meet immaterial testimony, 8, 127

New matter upon cross-examination, 8, 125

Purpose, 8, 123

Reasons for hostility, 8, 128

Reasons for prior statement, 8, 125

Repetition of direct testimony, 8, 128

Refreshing the memory, 8, 135

Account books, 8, 144

Admissibility of memoranda in evidence, 8, 146

Application of the rule, 8, 136

Attesting witness, 8, 135

Bill of exceptions, 8, 145

Bill of particulars, 8, 145

Check book, 8, 145

Circumstances to be considered in applying rule, 8, 138

Copies, 8, 140

Deposition upon former action, 8, 139

Discretion of court, 8, 138

In general, 8, 135

Inspection of papers not in court, 8, 142

Letters, 8, 145

Limitation of rule, 8, 136

Memoranda made by other persons, 8, 138

Memorandum of testimony, 8, 144

No independent recollection, 8, 146

Papers which may be used, 8, 143

Reason for rule, 8, 136

EXAMINATION OF WITNESSES, EXCEPTIONS AND OBJECTIONS,

- cont'd.*
 Refreshing the memory, *cont'd.*
 Reporter of a commercial agency, 8, 140
 Right of party to inspect the paper, 8, 142
 Schedule, 8, 145
 Stenographic notes, 8, 145
 Time of making memorandum, 8, 137
 When necessary to produce original, 8, 142
 Reputation:
 Testing the reliability of witness who testifies to reputation, 8, 115
 Responsive of answer, 8, 134
 Schedule of prices, 8, 145
Separation of witnesses, see TRIAL.
 Stenographers:
 Stenographic notes, 8, 145
Striking out evidence, see WITHDRAWING AND STRIKING OUT EVIDENCE.
Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.
Surrebuttal, see REBUTTAL AND SURREBUTTAL.
Testing reliability of witness, see *infra*, Cross-examination.
 Value:
 Testing reliability of witness who testifies to value, 8, 114
Withdrawing and striking out evidence, see WITHDRAWING AND STRIKING OUT EVIDENCE.
 Witnesses, 8, 74
 Exclusion from court room, 8, 92
 Written instruments, 8, 121
- EXCEPTIONS AND OBJECTIONS,**
 8, 153
 See BILLS OF EXCEPTIONS; DISMISSAL, DISCONTINUANCE, AND NONSUIT.
 Absence of pleadings, 8, 209
 Accounts and accounting, 8, 299
 Actions:
 Premature actions, 8, 302
Adequate remedy at law, see REMEDY AT LAW.
 Admiralty:
 Answer, 1, 272
 Libel, 1, 269
 Report of commissioner, 1, 276
 Admission of evidence, 8, 211, 236
 Admissibility apparent on its face, 8, 228
 After case gone to jury, 8, 217
 After verdict, 8, 217
 Appeal, 8, 211
 Applications of rule, 8, 226
 Civil cases, 8, 212
 Criminal cases, 8, 215
- cont'd.*
 Admission of evidence, *cont'd.*
 Exceptions to rule, 8, 228
 Immaterial alone, 8, 228
 Immateriality, 8, 236
 Incompetency, 8, 231
 Declaration and complaint, 8, 234
 Failure to lay sufficient foundation for admission, 8, 234
 Genuineness of writings, 8, 235
 Hearsay evidence, 8, 233
 Infants, 8, 232
 In general, 8, 231
 Parol evidence to vary writing, 8, 234
 Plea or answer, 8, 235
 Preliminary proof, 8, 235
 Proper pleadings to lay foundation for admission, 8, 234
 Secondary evidence, 8, 232
 Incompetent alone, 8, 228
 Incompetent, irrelevant, and immaterial, 8, 227
 In general, 8, 211
 Irrelevancy, 8, 236
 Irrelevant alone, 8, 228
 Limitation of rule, 8, 213
 Motion for new trial, 8, 217
 Necessity for objections, 8, 211
 Only grounds stated considered, 8, 223
 Order of admission, 8, 236
 Reason for rule, 8, 225
 Repetition of objections, 8, 229
 Necessity for exceptions, 8, 230
 Time of taking exceptions, 8, 231
 Specific grounds to be pointed out, 8, 218
 Specifying evidence objected to, 8, 217
 Specifying grounds of objection, 7, 218
 Admissibility apparent on its face, 8, 228
 Applications of rule, 8, 226
 Exceptions to rule, 8, 228
 Immaterial alone, 8, 228
 Incompetent alone, 8, 227
 Incompetent, irrelevant, and immaterial, 8, 227
 Irrelevant alone, 8, 228
 Only grounds stated considered, 8, 223
 Reasons for rule, 7, 226
 Specific grounds to be pointed out, 8, 218

EXCEPTIONS AND OBJECTIONS,

cont'd.
 Admission of evidence, *cont'd.*
 Specifying grounds of objection, *cont'd.*
 Undefined objections, 8, 223
 Waiver, 8, 226
 Time of making objections, 8, 215
 Undefined objections, 8, 223
 Waiver, 8, 226
 Affidavits, 8, 202
 Agency, 8, 299
 Amendments, 1, 571; 8, 207
 Bill, indictment, etc., 8, 207
 Exception necessary, 8, 208
 Plea or answer, 8, 208
Amicus curia, 8, 166
Another suit pending, see ANOTHER SUIT PENDING.
Answers, see *infra*, Plea or answer.
Answers in equity pleading, see ANSWERS IN EQUITY PLEADING.
 Appeal bonds and undertakings:
 Sureties, 1, 1005
 Appeals, 2, 546
 Objections not taken below 8, 157, 298
 Civil case, 8, 161
 Criminal case, 8, 161
 Defect apparent on record, 8, 162
 Equity, 8, 161
 Exceptions to rule, 8, 162
 Failure to state cause of action, 8, 162, 197
 General rule, 8, 157
 Guardian, 9, 997
 In what causes applicable, 8, 161
 Issues to jury, 11, 750
 Jurisdiction, 8, 162, 171
 Jury, 8, 186
 Legal conclusions, 8, 278
 Limitations, 8, 162
 New trial, 8, 279
 Receivers, 17, 871
 Replication, 18, 651
 To what errors applicable, 8, 162
 Verdict, 8, 820
 Want of jurisdiction, 8, 162, 171
 Service of exception, 2, 238
 To bill of exceptions, 8, 299
 To proceedings to perfect appeal, 8, 298
 Waiver to error by failure to object, 2, 518
 Appearance, 8, 171
 Arbitration and award, 8, 299
 Arguments of counsel, 2, 755
 Assignment, 8, 300

EXCEPTIONS AND OBJECTIONS,

cont'd.
Assignment of errors, see ASSIGNMENT OF ERRORS.
 Attachment, 8, 300
 Attorneys, 8, 299
Bill, see *infra*, Declaration and complaint.
 Bonds, 8, 300
 By whom exceptions taken, 8, 166
 By whom objection made, 8, 162
 Capital cases:
 Review of instruction not excepted to, 8, 257
 Case made on appeal, 3, 887
 Turning case into bill of exception, 3, 881
Certified cases, see CERTIFIED CASES.
 Certiorari, 8, 300
 Exceptions waived and objections not raised below, 4, 47
 Citation, 8, 180
Conclusions of law, see *infra*, Legal conclusions.
 Conduct of trial, 8, 272
 Conduct of counsel, 8, 272
 Conduct of trial judge, 8, 272
 Examples of irregularities, 8, 272, 273
 Irregularities in general, 8, 272
 Issues submitted to jury, 8, 273
 Continuances, 4, 908
 Corporations:
 Corporate capacity, 8, 300
 Costs, 8, 494
 Motion for retaxation of costs, 8, 295
 On appeal, 8, 494
 Specifically erroneous items, 8, 295
 Stating reasons for objection, 8, 295
 Taxation of costs, 8, 494
 Courts:
 Organization of court, 8, 178
 Criminal procedure:
 Indictment, information, or complaint, 8, 201
 Objections not taken below, 8, 161
 Cross-examination:
 Waiver of objection, 2, 523
 Damages, 8, 300
 Declaration and complaint, 8, 194
 Appeal, 8, 194
 Criminal procedure, 8, 201
 Defective statement of a cause of action, 8, 196
 Duplicity, 8, 201
 Exceptions to rule, 8, 197
 Failure to lay sufficient foundation for admission of evidence, 8, 234

EXCEPTIONS AND OBJECTIONS,

cont'd.

- Declaration and complaint, *cont'd.*
 - Failure to state cause of action
 - 8, 162, 197
 - Good after verdict, 8, 195
 - Inconsistency, 8, 199
 - Indefiniteness, 8, 199
 - In general, 8, 194
 - Misjoinder, 8, 201
 - Multifariousness, 8, 201
 - Necessity for exceptions, 8, 197
 - One good paragraph, 8, 199
 - Rule stated, 8, 194
 - Statement by way of recital, 8, 200
 - Supplemental complaint, 7, 197
 - Technical or formal defects, 8, 196
 - Want of jurisdiction, 8, 199
 - What objection must show, 8, 197

Decrees, see *infra*, Judgments and decrees.

Deeds, 8, 300

Defaults, 8, 294

Defense not raised by pleadings, 8, 210

Definiteness and certainty in pleadings, see DEFINITENESS AND CERTAINTY IN PLEADINGS.

Demurrer, 8, 205

Depositions, see DEPOSITIONS.

Directing verdict, 6, 700; 8, 282

Dismissal, discontinuance, and non-suit, 8, 292

Duplicity, 7, 243, 244; 8, 201

Eminent domain, see EMINENT DOMAIN.

Equity (see REMEDY AT LAW):

Not taken below, 8, 161

Evidence (see *infra*, Admission of evidence; Exclusion of evidence):

Competency of witnesses, see *infra*, Witnesses.

Failure to lay sufficient for admission, 8, 234

For variance between pleading and proof, 8, 247

Necessity for objections, 8, 247

Stating grounds of objection, 8, 250

Time and manner of making objections, 8, 249

Insufficiency of evidence, see *infra*, Insufficiency of evidence.

Questions, see *infra*, Examination of witnesses.

Renewing objections in motion for new trial, 8, 252

EXCEPTIONS AND OBJECTIONS,

cont'd.

Examination of parties before trial, 8, 69

Examination of witnesses:

To answers, 8, 246

Appeal, 8, 246

Method of raising objection, 8, 246

Specificness of objection, 8, 247

To questions, 8, 244

Application of the rule, 8, 245

Hypothetical questions, 8, 244

Necessity for exceptions, 8, 246

Necessity for objections, 8, 244

Stating grounds of objection, 8, 245

Time of making objection, 8, 245

Exclusion of evidence, 8, 236

Exceptions to rule, 8, 238

Laying foundation for objections, 8, 236

Necessity for exceptions, 8, 238

Necessity for objections, 8, 236

Time of taking exceptions, 8, 239

Executions, 8, 301

Executors and administrators, 8, 301

Filing, 8, 206

Findings of court:

Omission or refusal to find, 8, 277

Requirements as to exceptions, 8, 278

Time for request and exception, 8, 278

Findings of fact, 8, 273

Appeal, 8, 273

Effect of failure, 8, 273

Exceptions to rule, 8, 274

Incomplete findings, 8, 276

Indefinite findings, 8, 276

In general, 8, 273

Necessity, 8, 273

Objections cannot be raised for the first time on appeal, 8, 276

References, 8, 285

That findings are not supported by evidence, 8, 275

What the exception must specify, 8, 276

First taken on appeal, see *infra*, Appeals.

Forcible entry and detainer, 9, 77

Harmless error, 9, 78

Misjoinder of causes or parties, 9, 78

Objections not made below, 9, 77

Waiver of objections, 9, 78

EXCEPTIONS AND OBJECTIONS,

cont'd.

- Form of exceptions, 8, 167
- Frauds, statute of, 8, 210
- Friend of court, 8, 166
- Functions of exceptions and objections, 8, 156
- Garnishment, 9, 870
 - Errors apparent in the record, 9, 872
 - Necessity for exceptions, 9, 870
 - What errors considered on appeal, 9, 870
- Grand juries, 8, 181; 10, 402
 - After verdict, 8, 182
 - Challenge, 10, 404
 - In general, 10, 402
 - Jury composed of too many or too few members, 8, 182
 - Manner of objecting, 10, 404
 - Motion for new trial, 8, 182, 183
 - Motion in arrest of judgment, 8, 183
 - Motion to quash indictment, 10, 405
 - Motion to quash venire, 10, 406
 - Plea in abatement or motion, 10, 404
 - Proceedings before grand jury, 10, 409
 - Qualifications of grand jurors, 10, 407
 - Right to challenge and when to exercise it, 10, 408
 - To grand juries and grand jurors, 8, 181
 - Waiver by plea to the merits, 8, 182
 - Who may challenge, 10, 409
- Guardians:
 - Objections not taken below, 9, 997
- Habeas corpus, 9, 1080
- Handwriting:
 - Failure to lay sufficient foundation for admission of writing, 8, 235
- Hearing, 10, 17
- Hearsay evidence, 8, 233
- Homesteads and exemptions, 10, 75
- Homicide, 10, 189
- Immateriality, 8, 236, 228
- Incompetency of evidence, see infra,*
 - Admission of evidence.
- "Incompetent," 8, 227
- Indictments, 8, 201; 10, 563
 - Demurrer, 10, 563
 - How made, 10, 563
 - Motion to quash, 10, 563
 - Objection to complaints, 10, 577
 - Pointing out defects, 10, 566
 - Statute of jeofails, 10, 565
 - Time of making, 10, 564
- Index Pl. & Pr. — 23

EXCEPTIONS AND OBJECTIONS,

cont'd.

- Indictments, *cont'd.*
 - Waiver, 10, 564
 - Withdrawal of a plea, 10, 566
- Infants, 8, 232
- Information, 8, 201
- In general, 8, 156
- Injunctions (see INJUNCTIONS), 8, 301
- Instructions, 8, 253
 - Direction of verdict, 6, 700; 8, 282
 - Refusal of instructions, 8, 266
 - General exception, 8, 271
 - Grounds of request, 8, 269
 - Incomplete charge, 8, 268
 - Necessity for excepting to refusal of request, 8, 269
 - Necessity for requesting instructions, 8, 266
 - Time of taking exceptions, 8, 271
 - What exceptions must show, 8, 270
 - Refusal to direct, 8, 282
- Renewing exceptions in motion for new trial, 8, 271
- To instructions given, 8, 253
 - Application of the rule as to failure to object, 8, 254
 - Application of the rule as to specifying errors, 8, 263
 - Capital cases, 8, 257
 - Errors not specified not considered, 8, 264
 - Exceptions in gross, 8, 259
 - Exceptions to the rule, 8, 256
 - Exception to part of the charge containing several distinct propositions, 8, 260
 - General exceptions, 8, 261
 - Necessity for exceptions, 8, 255
 - Objections not raised below, 8, 253
 - Reason for specifying errors, 8, 262
 - Reason for the rule, 8, 254
 - Specifying erroneous propositions, 8, 257
 - Specifying errors, 8, 262
 - Statutory change of rule as to specifying errors, 8, 264
 - Time of taking exceptions, 8, 264
 - What exceptions must show, 8, 257
 - To manner of making charge, 8, 266
- Insufficiency of evidence, 8, 250
 - Appeal, 8, 250
 - Necessity for exceptions, 8, 252
 - Necessity for objections, 8, 250

EXCEPTIONS AND OBJECTIONS,

cont'd.

- Insufficiency of evidence, *cont'd.*
 - Proper method of taking advantage, 8, 252
 - Stating grounds of objection, 8, 251
- Intervention, 8, 192; 11, 505
- Irrelevancy, 8, 236
- "Irrelevant," 8, 228
- Issues submitted to jury, 8, 272
- Issues to the jury, 11, 691
 - Appellate review, 11, 744
 - Appellate review where exceptions and objections are not taken below, 11, 750
 - Bills of exceptions, 11, 692
 - Final decision by court, 11, 702
 - In general, 11, 691
 - New trial, consideration of exceptions, 11, 719
 - New trial where necessary objections were not made, 11, 720
 - Return, 11, 695
 - Transmission of exceptions, 11, 692
 - Transmission of exceptions and evidence, 11, 744
 - Where and to what taken, 11, 691
- Joinder of counts and causes, 8, 201
- Joinder of parties, 8, 188
- Judge (see JUDGE):
 - Authority of trial judge, 8, 178
 - Conduct of trial judge, 8, 272
- Judgment roll, 18, 479
- Judgments and decrees, 8, 287
 - Clerical errors, 8, 292
 - Default judgments, 8, 294
 - Defects of form, 8, 289
 - Error appearing on face of record, 8, 289
 - Excess in amount, 8, 290
 - For variance from pleadings or verdict, 8, 292
 - Incomplete judgment, 8, 289
 - In general, 8, 287
 - Insufficiency of evidence, 8, 291
 - Irregularities in entry of judgments or decrees, 8, 292
 - Judgment of dismissal, 8, 292
 - Judgments of nonsuit, 8, 292
 - Judgments on awards, 11, 1053
 - Manner of raising objection, 11, 904
 - Necessity, 8, 287
 - On appeal, 8, 287
 - Vacating and modifying judgment, 8, 288
 - Want of leave to sue on judgment, 11, 1098
- Judicial sales*, see JUDICIAL SALES.
- Jurat, 8, 206

EXCEPTIONS AND OBJECTIONS,

cont'd.

- Juries, 8, 183
 - Appeals, 8, 186
 - Disqualification of juror, 8, 184
 - Exception to refusal necessary, 8, 188
 - Failure to administer oath, 8, 187
 - Informality, 8, 186
 - Instances, 8, 183
 - Irregularity in drawing juries, 8, 184
 - Issues submitted to jury, 8, 272
 - Misconduct of juror, 8, 185
 - Oath, 8, 186
 - Rejection of juror, 8, 185
 - Time when objection should be made, 8, 186
 - To drawing, summoning, and impaneling jury, 8, 183
 - Trial without jury, 8, 187
- Jurisdiction*, see JURISDICTION.
- Justices of the peace:
 - Objections to jurisdiction, 12, 692
 - Pleadings, 12, 701
 - Want of jurisdiction on appeal from justice courts, 8, 173
- Legal conclusions, 8, 278
 - Effect of exceptions, 8, 279
 - In general, 8, 278
 - Raised for the first time in appellate court, 8, 278
 - References, 8, 285
 - Necessity, 8, 278
 - What authorizes review of law, 8, 278
- Local improvements, 13, 305
 - Assessments, 13, 312
- Malicious prosecution*, see MALICIOUS PROSECUTION.
- Mandamus, 8, 302; 13, 829
- Master in chancery*, see REFERENCES.
- Misnomer (see NAMES), 8, 192
- Mortgages, 8, 300
- Multifariousness, 8, 201
- Name, 8, 192
- Necessity for exceptions, 8, 163
 - Exceptions to the rule, 8, 163
 - In general, 8, 163
- Necessity for objections, 8, 157
 - Appeal*, see *infra*, Appeals.
- New trial, 8, 296; 14, 963
 - Grounds of motion for new trial, 8, 296
 - Necessity for exceptions, 8, 296
 - Renewal of objections to evidence in motion for new trial, 8, 252
 - Renewing exceptions in motion for new trial, 8, 271
 - Renewing objections in motion for new trial, 8, 168
 - Time of taking, 8, 297

EXCEPTIONS AND OBJECTIONS,

- cont'd.*
 New trial, *cont'd.*
 What exceptions must show, 8, 208
 Notice, 8, 180
 Oath, 8, 186
 Obviating necessity for objections and exceptions by stipulation, 8, 168
 Open and close, 15, 185
 Order of admission, 8, 236
 Parol evidence, 8, 234
 Particularity required in exceptions, 8, 167
 Parties, 8, 188
 Answer, 8, 190
 By whom exceptions taken, 8, 166
 By whom objection made, 8, 162
 Defect of parties, 8, 189
 Demurrer, 8, 190
 Incapacity to sue, 8, 191
 Intervention, 8, 192
 Misjoinder of parties, 8, 188
 Misnomer, 8, 192
 Objections to substitution of parties, 20, 1048
 Revivor, 8, 190
 Time of objecting in equity, 8, 189
 Waiver, 8, 188
 Want of jurisdiction of parties, 8, 169
 Necessity for objections, 8, 169
 Time and manner of making objection, 8, 171
 Partnership:
 Accounting, dissolution, and settlement, 15, 1058, 1080
 Bringing in new parties, 15, 1081
 In general, 15, 1080
 Nonjoinder and misjoinder, 15, 1081
 Actions arising out of partnership transaction, 15, 1010
 Personal injuries, 16, 461
 Petition (see *infra*, Declaration and complaint), 3, 493
 Pleading, 8, 192
 Absence of pleadings, 8, 209
 Affidavit, 8, 202
 Amendments, 8, 207
 Complaint, 8, 201
 Counterclaim, 8, 204
 Cross-complaint, 8, 204
 Declaration, petition, complaint, or bill, see *infra*, Declaration and complaint.
 Defects remedied by amendment, 8, 193

EXCEPTIONS AND OBJECTIONS,

- cont'd.*
 Pleading, *cont'd.*
 Defense not raised by pleadings, 8, 210
 Demurrer, 8, 205
 Failure to lay sufficient foundation for admission of evidence, 8, 234
 Filing, 8, 206
 Form of action, 8, 194
 For variance between pleading and proof, 8, 247
 Indictment, 8, 201
 Information, 8, 201
 Motion, 8, 193
 Necessity for exceptions, 8, 194
 On appeal, 8, 192
 Plea or answer, 8, 202
 Replication and reply, 8, 205
 Ruling on motion to strike out, 8, 208
 Signature, 8, 205
 Verification, 8, 205
 Waiver of exceptions and objections, 8, 211
 Plea or answer, 8, 202
 Answers, 8, 203
 Application of the rule, 8, 203
 Demurrer, 8, 204
 Failure to lay sufficient foundation for admission of evidence, 8, 235
 How raised, 8, 204
 In general, 8, 202
 Motion for judgment notwithstanding verdict, 8, 204
 Motion for new trial, 8, 204
 Motion to strike out, 8, 204
 What objection should point out, 8, 204
 Pleas in equity:
 Exception to answer filed with plea, 16, 628
 Liberty to accept, 16, 625
 Necessity of taking exception in plea overruled, 16, 626
 Prayers for relief, 16, 792
 By motion, 16, 792
 Demurrer, 16, 793
 Preliminary examination:
 Irregularities or want of examination, 16, 866
Premature suits, see PREMATURE SUITS.
Proceedings before referee or master, see REFERENCES.
Puis darrein continuance 17, 269
 Quieting title:
 Parties, 17, 324
 Receivers:
 Objections first raised on appeal, 17, 871
 Order appointing, 17, 870

EXCEPTIONS AND OBJECTIONS,

cont'd.

Recognizances, 8, 300

References, see REFERENCES.

Remedy at law, see REMEDY AT LAW.

Removal of causes, 18, 396, 402

Renewing objections in motion for new trial, 8, 168

Replevin, 18, 524, 544

Bond, 18, 624

Replications and replies, 8, 205; 18, 677

First taking on appeal, 18, 651

Waiver of objection, 18, 679

Report and case made:

Objections waived in trial court, 18, 734

Repugnancy, 18, 743

Rules of court, 18, 1253

Scandal and impertinence, 19, 208

Each exception must be supported in its entirety, 19, 209

Exceptions to report of master, 19, 212

Failure of exceptions to embrace whole of impertinent matter, 19, 210

Motions instead of exceptions, 19, 211

Notice, 19, 208

Written exceptions, 19, 208

Secondary evidence, 8, 232

Security for costs, see SECURITY FOR COSTS.

Sentence, see SENTENCE.

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Sham and frivolous pleadings, 20, 92

Sheriffs, 8, 302

Signature, 8, 205

Stipulation:

Obviating necessity for objections and exceptions by stipulation, 8, 168

Stock and stockholders.

Enforcement of stockholders' liability to creditors, 20, 753

Street railways:

Equitable action for trespass by elevated roads, 20, 862

Striking out evidence (see WITHDRAWING AND STRIKING OUT EVIDENCE), 22, 1321

Necessity for previous objection, 22, 1310

Striking out pleading:

Ruling on motion to strike out, 8, 208

Substitution of parties, 20, 1048

Summons and process, 8, 180

EXCEPTIONS AND OBJECTIONS,

cont'd.

Summons and process, see SUMMONS AND PROCESS.

Supplemental pleadings, see SUPPLEMENTAL PLEADINGS.

Taxation, 8, 302; 21, 421

Time to object (see *infra*, Appeals), 8, 162

For want of jurisdiction of parties, 8, 171

Time to take exceptions, 8, 166

Instructions, 8, 264

Trespass, see TRESPASS.

Trial, see *infra*, Conduct of trial.

Trover and conversion, 21, 1107, 1119

Trusts and trustees:

Accounting, 22, 105

Unincorporated societies:

Objections to parties plaintiff, 22, 238

Raising, waiving, and curing objections to defect of parties in actions against society, 22, 247

United States courts (see UNITED STATES COURTS), 22, 309

Usury, see USURY.

Variance (see VARIANCE):

For variance between pleading and proof, 8, 247

Necessity for objections, 8, 247

Stating ground of objection, 8, 250

Time and manner of making objections, 8, 249

Venue, 22, 812

Application for change of venue, 22, 815

Change of venue, 22, 815

Express statutory provision as to waiver, 22, 818

How objection taken, 22, 813

Omission of venue, 22, 812

Plea of privilege, 22, 814

Raising, waiving, and curing objections for wrong venue, 22, 813

That the venue is wrong, 8, 178

View that objection may not be waived, 22, 817

Waiver by pleading to merits, 22, 818

Waiver of objection, 22, 815

Verdict, 8, 280

Direction of verdict, 8, 282

Excessive verdict, 8, 281

Inadequate verdict, 8, 281

Incomplete verdict, 8, 282

Raised for the first time on appeal, 8, 280

Refusal to direct, 8, 282

To form of verdict, 8, 280

- EXCEPTIONS AND OBJECTIONS, *cont'd.***
 Verdict, *cont'd.*
 Verdict contrary to the evidence, 8, 281
 Verdict not within issues, 8, 282
 What the objection should specify, 8, 281
 Verification, 8, 205; 22, 1042
 Waiver of exceptions and objections, 8, 211
 Demurrer, 8, 211
 Demurrer sustained, 8, 211
 Examples, 8, 211
 Going to trial, 8, 211
 Limiting objection to the admission of evidence to a particular ground, 7, 226
 Pleading over, 8, 211
 What objection must show, 8, 163
 Appellate court, 8, 163
 Ground not reached in court below, 8, 163
 Grounds, 8, 163
 Only grounds stated considered, 8, 163
Withdrawing evidence, see WITHDRAWING AND STRIKING OUT EVIDENCE.
 Witnesses (see *infra*, Examination of witnesses):
 Competency of witness, 8, 239
 Exceptions to rule, 8, 240
 Incompetency for interest, 8, 240
 Necessity for objections, 8, 239, 244
 Objections on examination in chief, 8, 241
 Renewal of objection, 8, 244
 Specificity of objections, 8, 244
 Specifying grounds of objection, 8, 243
 Time of making objections, 8, 240
 Where objection is discovered during trial, 8, 242
 Where objection is known when witness is introduced, 8, 240
 Writings:
 Failure to lay sufficient foundation for admission, 8, 235
EXCESSIVE DAMAGES, see NEW TRIAL.
EXCLUSIVE REMEDIES, see ELECTION OF REMEDIES.
EX CONTRACTU AND EX DELICTO (see CONTRACTS; TORTS):
 Actions of tort and of contract distinguished, 4, 915
 Agency, see AGENCY.
- EX CONTRACTU AND EX DELICTO, *cont'd.***
 Amendments:
 Attachment, 1, 678
 Changing contract to tort and *vice versa*, 1, 567
 Assumpsit, 2, 988
 Carriers, 3, 818
 Actions either *ex delicto* or *ex contractu*, 3, 818
 Actions *ex contractu*, 3, 820
 Actions *ex delicto*, 3, 819
 Actions for refusal to carry, 3, 814
 Actions in admiralty, 3, 719
 Advantages peculiar to each form of action, 3, 819
 Consideration for carriage, 3, 845
 Effect of special contract, 3, 823
 Effect of statutes, 3, 824
 For loss or injury, 3, 818
 Misjoinder or nonjoinder of parties in action *ex delicto*, 3, 819
 Passengers, 15, 1121
 Construction of pleadings, 4, 754
 Death:
 Death of defendant, 5, 829
 Death of one of several defendants in actions *ex contractu*, 5, 836
 Death of one of several defendants in actions *ex delicto*, 5, 838
 Death of one of several plaintiffs, 5, 816
 Death of plaintiff, 5, 810
 Declaration or complaint, 4, 604
 Equitable assignments:
 Assignment of cause of action arising in tort, 7, 757
 Joinder of counts and causes, 1, 170
 Joinder of parties, see JOINDER OF PARTIES.
 Parties to actions, see PARTIES TO ACTIONS.
 Personal injuries, see PERSONAL INJURIES.
 Set-off, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.
 Survival of actions, see SURVIVAL OF ACTIONS.
 Theory of the case, see THEORY OF THE CASE.
EXCUSE, see CONFESSION AND AVOIDANCE.
EX DELICTO (see EX CONTRACTU AND EX DELICTO; TORT):
EXECUTIONS, 8, 303
 See EXECUTIONS AGAINST THE BODY; RETURNS.
 Abandonment or relinquishment of levy, 8, 574
 Failure of plaintiff to give directions, 8, 576

EXECUTIONS, *cont'd.*

- Abandonment or relinquishment of levy, *cont'd.*
 - Improper arrangement between creditor and debtor, 8, 575
 - Indefinite postponement of further execution of writ, 8, 575
 - Issuance of levy of *alias* writs, 8, 577
 - Relinquishment by the creditor, 8, 578
 - Retention of possession by defendant, 8, 574
 - Sale after abandonment of levy, 8, 579
 - Unreasonable delay in proceedings after levy, 8, 575
 - Voluntary relinquishment of levy, 8, 578

Actions:

- Actions for damages for failure to issue, 8, 383

Additional levies, 8, 570

- Abandonment or release of first levy, 8, 573
- Application of proceeds arising from irregular sale to higher demands, 8, 573
- Effect of acceptance of forthcoming bonds, 8, 571
- First levy unproductive, 8, 572
- In general, 8, 570
- Levy in first instance upon property insufficient in value, 8, 573
- Prior levy on chattels, 8, 570
- Prior levy on land, 8, 572
- Replevin by stranger, 8, 571

Admiralty, 1, 278

***Alias* and *pluries* executions (see *infra*, Simultaneous issuance of two or more writs), 8, 438**

- Abandonment or relinquishment of levy, 8, 577
- After institution of supplementary proceedings, 8, 439
- After payment and satisfaction of judgment, 8, 442
 - In general, 8, 442
 - Payment by one of several defendants, 8, 443
 - Payment to the sheriff after return day, 8, 442
 - Return of previous execution satisfied, 8, 442
 - Return of previous writ unsatisfied, 8, 442

By what officer levy should be made, 8, 489

Date, 8, 454

Form and contents of *alias* and *pluries* writs, 8, 454

In general, 8, 438

EXECUTIONS, *cont'd.*

Alias* and *pluries* executions, *cont'd.

Levy of two or more writs in hands of different officers, 8, 555

Levy under previous writ undisposed of, 8, 444

Abandonment of levy, 8, 450

In general, 8, 444

Levy on chattels, 8, 445

Levy on land, 8, 446

Levy upon property of stranger, 8, 448

Miscellaneous instances, 8, 451

Proceedings to set aside satisfaction, 8, 448

Qualifications of the rule as to the effects of a prior levy, 8, 447

Reason of the rule, 8, 445

Retention and conversion of property by debtor, 8, 449

Right to issue *alias* after forfeiture of forthcoming bond, 8, 450

Satisfaction *prima facie* only, 8, 447

Sheriff's liability for neglect does not prevent issuance of *alias*, 8, 450

Validity of *alias* issued notwithstanding prior levy, 8, 452

Mandate, 8, 455

Partial satisfaction previously obtained, 8, 454

Payment and satisfaction of judgment:

Payment of judgment by sheriff, 8, 443

Pending injunction against irregular execution, 8, 439

Proceedings to obtain *alias* and *pluries* writs, 8, 452

Recitals concerning the previous execution, 8, 454

Return of previous execution, 8, 440

Issuance of *alias* before return day of original, 8, 441

Necessity to first return previous writ, 8, 440

Validity of *alias* issued before return of previous writ, 8, 441

Substitution of copy for lost original, 8, 456

Successive writs in hands of same officer, 8, 553

Effect of levying junior execution first, 8, 554

EXECUTIONS, *cont'd.*

- Alias and pluries executions, cont'd.*
 - Successive writs in hands of same officer, *cont'd.*
 - Method of making levy, 8, 554
 - Order in which writs should be levied, 8, 553
 - Time of issuance, 8, 348
 - Whether right to issue exists independently of statute, 8, 439
- Alteration of instruments, 8, 437
- Amendments, 1, 674; 8, 435
 - Amendment of writ returnable at improper time, 8, 399
 - Amount, 8, 430
 - Caption, 1, 673
 - Clerical errors, 8, 436
 - Courts of inferior jurisdiction, 8, 436
 - Direction, 1, 673, 675; 8, 386
 - Effect of amendment after levy, 8, 435
 - Error in name, 1, 673
 - Furtherance of justice, 8, 436
 - Indorsement, 8, 560
 - In what respects the writ may be amended, 8, 436
 - Name of party improperly joined, 8, 420
 - Power to amend, 8, 435
 - Proceedings to procure amendment, 8, 437
 - Regarded as amended, 1, 675
 - Retroactive effect, 1, 675
 - Return day, 8, 399; 1, 674
 - Rights of third persons, 8, 437
 - Scire facias, 8, 358
 - Scope of inquiry, 8, 435
 - Seals, 1, 674
 - Signature, 1, 674
 - Statutes, 8, 435
 - Teste, 1, 674
 - To conform to judgment, 1, 672
 - To conform to præcipe, 1, 673
 - Variance between writ and judgment, 8, 430, 436
 - Within what time amendment may be made, 8, 437
- Amount, 8, 426
 - Amendment, 8, 430
 - Command to make specie, 8, 428
 - Costs, 8, 432
 - Indorsements, 8, 428
 - In general, 8, 426
 - Interest, 8, 431
 - Motion to quash, 8, 466
 - Variance as affecting sheriffs, 8, 429
 - Variance as affecting title of the purchaser, 8, 430
 - Variance as affecting validity of writ, 8, 429

EXECUTIONS, *cont'd.*

- Amount, *cont'd.*
 - Variance between writ and judgment, 8, 429
 - Writ issued after partial payment of judgment, 8, 428
 - Writ issued on judgment payable in instalments, 8, 427
- Appeals:
 - Appellate court, 8, 366
 - Decisions affecting executions, 2, 142
 - Effect of appeal, 2, 323
 - Motion to quash execution, 2, 367
 - Waiver of right of appeal, 2, 178
- Arbitration and award:
 - Judgments on awards, 11, 1055
- Arrest*, see EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES.
- Assignments:
 - Assignee of judgment, 8, 380
 - Assignment for benefit of creditors:
 - Issue of execution and return of *nulla bona* before suit to set aside assignment, 2, 895
 - Control of writ by assignees, 8, 485
 - Writ issued after assignment of judgment, 8, 416
 - Effect of death of assignor, 8, 417
 - Necessity to use assignor's name, 8, 416
 - Statutes authorizing use of assignor's name, 8, 417
- Attachments*, see ATTACHMENTS.
- Attorneys:
 - Application by attorney, 8, 380
 - Signature, 8, 402
- Audita querela, 3, 117
 - Relief against the writ, 8, 458
- Bailment, 8, 548
- Bastardy, 3, 310
- Breaking and forcing doors, 8, 518
 - After levy previously made, 8, 518
 - Buildings other than dwellings, 8, 518
 - Inner doors, 8, 519
 - Outer doors, 8, 518
 - Stranger's door, 8, 519
- Building, goods within, 8, 531
- Bulky articles, 8, 534
- By what officer, 8, 489
- Capias ad satisfaciendum*:
 - Levy after taking debtor's body, 8, 574
- Certiorari:
 - Improper issuance of execution, 4, 105
 - Relief against the writ, 8, 458

EXECUTIONS, *cont'd.*

- Chattels mortgaged, 8, 545
 - Goods in possession of mortgagee, 8, 547
 - In general, 8, 545
 - Levy on part or whole of mortgaged property, 8, 548
 - Statutory provisions, 8, 547
- Choses in action, 8, 548
- Clerical errors:
 - Amendment, 8, 436
- Clerks:
 - Duties of the clerk or other officer, 8, 382
 - Action for damages, 8, 383
 - Delegation of authority, 8, 383
 - In general, 8, 382
 - Issuance ministerial, 8, 382
 - Mandamus, 8, 383
 - Payment to clerk, 8, 383
 - Remedies against clerk or other officer, 8, 383
- Issuance by clerk *suo motu*, 8, 381
- Præcipe to the clerk, 8, 382
- Signature of clerk or other officer, 8, 401
- Computation of time:
 - Return day, 8, 396
- Confusion of goods, 8, 533
- Consolidation of actions, 8, 411
- Constables, see SHERIFFS AND CONSTABLES.
- Contents of writ, see *infra*, Form and contents of writ.
- Continuances:
 - Lapse of a year and a day, 8, 348
- Contributions, 8, 552
- Control of writ, see *infra*, Who has control over the writ.
- Coroner:
 - Direction to coroner, 8, 385
- Corporations, 8, 419
 - Issuance against, 8, 419
 - Members of corporations, 8, 419
 - Variance in name, 8, 419
 - Writs intended to reach franchises of corporations, 8, 395
- Costs, 8, 432
 - Collection by execution, 5, 256
 - Appeals, 5, 257
 - Collection of fees of court officers, 5, 258
 - Demurrer, 5, 257
 - Execution irregularly issued, 5, 258
 - In general, 5, 256
 - Interlocutory costs, 5, 257
 - Mandamus for issuance of execution, 5, 257
 - What the execution should show, 5, 258

EXECUTIONS, *cont'd.*

- Counties:
 - By what officer levy should be made, 8, 491
 - County into which the writ is issuable, 8, 371
 - Courts of general jurisdiction, 8, 371
 - Direction to sheriff of another county, 8, 385
 - Statutory provisions, 8, 372
 - Testatum fieri facias*, 8, 372
 - Two or more writs issued to different counties, 8, 375
 - Validity of writ irregularly issued to improper county, 8, 373
 - Execution against county, 5, 299
 - Land lying partly in two counties, 8, 491
- Courts:
 - Court from which the writ is issuable, 8, 364
 - Abolition of court, 8, 365
 - Appeal and trial *de novo*, 8, 367
 - Appellate court, 8, 366
 - Courts of concurrent jurisdiction, 8, 365
 - Execution on foreign judgment, 8, 366
 - Executions issued out of courts of record on justices' judgments, 8, 368
 - Statutory provisions for filing transcript in other counties, 8, 365
 - Trial or appellate court, 8, 366
 - Vexatious appeal, 8, 367
 - Whether writ sued out in appellate court, 8, 367
 - Courts in which judgment should be revived, 8, 367
 - Description of court which rendered judgment, 8, 406
 - Injunction, 8, 483
 - Leave of court*, see *infra*, Leave of court.
 - Scire facias, 8, 357
 - Seal, 8, 402
 - Setting out jurisdiction of court, 8, 407
 - Creditors' bills, see CREDITORS' BILLS.
 - Crops:
 - Description of growing crops, 8, 535
 - Unripe crops, 8, 535
 - Custodian of property, 8, 536
 - Date, 8, 400
 - Alias* and *pluries* writs, 8, 454
 - Common-law rule, 8, 400
 - Statutes, 8, 400

EXECUTIONS, *cont'd.*

- Death, 22, 644, 645
 - Death of defendant, 8, 329
 - Against whom scire facias to be issued, 8, 336
 - Alias executions, 8, 335
 - Death of one or more defendants, 8, 422
 - Death of one or more defendants leaving survivors, 8, 334
 - Execution against real estate of survivors, 8, 334
 - In general, 8, 329
 - Issuance of writs on dormant judgments, 8, 340
 - Leave of court to revive, 8, 336
 - Levy after death, 8, 500
 - Levy of attachment in debtor's lifetime, 8, 331
 - Revivor by scire facias, 8, 336
 - Revivor in appellate court pending appeal, 8, 331
 - Scire facias, if issued, must be against survivors, 8, 335
 - Statute making judgment a lien, 8, 331
 - Statute regulating teste of writ, 8, 333
 - Statute respecting distribution of decedent's assets, 8, 332
 - Statute staying the execution, 8, 335
 - Statutory provisions, 8, 337, 340
 - Validity of writ irregularly issued without revivor, 8, 340
 - Why such execution is considered void, 8, 341
 - Writ tested after death of plaintiff, 8, 229
 - Writ tested before defendant's death, 8, 332
- Death of plaintiff, 8, 325
 - Death of one of plurality of plaintiffs, 8, 327
 - Death of one or more plaintiffs, 8, 414
 - In general, 8, 325
 - Levy after death, 8, 499
 - Pending execution, 5, 802
 - Statutory provisions, 8, 327
 - Validity of writ irregularly issued without revivor, 8, 328
 - Writ tested before the plaintiff's death, 8, 326
- Motion to quash where writ has been issued after death of parties without revivor, 8, 465
- Debts, 8, 458

EXECUTIONS, *cont'd.*

- Decrees (see *infra*, Rendition and entry of judgment), 5, 1068
- Changing time or manner of execution, 5, 1068
- Execution at law, 5, 1068
- In general, 5, 1068
- Defendant and recitals concerning, 8, 418
- Amendment, 8, 420
- "And" or "or," 8, 422
- Christian names, 8, 419
- Conjunction, 8, 422
- Corporations, 8, 419
- Death, see *infra*, Death.
- Death of one or more defendants, 8, 422
- Execution against executor and administrator, 8, 424
- Execution against principal and surety, 8, 426
- Execution on judgment against partnership, 8, 423
- In general, 8, 418
- Memorandum as to defendant's death, 8, 423
- Parties defendant not named in judgment, 8, 420
- Personal representatives, 8, 423
- Plurality of defendants in general, 8, 420
- Validity of execution omitting one or more defendants, 8, 423
- Definition, 8, 311
- Demand:
 - Necessity of demand, 8, 376
- Demand for payment, 8, 505
- Direction of the writ, 8, 384
 - Amendment of direction, 8, 386
 - Direction to coroner, 8, 385
 - Direction to sheriff of another county, 8, 385
- Execution on judgment in suit commenced by attachment, 8, 386
- In general, 8, 384
- In name of sovereign, 8, 389
- In name of state, 8, 389
- Insertion by direction of attorney, 8, 386
- Motion to quash, 8, 467
- Selection of officer by the plaintiff, 8, 385
- To whom the writ should be directed, 8, 384
- Validity of writ improperly directed, 8, 386
- Doors, see *infra*, Breaking and forcing doors.
- Elegit, 7, 409
- Eminent domain:
 - Enforcement of awards and judgments, 7, 624

EXECUTIONS, *cont'd.*

Entry, see LEVY OF WRIT.

Error, writ of:

Relief against writ, 8, 457

Excessive levies, 8, 502

Executors and administrators:

Executions against executors and administrators, 8, 424

De bonis propriis or *de bonis testatoris*, 8, 424

Examples, 8, 424, 426

Form of writ, 8, 425

In general, 8, 424

Executions issued by executors and administrators, 8, 415

On judgment recovered by decedent, 8, 415

On judgment recovered on death of decedent, 8, 415

Included in execution where no revivor has been had, 8, 423

Exemptions (see HOMESTEADS AND EXEMPTIONS), 8, 396

Extent, see EXTENT.

Final judgments and decrees, 2, 55

Fines and costs in criminal cases, 8, 964

At common law, 8, 964

Costs, 8, 991

Execution after imprisonment, 8, 966

Imprisonment and execution concurrently, 8, 966

United States, 8, 965

Forcible entry and detainer, 9, 73

Foreclosure of mortgages:

Deficiency judgments, 9, 490

Special executions, 8, 393

Form and contents of writ, 8, 387

Amount, see *infra*, Amount.

Command to make, etc., 8, 390

Conformity to the judgment, see *infra*, Judgments.

Date, see *infra*, Date.

Defendant and recitals concerning, see *infra*, Defendant and recitals concerning.

Description of judgment, 8, 405

Direction in name of sovereign or state, 8, 389

Disposition of the money made, 8, 390

Indorsements, 8, 388

In general, 8, 387

Name of sovereign, 8, 389

Name of state, 8, 389

Plaintiff, 8, 412

Plaintiff and recitals concerning, see *infra*, Plaintiff and recitals concerning.

Provisions relative to process generally, 8, 389

EXECUTIONS, *cont'd.*

Form and contents of writ, *cont'd.*

Recitals touching property to be taken, see *infra*, Recitals touching property to be taken.

Return day, see *infra*, Return day.

Seal, see *infra*, Seal.

Signature, see *infra*, Signature.

Statutory requirements, 8, 388

Surplusage, 8, 388

Teste, 8, 399

Waiver of informalities, 8, 433

Writs issued by justices, 8, 387

Writs issued on decrees in chancery, 8, 388

Forthcoming and delivery bonds, see FORTHCOMING AND DELIVERY BONDS.

Franchises, 8, 395

Garnishment, see GARNISHMENT.

General executions, 8, 390

Distinction between special and general executions, 8, 390

When general execution is proper, 8, 391

Growing crops, 8, 535

Heirs and devisees, 10, 36

Actions at law against heirs and devisees on statutory liabilities, 10, 45

Homesteads, see HOMESTEADS AND EXEMPTIONS.

Husband and wife, 8, 552

Indorsement of the levy, 8, 557

Aider by sheriff's deed, 8, 564

Amendment, 8, 560

Certainty requisite, 8, 561

Conclusiveness of levy, 8, 568

Construction of levy, 8, 565

Description applicable to more than one tract, 8, 566

General propositions as to method of making indorsement, 8, 559

Indorsement as to levy on land, 8, 561

Inventory of chattels, 8, 558

Land held in cotenancy, 8, 670

Legal subdivisions, 8, 565

Levy on real property, 8, 557

Levy upon less than debtor's actual interest, 8, 568

Life interest, 8, 569

Metes and bounds, 8, 565

Mortgaged premises, 8, 569

Necessity to describe premises, 8, 561

Necessity to indorse levy, 8, 557

On what the indorsement should be made, 8, 559

Propositions, 8, 559

EXECUTIONS, *cont'd.*

- Indorsement of the levy, *cont'd.*
 - Quantity of land taken, 8, 565
 - Reasonable certainty, 8, 562
 - Reference to records, 8, 566
 - Reversionary interest, 8, 569
 - Schedule, 8, 558
 - Statement as to ownership and quantity of interest, 8, 567
 - Statutory requirements, 8, 560
 - Technical accuracy, 8, 563
 - Time of seizure, 8, 560
- Indorsements, 8, 388
 - Amount, 8, 428
- Injunctions, 8, 475; 22, 644
 - Alias* and *pluries* executions, 8, 439
 - Appropriateness of the remedy, 8, 475
 - Attack upon the judgment, 8, 479
 - Execution prematurely issued, 8, 477
 - Jurisdiction of state and United States courts, 8, 483
 - Leave of court after dissolution of injunction, 8, 377
 - Levy of the writ, 8, 494
 - Multifariousness, 8, 483
 - Parties, 8, 483
 - Payment as ground for injunction, 8, 477
 - Pleadings, 8, 483
 - Preservation of inheritance, 8, 432
 - Prevention of loss of business and credit, 8, 482
 - Property taken for public use, 8, 483
 - Relief as to strangers, 8, 480
 - Revival of judgment, 8, 357
 - Void writ, 8, 478
- Interest, 8, 431
 - Conformity to judgment, 8, 431
 - Interest not allowed by judgment, 8, 431
 - Validity of writ as regards interest, 8, 432
- Inventory*, see *infra*, Indorsement of the levy.
- Issuance (see *infra*, Counties; Simultaneous issuance of two or more writs; Time of issuance), 8, 433
 - Clerks, see *infra*, Clerks.
 - Directory statutes, 8, 435
 - Indorsement of receipt by sheriff, 8, 434
 - In general, 8, 433
 - Ministerial duties, 8, 382
 - Out of what court the writ is issuable*, see *infra*, Courts.

EXECUTIONS, *cont'd.*

- Issuance, *cont'd.*
 - Procurement of the writ*, see *infra*, Procurement of the writ.
 - Ratification of unauthorized issuance, 8, 381
 - To whom the writ should be directed*, see *infra*, Direction of the writ.
 - Validity of writ irregularly issued*, see *infra*, Time of issuance.
- What constitutes issuance of the writ, 8, 433
- Writ left at the officer's office, 8, 434
- Joint tenants and tenants in common, 8, 536
 - Indorsement of the levy, 8, 570
 - Levy upon land held in cotenancy or joint tenancy, 8, 551
- Judgments (see *infra*, Payment and satisfaction of judgment; Rendition and entry of judgment):
 - Alias* and *pluries* executions:
 - After payment and satisfaction of judgment, 8, 442
 - In general, 8, 442
 - Payment by one of several defendants, 8, 443
 - Payment of judgment by sheriff, 8, 443
 - Payment to the sheriff after return day, 8, 442
 - Return of previous execution satisfied, 8, 442
 - Return of previous writ unsatisfied, 8, 442
- Amendment:
 - Where there is a variance between writ and judgment, 8, 436
- Amount, 8, 429
- Assignment of judgment*, see *infra*, Assignments.
- Conformity to the judgment, 8, 408
 - Consolidation and splitting up of judgments, 8, 411
 - Degree of strictness required, 8, 409
 - Interest, 8, 431
 - Necessity of following the judgment, 8, 408
 - Separate judgments against several defendants, 8, 411
 - Separate judgments against the same defendant, 8, 411
 - Several executions on one judgment, 8, 412

EXECUTIONS, *cont'd.*

Judgments, *cont'd.*

Conformity to judgment, *cont'd.*

Title of purchaser, 8, 410

Validity of writ varying from judgment, 8, 410

Variance in amount between writ and judgment, 8, 429

Description of judgment, 8, 405

Date of the rendition of the judgment, 8, 407

Description of the court which rendered the judgment, 8, 406

In general, 8, 405

Jurisdiction of court, 8, 407

Reason for requiring description, 8, 406

Recitals touching docketing of judgment, 8, 408

What must appear on the face of the execution, 8, 405

Effect of issuance of execution and proceedings thereon in actions on judgments, 11, 1111

Arrest of debtor, 11, 1112

Effect of discharge, 11, 1112

In foreign judgments, 11, 1113

Issuance of execution, 11, 1111

Levy of execution, 11, 1111

Where a levy of real estate is not regarded as a satisfaction, 11, 1112

Election of remedies:

Action and execution concurrent and cumulative, 11, 1089

Action lies though execution might issue, 11, 1089

Action not necessary, 11, 1091

Actions upon judgments not favored, 11, 1091

Execution a cumulative remedy, 11, 1090

When necessity for a separate action exists, 11, 1092

Enforcement of judgments, 11, 1082

In general, 11, 1082

Inherent power of court, 11, 1082

Order for an execution, 11, 822

Revivor, 8, 360

Variance as to the amount between writ and judgment, 8, 429

Judicial sales:

Levy of writ, 8, 488

Time of issuance of writ, 8, 366

EXECUTIONS, *cont'd.*

Judicial sales, *cont'd.*

Title of purchaser under levy of sale made after payment, 8, 499

Title of purchaser where writ is irregular, 8, 363

Variance in amount between writ and judgment, 8, 430

Jurisdiction (see *infra*, Courts):

Executions issued out of courts of record on justices' judgments, 8, 368

Injunction, 8, 483

Into what county the writ is issuable, 8, 371

Jurisdiction of state and United States courts, 8, 483

Motion to quash the writ, 8, 459, 579

Executions issued on decrees in chancery, 8, 461

In general, 8, 459

Jurisdiction exists independently of statute, 8, 461

Levy not attempted, 8, 461

To what court the motion should be addressed, 8, 461

Setting out jurisdiction of court, 8, 407

Jurisdiction to quash, 8, 459, 579

Justices of the peace:

Date, 8, 401

Duties, 8, 382

Executions issued out of courts of record on justices' judgments, 8, 368

Collateral attack, 8, 370

Formality, 8, 368

In general, 8, 368

Proceedings for the sale of land, 8, 368

Recital as to issuance of writ by justice, 8, 371

Requisites and sufficiency of transcript, 8, 369

Statutes, 8, 368, 371

Sufficiency of the execution issued by the justice and the return thereon, 8, 370

Transcript, 8, 368, 369

When justice cannot issue execution, 8, 371

Form and contents of writ, 8, 387

Return day, 8, 398

Validity of writ improperly dated, 8, 401

Keeper of property, 8, 536

Land (see *infra*, Levy of the writ), 8, 392

Leasehold, 8, 550

EXECUTIONS, *cont'd.*

- Leave of court, 8, 376
 - After dissolution of injunction, 8, 377
 - After reversal, 8, 378
 - Conditional judgment, 8, 377
 - Deficiency after sale under decree of foreclosure, 8, 377
 - Necessity of obtaining in general, 8, 376
 - Notice of motion for leave to issue execution, 8, 379
 - Remittitur, 8, 378
 - Scire facias *quare restitutionem non*, 8, 379
 - Statute requiring order of court, 8, 379
 - Upon affirmance of judgment, 8, 378
- Levy of the writ (see *infra*, Abandonment or relinquishment of levy; *Alias* and *pluries* executions), 8, 485
- Abatement of the writ, 8, 496
 - Death of the defendant, 8, 500
 - Death of the plaintiff, 8, 499
 - Exhibition of receipt to officer, 8, 498
 - Payment, 8, 496
 - Payment by a stranger, 8, 497
 - Payment by sheriff, 8, 497
 - Payment by surety, 8, 498
 - Satisfaction, 8, 496
 - Several defendants, 8, 498
 - Title of purchaser under levy and sale made after payment, 8, 499
 - Whether officer is justified in levying after payment, 8, 498
- Acts otherwise amounting to a trespass, 8, 532
- Additional levies*, see *infra*, *Additional levies*.
- Appointment of keeper or custodian of property, 8, 536
- Bailment, 8, 548
- Bulky articles, 8, 534
- By what officer, 8, 489
 - Alias* execution, 8, 489
 - Constable not confined to his own precinct, 8, 491
 - Disqualification of officer, 8, 490
 - Execution issued to any constable, 8, 490
 - In general, 8, 489
 - Land lying partly in two counties, 8, 491
 - Mandamus to compel levy, 8, 491

EXECUTIONS, *cont'd.*

- Levy of the writ, *cont'd.*
 - By what officer, *cont'd.*
 - Officer is confined to his own county, 8, 490
 - Third person, 8, 490
- Chattels, 8, 517
- Choses in action, 8, 548
- Confusion of goods, 8, 533
- Control, 8, 531
- Crops, 8, 535
- Custodian of property, 8, 536
- Definition, 8, 485
- Demand for payment, 8, 505
- Directions by the plaintiff, 8, 504
- Dominion, 8, 531
- Entry upon debtor's premises, 8, 517
 - Breaking and forcing doors, 8, 518
 - Creditor or his agent, 8, 517
 - In general, 8, 517
 - Levy on land, 8, 517
- Excessive levies, 8, 502
- Exercise of dominion and control, 8, 531
- General principles concerning method of making levy, 8, 504
- Goods confused with property belonging to strangers, 8, 533
- Goods within building, 8, 531
- Growing crops, 8, 535
- Indorsement of the levy*, see *infra*, *Indorsement of the levy*.
- Intention to levy, 8, 504
- Joint tenants and tenants in common, 8, 536, 551
- Keeper of property, 8, 536
- Leasehold, 8, 550
- Levy after taking debtor's body, 8, 574
- Levy on chattels in which others than the debtor have interest, 8, 536
 - Bailment, 8, 548
 - Chattels held in cotenancy or joint tenancy, 8, 536
 - Interest seized, 8, 537
 - Mortgaged property, 8, 545
 - Partnership property*, see *infra*, *Partnership*.
 - Reversionary interest, 8, 536
- Manucaption and removal of goods, 8, 520
 - Authorities holding manucaption necessary, 8, 525
 - Chattels in the debtor's manual custody, 8, 529
 - Continued possession by debtor and exercise of dominion, 8, 528
 - Eventual manucaption, 8, 527

EXECUTIONS, *cont'd.*

- Names:
 - Christian names, 7, 419
 - Description of defendant, 8, 418, 419
 - Direction in name of sovereign or state, 8, 389
- New trial:
 - Motion for new trial, 8, 319
- Nominal plaintiff:
 - Execution on judgment recovered in suit by nominal plaintiff, 8, 417
- Notice, 8, 505
 - How notice should be given, 8, 506
 - Motion to quash, 8, 471
 - Necessity of notice before issuance of execution, 8, 376
 - Necessity to give debtor information, 8, 505
 - Statutes, 8, 506
 - Validity of levy when required notice is given, 8, 507
- Notice of motion for leave to issue execution, 8, 379
- Notorious acts, 8, 530
- Obstructing justice*, see **OBSTRUCTING JUSTICE.**
- Officer*, see *infra*, Clerks; Public officer; Sheriffs.
- Open acts, 8, 530
- Parties*, see *infra*, Plaintiff and recitals concerning.
 - Injunction, 8, 483
 - Scire facias, 8, 358
- Partnership, 8, 537
 - Accommodation to the debtor and his copartners, 8, 538
 - Chattels belonging to partnership, 8, 537
 - Dissolution of partnership, 8, 542
 - Execution on judgment against partnership, 8, 423
 - Nature of the interest seized, 8, 544
 - Partnership as plaintiff, 8, 414
 - Right of officer to take possession, 8, 537
 - Seizure of specific articles, 8, 543
- Payment:
 - Alias* and *pluries* executions after payment, 8, 442
 - Injunction, 8, 477
 - Levy, 8, 496
 - Motion to quash, 8, 463
 - Writ issued after partial payment of judgment, 8, 428
- Payment and satisfaction of judgment, 8, 320
 - Bona fide* purchasers, 8, 324
 - Estoppel of judgment debtor, 8, 325

EXECUTIONS, *cont'd.*

- Payment and satisfaction of judgment, *cont'd.*
 - In general, 8, 320
 - Partial payments, 8, 321
 - Payment accompanied by assignment, 8, 323
 - Purchasers with knowledge, 8, 324
 - Tender, 8, 322
 - Title of purchaser where writ is issued for payment, 8, 323
 - Tort on part of plaintiff, 8, 321
 - Validity of writ issued after payment as against the sheriff, 8, 323
 - Validity of writ issued for payment, 8, 323
 - Writ issued to enforce repayment or contribution, 8, 322
- Payment of money into court, 8, 313
- Pen-and-ink levy, 8, 519
- Plaintiff*, see *infra*, Who has control over the writ.
 - Signature, 8, 402
- Plaintiff and recitals concerning (see *infra*, Death), 8, 412
 - Death of one or more plaintiffs, 8, 414
 - Execution on judgment recovered in suit by nominal plaintiff, 8, 417
- Executions issued by executors and administrators, 8, 415
 - In general, 8, 412
 - Nominal plaintiff, 8, 417
 - Partnership as plaintiff, 8, 414
 - Plurality of plaintiffs, 8, 414
 - Void or voidable, 8, 413
 - Writ issued for costs, 8, 413
 - Writs issued after assignment of judgment, 8, 416
- Pluries* executions, see *infra*, *Alias* and *pluries* executions.
- Pluries* writs:
 - Time of issuance, 8, 348
- Possession, writ of*, see **POSSESSION, WRIT OF.**
- Præcipe*, 16, 770
- Preliminary essentials and impediments to the right to issue, 8, 312
- Procurement of the writ, 8, 376
 - Duties of the clerk or other officer, 8, 382
 - Leave of court in general, 8, 376
 - Necessity to obtain leave of court, 8, 376
 - Notice and demand, 8, 376
 - Præcipe* of clerk, 8, 382
 - Remedies against clerk or other officer, 8, 383
 - Statutes requiring order of court, 8, 377

EXECUTIONS, *cont'd.*

- Procurement of the writ, *cont'd.*
 - Who may procure emanation of the writ, 8, 380
- Prohibition:
 - Relief against the writ, 8, 457
- Property, see infra*, Recitals touching property to be taken; Status of property seized and protection of officer's possession.
- Public officer (see *infra*, Clerks; Sheriffs):
 - By what officer levy should be made, 8, 489
- Purchasers, see infra*, Judicial sales.
- Quashal of the writ, see infra*, Relief against the writ.
- Ratification:
 - Unauthorized issuance, 8, 381
- Real property (see *infra*, Levy of the writ), 8, 392
- Receivers:
 - Equitable execution, 17, 682
 - Leave of court, 17, 779
- Recitals touching property to be taken, 8, 390
 - Direction to take chattels, 8, 392
 - Direction to take goods, 8, 392
 - Direction to take lands and tenements, 8, 392
 - Distinction between special and general executions, 8, 390
 - Election of property by plaintiff, 8, 391
- General executions, 8, 390
 - Direction to take chattels, 8, 392
 - Direction to take goods, 8, 392
 - Direction to take lands and tenements, 8, 392
 - Distinction between special and general executions, 8, 390
 - Election of property by plaintiff, 8, 391
 - In general, 8, 390, 393
 - Interest in land, 8, 392
 - Special writs not void but voidable, 8, 391
 - When general execution is proper, 8, 391
- In general, 8, 390
- Interest in land, 8, 392
- Special executions, 8, 393
 - Attachment, 8, 393
 - Description of mortgaged premises, 8, 393
 - Executions against married women, 8, 395
 - General commands treated as surplusage, 8, 395

EXECUTIONS, *cont'd.*

- Recitals touching property to be taken, *cont'd.*
 - Special executions, *cont'd.*
 - General instead of special writ, 8, 394
 - Judgment foreclosing mechanic's lien, 8, 393
 - Void or voidable, 8, 394
 - Writs intended to reach franchises of corporations, 8, 395
 - Special writ not void but voidable, 8, 391
 - When general execution is proper, 8, 391
- Records:
 - Amendment after issuance of execution, 17, 922
- Relief against the writ (see *infra*, Injunctions), 8, 457
 - Audita querela*, 8, 458
 - Certiorari*, 8, 458
 - Motion to quash the writ, 8, 459
 - Acts of sheriff or constable, 8, 468
 - Amount of the judgment, 8, 466
 - Attack upon judgment, 8, 468
 - At what time motion must be made, 8, 470
 - Discretion of court, 8, 469
 - Grounds for quashal in general, 8, 462
 - Harmless irregularity, 8, 464
 - Invalidity of judgment and excess of jurisdiction, 8, 469
 - Irregular direction as to return of writ, 8, 467
 - Issuance of writ after death of parties without revivor, 8, 465
 - Jurisdiction, 8, 459
 - Executions issued on decrees in chancery, 8, 461
 - In general, 8, 459
 - Jurisdiction exists independently of statute, 8, 461
 - Levy not attempted, 8, 461
 - To what court the motion should be addressed, 8, 461
- Moving papers, 8, 473
- Notice of the motion, 8, 471
- Parties to the motion, 8, 472
- Part payment of judgment, 8, 464

EXECUTIONS, *cont'd.*Suretyship, *cont'd.*

Execution against principal and surety, 8, 426

Levy of writ, 8, 553

Surplusage, 8, 388

General commands in special executions, 8, 395

Tender, 8, 322

Tenements, 8, 392

Term:

Time of issuance, 8, 343

Teste, 8, 399

Time of issuance, 8, 343

After the lapse of a year and a day, 8, 345

After filing remittitur, 8, 347

Alias writ, 8, 348

Continuances on the roll, 8, 348

Effect of lien of attachment, 8, 347

Effect of revivor against debtor's administrator, 8, 348

In general, 8, 345

Interruptions by the debtor, 8, 352

Lapse of more than a year and a day, 8, 349

Pluries writ, 8, 348

Statute of Westminster, 8, 347

Statutory bar to issuance of writ, 8, 350

Statutory provisions, 8, 353

Stay of the writ, 8, 352

Sufficiency of preceding writ, 8, 352

Utmost time when an execution may be issued as of course, 8, 349

When the period of limitation begins to run, 8, 347

Before the end of the term, 8, 343

In general, 8, 343

Ordinary time, 8, 343

Statutory provisions, 8, 344

Scire facias and analogous proceedings, 8, 357

After filing a justice's transcript, 8, 357

Court in which judgment should be revived, 8, 357

In general, 8, 357

Injunction against writ already issued, 8, 357

Nature of scire facias, 8, 357

Proceedings under statutes, 8, 357

Scire facias while execution is issuable, 8, 357

EXECUTIONS, *cont'd.*Time of issuance, *cont'd.*

Statutory provisions, 8, 353

After filing transcript of a justice's judgment, 8, 356

In general, 8, 353

Retroactive statute, 8, 356

Special executions, 8, 357

Statutes limiting right of action on judgment, 8, 355

Various statutes, 8, 353, 357

Utmost time when an execution may be issued as of course, 8, 349

Validity of writ irregularly issued, 8, 360

Duty of sheriff to obey the writ, 8, 362

In general, 8, 360

Title of purchaser, 8, 363

Waiver of irregularity by debtor, 8, 362

Validity of writ prematurely issued, 8, 344

Time of levying, see *infra*, Levy of the writ.

Time of return, see *infra*, Return day.

Transcript, see *infra*, Justices of the peace.

Trespass:

Acts otherwise amounting to a trespass, 8, 532

Trial of the right of property, see RIGHT OF PROPERTY, TRIAL OF.

Trusts and trustees, see TRUSTS AND TRUSTEES.

Two or more writs, see *infra*, *Alias* and *pluries* executions.

Unincorporated societies, 22, 252

United States courts, 22, 308

Following state practice in levies, 8, 504

Injunction, 8, 483

Validity of writ having no seal, 8, 403

Validity of writ improperly dated, 8, 401

Validity of writ improperly directed, 8, 386

Validity of writ irregularly issued, see *infra*, Time of issuance.

Validity of writ irregularly issued to improper county, 8, 373

Venditioni exponas, see VENDITIONI EXPONAS.

Vendor's liens, 22, 750

Venue, see *infra*, Counties.

View of goods, 8, 530

Waiver:

Manucaption and removal of goods, 8, 256

EXECUTIONS, *cont'd.*

- Waiver, *cont'd.*
 - Pen-and ink levy, 8, 519
 - Waiver by debtor of right to have personal property taken, 8, 518
 - Waiver by debtor of right to have personal property taken first, 8, 516
 - Waiver of right of selection by debtor, 8, 507
- Waiver of informalities, 8, 433
- Who has control over the writ, 8, 484
 - Control of writ by officers entitled to fees, 8, 485
 - Plaintiff's right to control writ, 8, 484
 - Rights of assignees, 8, 485
 - Rights of strangers, 8, 485
- Witnesses, 8, 530
- Year and a day, 8, 345

EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES, 8, 586

- See WARRANTS.
- Admiralty, 1, 261
- Affidavits, 8, 600
- Agency, 8, 592; 16, 915
- Alias executions, 8, 646
- Amendments, 8, 635
- Appeals:
 - Motion to vacate order of arrest, 8, 619
- Arrest defined, 8, 586
- Attestation, 8, 634
- Attorneys, 8, 595
 - Discharge, 8, 640
- Bail:
 - Amount of bail, 8, 609
 - The undertaking, 8, 610
- Bankruptcy:
 - Protection of bankrupt from arrest, 22, 368
- Banks and banking, 8, 595
- Breach of promise of marriage, 8, 589
- Capias ad satisfaciendum*, 8, 622
 - Alias executions, 8, 646
 - Amendment, 8, 635
 - Attestation, 8, 634
 - Commencement, 8, 632
 - Contents, 8, 632
 - Definition, 8, 622
 - Demand, 8, 630
 - Discharge of one defendant, 8, 643
 - Discharge on payment of judgment, 8, 640
 - Discharge with plaintiff's consent, 8, 641
 - Effect of body execution, 8, 636
 - Escape, 8, 648
 - Following judgment, 8, 632
 - Grounds for issuing, 8, 623

EXECUTIONS AGAINST THE BODY, ETC., *cont'd.*

- Capias ad satisfaciendum, cont'd.*
 - How right of execution lost, 8, 645
 - Imposing conditions upon discharge, 8, 644
 - Imprisonment of one of several defendants, 8, 638
 - Judgment, 8, 633
 - Liens acquired during imprisonment, 8, 638
 - Mandate, 8, 634
 - Order directing execution, 8, 631
 - Order for discharge, 8, 644
 - Prerequisites to issuance, 8, 625
 - Prior order of arrest, 8, 626
 - Proceedings to obtain second arrest, 8, 648
 - Rearrest on original process, 8, 648
 - Requisites, 8, 626, 632
 - Return of *fi. fa.* unsatisfied, 8, 630
 - Second arrest, 8, 646
 - Simultaneous issuance of property and body executions, 8, 635
 - Supersedeas of writ, 8, 639
 - To whom directed, 8, 632
- Character, injuries to, 8, 587
- Criminal conversation:
 - Moving papers, 8, 601
- Deceit, 8, 589
- Definition of arrest, 8, 586
- Del credere* commission, 8, 594
- Demand:
 - Executions against the body, 8, 630
- Discharge:
 - Imposing conditions upon discharge, 8, 644
 - Payment of judgment, 8, 640
 - Plaintiff's consent, 8, 641
- Escape, 8, 648
- Executions, 8, 622
 - Simultaneous issuance of property and body executions not permissible, 8, 635
 - Levy after taking debtor's body, 8, 574
- Fraud, 8, 589
 - Agents, factors, or brokers, 8, 592
 - Attorneys, 8, 595
 - Avoiding debt honestly contracted, 8, 590
 - Bankers, 8, 595
 - Claim of third person, 8, 594
 - Concealment of insolvency, 8, 591

EXECUTIONS AGAINST THE BODY, ETC., *cont'd.*

Fraud, cont'd.

- Debt contracted in another state, 8, 591
- Del credere* commission, right to, 8, 594
- Fraud in contracting or avoiding payment of debt, 8, 589
- Fraud in fiduciary capacity, 8, 592
- Fraud of agent, 8, 592
- Fraud of copartner, 8, 592
- Moving papers, 8, 603
- Public officers, 8, 595
- Second arrest, 8, 621
- Grounds of arrest, 8, 586
- Breach of promise of marriage, 8, 589
- Capias ad satisfaciendum*, 8, 623
- Concealment of insolvency, 8, 591
- Debt contracted in another state, 8, 591
- Deceit, 8, 589
- Executions against the body, 8, 622
- Fraud in avoiding payment of judgment debt, 8, 592
- Fraud in contracting or avoiding payment of debt, 8, 589
- Fraud of agent, 8, 592
- Fraud of copartner, 8, 592
- Generally, 8, 586
- In actions to recover fine or penalty, 8, 597
- Injuries to person, character, or property, 8, 586, 587
- Joining several causes of action, 8, 591
- Misconduct or neglect in office or in professional employment, 8, 597
- Removal of debtor from state, 8, 596
- Replevin, 8, 587
- Strict construction, 8, 586
- Trover, 8, 587
- What representations render party liable, 8, 591
- Habeas corpus*, see **HABEAS CORPUS**.
- Judgments:
 - Discharge on payment of judgment, 8, 640
 - Following judgment, 8, 632
- Liens:
 - Liens acquired during imprisonment, 8, 638
- Mandate, 8, 634
- Mistake:
 - Second arrest, 8, 621
- Motion*, see *infra*, Moving papers.

EXECUTIONS AGAINST THE BODY, ETC., *cont'd.*

- Moving papers, 8, 598
- Affidavits, 8, 600
- Before whom made, 8, 599
- Breach of promise to marry, 8, 603
- By whom made, 8, 598
- Capias ad satisfaciendum*, 8, 625
- Contents, 8, 599
- Conversion, 8, 602
- Criminal conversation, 8, 601
- Executions against the body, 8, 625
- Facts and not conclusion must be stated, 8, 599
- Fraud in contracting debt, 8, 603
- Fraud in fiduciary capacity, 8, 605
- Fraudulent disposal or removal of property, 8, 606
- Ground of arrest, 8, 599
- Injuries to person or character, 8, 601
- Malicious prosecution, 8, 603
- Manner of stating facts, 8, 600
- Necessity for, 8, 598
- Removal of debtor from state, 8, 607
- Replevin, 8, 602
- Slander, 8, 60
- Sources of information, 8, 601
- Obstructing justice*, see **OBSTRUCTING JUSTICE**.
- Order (see *infra*, Vacating order), 8, 608
- Bail, 8, 609
- By whom made, 8, 608
- Contents, 8, 608
- Discharge, 8, 644
- Name of defendant, 8, 609
- Prior order of arrest to entitle plaintiff to execution against the body, 8, 626
- Reciting statute, 8, 609
- Return, 8, 609
- Signature, 8, 610
- Partnership:
 - Fraud of copartner, 8, 592
- Poor debtor acts*, see **POOR DEBTOR ACTS**.
- Privilege*, see **PRIVILEGE**.
- Questions of law and fact:
 - Appeal, 8, 620
- Replevin, 8, 588
- Moving papers, 8, 603
- Returns*, see **RETURNS**.
- Second arrest, 8, 620, 646
- Absence of oppression or laches, 8, 621
- Fraud, 8, 621
- General rule, 8, 620

EXECUTIONS AGAINST THE EXECUTORS AND ADMINISTRATORS, *cont'd.*

Second arrest, *cont'd.*

Mistake, 8, 621

When rule not applicable, 8, 621

Slander:

Moving papers, 8, 602

Supersedeas and stay of proceedings, 8, 639; 20, 1211

Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.

Trover, 8, 587

Moving papers, 8, 602

Undertaking, 8, 610

United States courts, 22, 300

Vacating order, 8, 611

Appeal, 8, 619

Before and by whom motion made, 8, 611

Conditions imposed on vacating order, 8, 619

How motion made, 8, 613

Questions of law and fact, 8, 620

Time of moving, 8, 611

When order will be vacated, 8, 614

When order will not be vacated, 8, 616

Warrants, see WARRANTS.

EXECUTION SALES (see JUDICIAL SALES; SHERIFF'S SALES):

Surplus money, see SURPLUS MONEY.

EXECUTORS AND ADMINISTRATORS 8, 650

See LEGATEES AND DISTRIBUTEES; PROBATE AND CONTEST OF WILLS; SETTLEMENT OF DECEDENTS' ESTATES.

Abatement in pleading:

Nonjoinder, 1, 16

Accounts and accounting:

Common-law action of account, 1, 85

Actions, see *infra*, Costs; Foreign executors and administrators; Joinder of counts and causes; Suits between co representatives; Suits in equity by and against executors and administrators.

Actions at law against executors and administrators, 8, 678

Actions against executor *de son tort*, see *infra*, Executor *de son tort*.

Averment of representative character, see *infra*, Averment of representative character.

Denial of representative capacity, 8, 685

Enforcing judgments *de bonis testatoris* or *intestati*, 8, 693

Execution, 8, 694

Actions at law against executors and administrators, *cont'd.*

Joinder as defendants in actions on joint obligations, 8, 680

Joinder of co-representatives, see *infra*, Joinder of parties.

Joinder of counts and causes of action, 8, 681

Judgment, see *infra*, Judgments.

Liability to suit in general, 8, 678

Plea of *plene administravit*, 8, 686

Actions at law by executors and administrators, 8, 653

Averment of presentation of claims, 8, 675

Averment of representative character, see *infra*, Averment of representative character.

Capacity to sue, see *infra*, Capacity to sue.

Execution, 8, 678

Joinder as plaintiffs in actions on joint obligations, see *infra*, Joinder of parties.

Joinder of co-representatives, see *infra*, Joinder of parties.

Joinder of counts and causes, see *infra*, Joinder of counts and causes.

Judgment, 8, 678

Profert and oyer of letters, see *infra*, Profert and oyer of letters.

When representative may sue in either official or individual capacity, 8, 658

When representative must sue in official capacity, 8, 658

Actions on administration bonds, see *infra*, Administration bonds.

Administration bonds, 8, 717; 19, 906

Conclusiveness of judgment or decree, 8, 718

Declaration and complaint, 8, 723

Assignment of breaches, 8, 723

Negating covenants, 8, 724

Requisite averments, 8, 723

Judgment and subsequent proceedings, 8, 725

Leave to sue, 8, 719

Application for leave, 8, 719

Discretion of court, 8, 720

Objection for want of leave, 8, 720

Order granting leave, 8, 720

When necessary and how obtained, 8, 719

Necessity of preliminary judgment or decree, 8, 717

EXECUTORS AND ADMINISTRATORS, *cont'd.*

- Administration bonds, *cont'd.*
 - Necessity of two prior judgments, 8, 718
- Parties to action, 8, 720
 - Defendants, 8, 722
 - Plaintiffs, 8, 720
- Pleas, 8, 725
- Remedy in equity, 8, 726
 - Jurisdiction of equity, 8, 726
 - United States courts, 8, 727
- Administrator *de bonis non*, 8, 654
 - Averment of representative character, 8, 669
- Admiralty, 1, 290
- Affidavits of merits or defense, 1, 349
- Allowance to widow or family*, see SETTLEMENT OF DECEDENTS' ESTATES.
- Amendments, 1, 538
 - Judgment, 8, 692
- Appeal bonds and undertakings, 968, 973
- Appeals:
 - Appeals by, 2, 158, 165, 171
 - Right to take appeal, 2, 197
- Appearances, 2, 674
- Appointment*, see SETTLEMENT OF DECEDENTS' ESTATES.
- "As," 8, 667
- Averment of representative capacity:
 - Equity, 8, 696
 - As plaintiffs, 8, 696
 - Objection for insufficiency, 8, 697
 - Objection for want of representative capacity, 8, 697
 - Sufficiency in general, 8, 696
 - Foreign administrators, 8, 712
- Averment of representative character, 8, 665
- Actions against executors and administrators, 8, 683
 - Descriptio personæ* as surplusage, 8, 684
 - Sufficiency in general, 8, 683
- "As," 8, 667
- Controlling test, 8, 668
- Demurrer or special denial, 8, 674
- Descriptio personæ* as surplusage, 8, 670
- Fact that plaintiff is representative and sues as such, 8, 665
- General issue, 8, 674
- In suit by administrator *de bonis non*, 8, 669
- In suit by limited administrator, 8, 669
- Issuance of letters, 8, 666
- Ne unques* executor or administrator, 8, 671

EXECUTORS AND ADMINISTRATORS, *cont'd.*

- Averment of representative character, *cont'd.*
 - Objection for insufficiency of averment, 8, 671
 - Objection for want of representative capacity, 8, 671
 - Sufficiency in general, 8, 665
 - Under the codes, 8, 671
 - Waiver by pleading to merits, 7, 672
 - Where authority is terminated after suit brought, 8, 674
 - Where there are several counts, 8, 667
- Bills for instructions, 8, 688
- Bills in equity:
 - Averments in bill as to representative character of suit, 15, 631
- Bonds*, see *infra*, Administration bonds.
- Breach of promise of marriage, 3, 685
- Capacity to sue, 8, 653
 - Administrator *de bonis non*, 8, 654
 - Administrator *pendente lite*, 8, 656
 - Before probate or grant of letters, 8, 654
 - Exclusive right, 8, 654
 - Executor *de son tort*, 8, 658
 - In general, 8, 653
 - Statutory and general modification, 8, 656
 - When representative may sue in either official or individual capacity, 8, 658
 - When representative must sue in official capacity, 8, 658
- Citations, 4, 539
- Claim, averment of presentation of, 8, 675
- Collateral attack*, see SETTLEMENT OF DECEDENTS' ESTATES.
- Conditions precedent:
 - Presentation of claim to executor or administrator, 4, 657
- Confession of judgment, 8, 689
- Costs, 5, 156; 8, 728
 - Plene administravit* found for defendant, 8, 730
 - Statutory regulations, 8, 731
 - Suits in equity, 8, 733
 - When subject to costs, 8, 730
 - When they are defendants at law, 8, 730
 - When they are plaintiffs, 8, 728
- Covenant, 5, 355, 361
- Creditors' bills*, see CREDITORS' BILLS.
- Death by wrongful act, 5, 852, 854, 868
- Appointment as administrator, 5, 868

EXECUTORS AND ADMINISTRATORS, *cont'd.**De bonis non*, 8, 654

Averment of representative character, 8, 669

De bonis propriis, 8, 688*De bonis testatoris or intestati*, 8, 687, 693

Debt, 5, 918

Debts and decedents, see SETTLEMENT OF DECEDENTS' ESTATES.

Declaration and complaint, 4, 597

Actions against executor *de son tort*, 8, 679

Administration bonds, 8, 723

Assignment of breaches, 8, 723

Negating covenant, 8, 724

Requisite averments, 8, 723

Ambiguity, 8, 199

Uncertainty, 8, 199

Decree (see *infra*, Administration bonds), 8, 697

Default, 8, 689

Denial of representative capacity, 8, 685

In general, 8, 685

Ne unques executor, 8, 685*Puis darrein continuance*, 8, 685*Descriptio personæ*, 8, 670*De son tort* (see *infra*, Executor *de son tort*), 8, 658

Detinue:

Judgment against, 6, 663

Parties to the action, 6, 647, 648

Discharge of executors and administrators, see SETTLEMENT OF DECEDENTS' ESTATES.*Discretion of court*, see *infra*, Administration bonds.

Dismissal, discontinuance, and nonsuit, 15, 637

Ejectment, 7, 291

Coexecutors, 7, 294

Estates *pur autre vie*, 7, 292

Rule at common law, 7, 291

Under statute, 7, 293

Under the will, 7, 292

Whether action may be maintained by, 7, 291

Eminent domain:

Heirs and personal representatives, 7, 512

Notice, 7, 489

Equity:

Administration bonds, 8, 726

Costs, 8, 733

Suits between co-representatives, 8, 699

Error, writ of, 7, 857

Revival of action, 7, 866

Exceptions and objections, 8, 301

EXECUTORS AND ADMINISTRATORS, *cont'd.*

Executions:

Executions against executors and administrators, 8, 424

De bonis propriis or de bonis testatoris, 8, 424

Examples, 8, 424, 426

Form of writ, 8, 425

In general, 8, 424

Executions issued by executors and administrators, 8, 415

On judgment recovered after death of decedent, 8, 415

On judgment recovered by decedent, 8, 415

Included in execution where no revivor has been had, 8, 423

Executor *de son tort*, 8, 658Actions against executor *de son tort*, 8, 679

Declaration, 8, 679

Judgment, 8, 680

Ne unques executor, 8, 679

Plea, 8, 679

Foreclosure of mortgages, 9, 280

Deficiency judgments, 9, 464

Foreclosure by foreign personal representatives, 9, 298

In foreclosure of land contracts, 9, 282

Mortgages running to personal representatives, 9, 282

Parties, 9, 280

Personal representatives of deceased mortgagor as parties defendants, 9, 335

Joinder of necessary parties, 9, 335

Necessity of administration, 9, 338

Rule that personal representative is a necessary party, 9, 337

Rule that personal representative is not a necessary party, 9, 335

Right to foreclose ordinary cases, 9, 280

Where mortgagee was a trustee, 9, 281

Where there is more than one personal representative, 9, 281

Foreign executors and administrators, 8, 700

Foreclosure of mortgages, 9, 298

Suits against foreign executors and administrators, 8, 714

At law, 8, 715

Exceptions to the rule, 8, 715

General rule, 8, 714

In chancery, 8, 715

EXECUTORS AND ADMINISTRATORS, *cont'd.*

Foreign executors and administrators, *cont'd.*

Suits against foreign executors and administrators, *cont'd.*

Objection for nonliability to suit, 8, 717

Suits authorized by statute, 8, 716

Waiver of objection, 8, 717

Suits by foreign executors and administrators, 8, 700

Actions by assignees of foreign representatives, 8, 711

Actions on judgments, 8, 710

Actions on negotiable instruments, 8, 711

Averment of official character, 8, 712

Averment of official character as surplusage, 8, 712

Capacity acquired pending suit, 8, 703

Capacity to sue in individual character, 8, 708

Compliance with statutory conditions, 8, 704

General rule of disability to sue, 8, 700

Incapacity to sue in official character, 8, 700

Objection for incapacity to sue, 8, 713

Statutes authorizing actions in official character, 8, 705

Taking out domestic and ancillary letters, 8, 703

Waiver of objection for incapacity to sue, 8, 713

Forma pauperis, 16, 681

Forthcoming and delivery bonds, 9, 649

Friend of the court:

Unauthorized letters of administration, 9, 724

Funds and deposits in court:

Payment out of court without requiring letters of administration, 9, 756

Guardians:

Insolvent guardian, 9, 984

Representatives of deceased guardians or sureties, 9, 983

Settlement by guardian as personal representative, 9, 960

Settlement by personal representative, 9, 958

Heirs and devisees:

Joinder of parties, 10, 33

Joinder of personal representatives in equity, 10, 50

EXECUTORS AND ADMINISTRATORS, *cont'd.*

Heirs and devisees, *cont'd.*

Scire facias on judgments against ancestor or personal representative, 10, 45

Homesteads and exemptions, 10, 62

Husband and wife:

Action against wife in representative capacity, 10, 254

Action by wife alone in representative capacity, 10, 222

Joinder of husband where married woman sues in representative capacity, 10, 222

Parties to action, 10, 254

Injunctions:

Defendant, 10, 914

Insurance:

Parties to action on policy, 11, 390

Inventory, see SETTLEMENT OF DECEDENTS' ESTATES.

Joinder of counts and causes, 1, 177; 8, 662

Actions against executors and administrators, 8, 681

In individual and representative capacity, 8, 681

Objection for misjoinder, 8, 682

Code pleading, 1, 210

How misjoinder cured, 8, 665

Objections for misjoinder, 8, 664

What may be joined, 8, 662

What may not be joined, 8, 663

Joinder of parties:

Actions against representatives, 8, 680

Co-representatives, 8, 661

Feme sole after marriage, 8, 662

How objection for nonjoinder taken, 8, 661

In general, 8, 661

Under the codes, 8, 662

Equity, 8, 695

As defendants, 8, 695

As plaintiffs, 8, 695

Heirs and devisees, 10, 39

Heirs and devisees and personal representatives in equity, 10, 50

Joinder as defendants in actions on joint obligations, 8, 680

Joinder as plaintiffs in actions on joint obligations, 8, 662

Joinder of co-representatives as defendants, 8, 680

Joinder of heirs and devisees, 10, 33

Judgments (see *infra*, Administration bonds), 11, 950, 952

EXECUTORS AND ADMINISTRATORS, *cont'd.***Judgments, *cont'd.***

Actions against executor *de son tort*, 8, 680

Actions against executors and administrators, 8, 687

Amendment of judgment, 8, 692

Confession, 8, 688

Confession of assets, 8, 692

De bonis propriis, 8, 688

De bonis testatoris or intestati, 8, 687

Default, 8, 689

Enforcing judgment *de bonis testatoris or intestati*, 8, 693

General requisites, 8, 687

Payable in due course of administration, 8, 689

Quando acciderint, 8, 691

Actions at law against executors and administrators, 8, 678

Actions on judgments, 11, 1116, 1121

Actions on judgments by foreign executors and administrators, 8, 710

Administration bonds, 8, 725

Declaration and complaint in actions on judgments, 11, 1123

Decree in equity, 8, 697

Leave to sue upon judgments, 11, 1096

Parties to action on judgments, 11, 1116, 1121

Judicial sales, 12, 7

Leave of court, see *infra*, Administration bonds.

Legacies and devises, see LEGATEES AND DISTRIBUTEES.

Letters of administration or letters testamentary, see SETTLEMENT OF DECEDENTS' ESTATES. see *infra*, Profert and oyer of letters.

Limitations, 13, 195, 272

Administration and nonadministration, 13, 276

Averments as to lapse of time, 13, 274

Averments in bill or complaint, 13, 274

General or special replication, 13, 276

In general, 13, 272

Necessary averments in bill or complaint, 13, 274

New promise, payment, or acknowledgment, 13, 251

Replication, 13, 276

Requisites and sufficiency of replication, 13, 277

Requisites of plea, 13, 273

EXECUTORS AND ADMINISTRATORS, *cont'd.***Limitations, *cont'd.***

Specially pleading defense, 13, 272

Mechanics' liens:

Personal representatives as parties defendant, 13, 960

Misjoinder, see *infra*, Joinder of counts and causes; Joinder of parties.

Multifariousness, 8, 697

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Ne unques executor or administrator, 8, 671, 685

Actions against executor *de son tort*, 8, 679

Official capacity, 8, 658

Opening, amending, and vacating judgments, 15, 253

Oyer. see *infra*, Profert and oyer of letters.

Parties to action (see PARTIES TO ACTION), 15, 480

Partition:

Legal representatives as parties plaintiff, 15, 788

Parties defendant, 15, 794

Partnership, see PARTNERSHIP.

Patents:

Joinder of next of kin or heir, 16, 72

When proper parties, 16, 72

Payment into court, 9, 743

Penalties and penal actions, 16, 265

Pendente lite administrator, 8, 656

Pleas:

Administration bonds, 8, 725

Denial of representative capacity, 8, 685

Ne unques executor or administrator, 8, 671

Plene administravit, 8, 686

Puis darrein continuance, 8, 685

Plene administravit, 8, 686

Presentation of claim, averment of, 8, 675

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.

Probate or grant of letters, 8, 654

Profert and oyer of letters, 8, 676

Federal controlled by state practice, 8, 677

Form of profert, 8, 677

Necessity and sufficiency of profert, 8, 676

Necessity of profert at common law, 8, 676

Objection for absence or insufficiency of profert, 8, 677

Oyer, 8, 678

Profert unnecessary in many states, 8, 677

EXECUTORS AND ADMINISTRATORS, *cont'd.**Puis darrein continuance*, 8, 685*Quando acciderint*, 8, 691

Quieting title, 17, 299

Redemption, 17, 950, 960

Removal of causes, 18, 224

Citizenship, 18, 189

Proceedings relating to wills and administration, 18, 174

Review, 18, 1009

Revival of judgments, see REVIVAL OF JUDGMENTS.*Revivor of suits and actions*, see REVIVOR OF SUITS AND ACTIONS.

Sales:

Action for price, 19, 13

Security for costs, 19, 350

Costs of personal representative, 19, 391

In general, 19, 350

Where representative is nonresident, 19, 350

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.*Specific performance*, see SPECIFIC PERFORMANCE.

Stock and stockholders:

Joinder of representatives of deceased stockholders in actions to enforce stockholders' liability to creditors, 20, 727

Substitution of parties:

New personal representative, 20, 1039

Suits, see *infra*, Actions at law by executors and administrators.*Suits between co-representatives*, 8, 699

At common law, 8, 699

In equity, 8, 699

Suits by and against foreign executors and administrators, see *infra*, Foreign executors and administrators.*Suits in equity by and against executors and administrators*, 8, 694

As parties in chancery generally, 8, 694

Averment of representative capacity as plaintiffs, 8, 696

Bills for instructions, 8, 698

Capacity to sue acquired pending suit, 8, 696

Decree, 8, 697

Joinder of co-representatives, 8, 695

Multifariousness, 8, 697

Objection for want of representative capacity, 8, 697

Summary proceedings, 20, 1080

Summons and process, 20, 1134

EXECUTORS AND ADMINISTRATORS, *cont'd.*

Supplementary proceedings, 21, 99

Surplusage, irrelevant or redundant matter, 21, 294, 295

Averment of official character of foreign representatives as surplusage, 8, 712

Descriptio personae, 8, 670*Descriptio personae* as surplusage, 8, 684*Survival of actions*, see SURVIVAL OF ACTIONS.

Trespass, 21, 804

Trover and conversion:

Parties to actions, 21, 1045

Conversion after death of decedent, 21, 1045

Conversion before administration granted, 21, 1045

Conversion before death of decedent, 21, 1045

Vendor's liens, 22, 712

Venue, 22, 808

Verdict, 22, 867

Wills:

Suits by executors for instructions, 22, 1191

EXEMPLARY DAMAGES:

Amount in controversy, 1, 711, 715

Assault and battery, 2, 863

Attachment, 5, 724

Breach of promise of marriage, 3, 689; 5, 745

In general, 5, 723

Malice, 5, 724

Malicious prosecution, 13, 454

Necessity for distinctive claim, 5, 724

Personal injuries:

Instructions, 16, 435

Remittitur:

Improper recovery of exemplary damages, 18, 143

Where both actual and exemplary damages are claimed, 5, 725

Where claimed, 5, 725

EXEMPTIONS (see HOMESTEADS AND EXEMPTIONS):*Bankruptcy*, see BANKRUPTCY.**EXHIBITS, 8, 736**

Appeals:

Transcript on appeal, 2, 264

Bills in equity, 3, 362

Definiteness and certainty in pleadings, 6, 253

Definition, 8, 736

Demurrers, 6, 299

Depositions, 6, 603

Admissibility of exhibit, 6, 605

Copies as exhibits, 6, 606

Copies of books, 6, 603

Effect of failure to attach, 6, 604

General rule as to, 6, 603

EXHIBITS, *cont'd.*Depositions, *cont'd.*

Identification, 6, 604

Identification by parol at trial,
6, 605Independent use as evidence, 6,
605

Oath, 6, 605

Private correspondence, 6, 605

Sufficiency of identification, 6,
604When the exhibit is not annexed,
6, 604

Equity, 8, 737

Exhibits to pleadings, 8, 738

Bill in equity, 8, 740

Excuse for failure to exhibit, 8,
739

How far a part of pleading, 8, 740

Pleading at law and under the
code, 8, 740

What should be exhibited, 8, 738

How exhibits are made such, 8, 742

How proved in chancery, 8, 737

Infants:

Petition for sale of real property,
10, 776

Judgments:

Actions on judgments, 11, 1143

Assignment to plaintiff, 11,
1145Authentication of exhibit,
11, 1144Exhibit as part of pleadings,
11, 1144Note sued on originally, 11,
1144

Record of judgment, 11, 1143

Whether judgment is a
written instrument, 11, 1143

Review, 18, 1033, 1034

Set-off, recoupment, and counter-
claim, 19, 750

Specific performance, 20, 460

Exoneretur, see BAIL.**EXPERT WITNESSES, 8, 743**

Answer, 8, 771

Basis of opinion, 8, 769, 771

Collateral matters, 8, 772

Necessity of assigning, 8, 772

Opinion confined to hypothesis,
8, 773

Basis of opinion, 8, 769, 771

Cross-examination, 8, 749, 766

Basis of opinion, 8, 769

Conjectural or presumptive
facts, 8, 770Form of hypothetical question,
8, 770

General rule, 8, 766

Hypothetical question, 8, 770

Latitude allowed, 8, 767

Scientific books, 8, 768

EXPERT WITNESSES, *cont'd.*

Direct examination, 8, 751

Form of hypothetical question,
8, 755

Hypothetical question, 8, 752

When necessary, 8, 752

When unnecessary, 8, 764

Where expert has heard testi-
mony, 8, 754

In general, 8, 751

Discretion of court, 8, 747

Examination of witnesses:

Assumption of facts, 8, 78

Hypothetical question, 8, 752

Cross-examination, 8, 770

Form, 8, 770

Presumption of conjectural
facts, 8, 770

Discretion of court, 8, 763

Embodying all facts, 8, 756

Facts within personal knowledge
of witness, 8, 764

Form, 8, 755

Cross-examination, 8, 770

Hypothesis referring to testi-
mony heard by witness, 8,
762

Instruction to jury, 8, 780

Opinion confined to hypothesis,
8, 773

Opinion of other experts, 8, 761

Question based on any assump-
tion, 8, 757

Self-evident facts, 8, 762

Similar case hypothetically
stated, 8, 755

When necessary, 8, 752

When unnecessary, 8, 764

Where expert has heard testi-
mony 8, 754

Instructions, 8, 774; 11, 329

Advisory, 8, 777

Application of same rules as
with other evidence, 11, 332

Cautionary instructions, 11, 329

Cautious consideration, 8, 777

Conflict of testimony, 8, 776

Customary consideration, 8, 778

Great consideration, 8, 777

Hypothetical question, 8, 780

In general, 8, 774

Instructions disparaging testi-
mony, 11, 330Instructions giving undue
weight to testimony, 11, 331

Judicial comments, 8, 778

Judicial opinion forbidden by
statute, 8, 779

Little consideration, 8, 778

Opinion not binding on jury, 8,
776Stating the rules regulating esti-
mates of evidence, 8, 775

EXPERT WITNESSES, *cont'd.*Instructions, *cont'd.*Weight to be given testimony,
11, 329Withdrawal of incompetent testi-
mony, 8, 775

Introductory, 8, 774

Limitations, 8, 745

Numerical limitation, 8, 782

Preliminary examination, 8, 745

Cross-examination, 8, 749

Discretion of court, 8, 747

In general, 8, 745

Review, 8, 749

Re-examination, 8, 771

Review, 8, 749

Selection, 8, 781

Separation, 8, 782

**EXPOSURE OF PERSON, see IN-
DECENT EXPOSURE.****EXPRESS COMPANIES, see CAR-
RIERS.****EXTENSION OF TIME, see TIME
TO PLEAD.****EXTENT, 8, 883**

Appraisement, 8, 786

As used in the United States, 8, 785

Creditor's liability for proceeds 8,
789

Definition, 8, 784

Delivery, 8, 788

Description of land, 8, 785

Kinds of extent, 8, 784

Notice, 8, 786

Payments on lands retained by
debtor, 8, 789

Proceedings, 8, 786

Redemption of portion of lands, 8,
789

Restitution, 8, 790

Return, 8, 788

Seizin, 8, 788

Set-off, 8, 786

Setting aside extent, 8, 790

What may be taken, 8, 785

EXTORTION, 8, 791See **TOLLS.**Actions to recover illegal exactions
or penalty, 8, 795Declaration, petition, or com-
plaint, 8, 795

Form of action, 8, 795

Joinder of counts and causes, 8,
797

Who may sue, 8, 795

Conspiracy, 4, 726

Declaration and complaint, 8, 795

Definition, 8, 791

Extorsively, 8, 794

Extortion as an offense, 8, 792

Extorsively, 8, 794

Fees taken and fees due, 8, 792

Intent, 8, 793

EXTORTION, *cont'd.*Extortion as an offense, *cont'd.*

Joinder of defendants, 8, 794

Knowingly, 8, 794

Office and official character, 8,
793Ownership of money taken, 8,
794

Time, 8, 794

What indictment must show, 8,
792

Wilfully, 8, 794

*Extra allowances, see ADDITIONAL AL-
LOWANCES OF COSTS.*

Indictment, 8, 792

Intent, 8, 793

Joinder of counts and causes, 8, 797

Joinder of offenses, 8, 794

*Threats and threatening letters, see
THREATS AND THREATENING LET-
TERS.***EXTRA ALLOWANCES, see AD-
DITIONAL ALLOWANCES OF COSTS.****EXTRADITION, 8, 798**

Affidavit, 8, 817

Authentication, 8, 809

Conclusiveness of certificate, 8,
810

In general, 8, 809

Sufficiency of authentication, 8,
809Sufficiency of, to justify commit-
ment, 8, 811Bail and recognizance, 3, 205; 8, 821
Costs, 8, 825

In general, 8, 825

International extradition, 8, 825

Interstate extradition, 8, 826

Declaration and complaint, 8, 804

Definition, 8, 800

Demand:

Interstate extradition, 8, 814

Demand upon foreign government,
8, 801

Division, 8, 800

Documentary evidence, 8, 809

Examination, 8, 808

Before whom, 8, 808

Documentary evidence, 8, 809

Testimony at the hearing, 8, 808

*Expenses, see infra, Costs.*From foreign country to United
States, 8, 800Arrest in civil action after ac-
quittal, 8, 802Demand upon foreign govern-
ment, 8, 801

For what offense triable, 8, 801

Institution of proceedings, 8, 800

Papers in support of request, 8,
800Privilege of return to country of
asylum, 8, 802

EXTRADITION, *cont'd.*

- From foreign country to United States, *cont'd.*
 - Remedy against trial for other offenses, 8, 802
- From United States to foreign country, 8, 802
 - Arrest for purpose of examination, 8, 807
 - At whose instance warrant issued, 8, 804
 - Authentication, 8, 809
 - Certainty in charging crime, 8, 804
 - Complaint, 8, 804
 - Documentary evidence, 8, 809
 - Examination, 8, 808
 - Existence of foreign criminal proceedings, 8, 806
 - Habeas corpus*, see *infra*, *Habeas corpus*.
 - Hearing, 8, 808
 - Issuance of executive mandate, 8, 806
 - Jurisdictional extent of warrant, 8, 807
 - Necessity for warrant, 8, 803
 - Oath, 8, 806
 - Power confined to federal government, 8, 802
 - Preliminary executive warrant, 8, 803
 - Requirements of warrant, 8, 804
 - Requisites of warrant, 8, 807
 - Testimony at the hearing, 8, 808
 - What complaint should show, 8, 805
 - Who may issue warrant, 8, 807
- Habeas corpus*, 8, 811, 822; 9, 1010
 - Consideration of the charge of crime, 8, 822
 - Effect of recitals in executive warrant, 8, 824
 - Guilt or innocence of accused, 8, 823
 - Identity of accused, 8, 824
 - In general, 8, 811
 - Interstate extradition, 8, 822
 - Jurisdiction, 8, 822
 - Manner of arrest and removal, 8, 824
 - Motive of extradition proceedings, 8, 823
 - Res adjudicata*, 8, 825
 - To effect arrest of party held in civil suit, 8, 812
 - Warrant of surrender subject to review, 8, 812
 - Whether accused is a fugitive from justice, 8, 823
- Hearing, 8, 808
- Identity, 8, 824
- Institution of proceedings, 8, 800

EXTRADITION, *cont'd.*

- International extradition, 8, 800
- Costs, 8, 825
- Final surrender to foreign country, 8, 812
 - By whom made, 8, 812
- Power of president notwithstanding judicial determination, 8, 813
- Prerequisites, 8, 813
- From foreign country to United States, see *infra*, From foreign country to United States.
- From United States to foreign country, see *infra*, From United States to foreign country.
- In general, 8, 800
- Interstate extradition, 8, 813
 - Application for executive demand, 8, 814
 - Arrest of fugitive to await extradition papers, 8, 188
 - Bail, 8, 821
 - By whom demand made, 8, 814
 - Costs, 8, 826
 - Demand, 8, 814
 - Duty to issue executive mandate, 8, 818
 - Executive mandate, 8, 818
 - For what offense triable after extradition, 8, 825
 - Habeas corpus*, see *infra*, *Habeas corpus*.
 - Institution of proceedings, 8, 814
 - Issuance of second warrant, 8, 821
 - Nature of right and obligation of states, 8, 813
 - Necessary papers in support of demand, 8, 815
 - Requisition, 8, 814
 - Showing that the accused is a fugitive from justice, 8, 817
 - Sufficiency of affidavit accompanying requisition, 8, 817
 - Sufficiency of indictment accompanying requisition, 8, 816
 - Sufficiency of mandate, 8, 820
 - To whom executive mandate issued, 8, 819
 - Upon whom demand made, 8, 814
 - When demand made, 8, 815
- Oath, 8, 806
- Papers in support of request, 8, 800
- Requisition, 8, 814
- Res adjudicata*, 8, 825
- States, see *infra*, Interstate extradition.
- Warrants, see *infra*, From United States to foreign country.

EXTRAORDINARY REMEDY,
see INJUNCTIONS; MANDAMUS; PRO-
HIBITION; QUO WARRANTO; SUMMARY
PROCEEDINGS.

EXTRAORDINARY TERMS, see
TERMS OF COURT.

FACTORS AND BROKERS, 8, 828

Actions against factors in general,
8, 836

Declaration and complaint, 8,
838

For misfeasance of factor, 8, 837

Form of action, 8, 836

Proceeds of sale, 8, 836

Actions by brokers, 8, 831

Allegations and proof, 8, 836

Answer or plea, 8, 835

Commissions, 8, 832

Custom, 8, 831

Declaration for commission, 8,
832

Declaration for indemnity, 8, 831

For indemnity, 8, 831

Plea, 8, 832

Answer, 8, 835

Assumpsit, 2, 1017

Capacity to sue respecting principal's
property, 8, 828

Capacity of broker to sue, 8, 830

Capacity of factor to sue, 8, 828

Contract, 8, 828

Insurance brokers, 8, 831

Tort, 8, 829

Carriers, 3, 834

Commissions, 8, 832

Declaration and complaint, 8, 831,
832

Actions against, 8, 838, 839

Fraud:

Actions against brokers for fraud
or negligence, 8, 839

Liability to sue respecting principal's
property, 8, 836

Misfeasance, 8, 837

Negligence:

Actions against, 8, 839

Parties to actions, 22, 174

Usages and customs, 8, 831

FACTUM, see NON EST FACTUM.

FALSE ENTRY:

Banks and banking, 3, 256

Jurisdiction, 3, 261

FALSE IMPRISONMENT, 8, 841

Amendments, 1, 570; 8, 849

Answers, 8, 850

Answers in code pleading:

Justification, 1, 846

Civil action, 8, 841

Answer, 8, 850

Declaration and complaint, 8,
845

Definition, 8, 841

Form of action, 8, 842

FALSE IMPRISONMENT, *cont'd.*

Civil action, *cont'd.*

Joinder of causes of action, 8,
844

Joinder of parties, 8, 844

Jurisdiction, 8, 842

Parties, 8, 844

Replication, 8, 853

Survival of right of action, 8, 845

Venue, 8, 842

Contempt, 4, 821

Criminal procedure, 8, 853

Damages, 5, 760

Special damages, 8, 848

Declaration and complaint, 8, 845

Actions against public officers.
8, 848

Allegation of special damages,
8, 848

Amendments, 8, 849

Averment of defendant's act, 8,
848

Essential averments, 8, 845

Malice, 8, 845

Particular instrumentality, 8, 846

Probable cause, 8, 845

Sufficient allegation, 8, 847

Unlawfulness, 8, 846

Evidence:

Indictment as evidence, 8, 31

Indictment, 8, 853

Joinder of charges, 8, 854

Joinder of counts and causes, 8, 844

Libel and slander, 1, 189

Malicious prosecution, 1, 189

Joinder, 1, 189

Slander, 1, 189

Joinder of parties, 8, 844

Jurisdiction, 8, 842

Justification, 8, 850

Malice, 8, 845

Malicious prosecution (see MALICIOUS
PROSECUTION):

Changing form of action, 1, 570

Joinder of counts and causes,
13, 423

Parties, 8, 844

Plea, 8, 850

Preliminary examination, 16, 832

Privilege, 16, 984

Probable cause, 8, 845, 851

Replication, 8, 853

Special damages, 8, 848

Splitting causes of action, 1, 162

Survival of actions, 8, 845; 21, 347

Unlawfulness, 8, 846

Venue, 8, 842; 22, 782

Criminal procedure, 8, 854

Winding up corporations:

Application of statutes confer-
ring jurisdiction upon courts
of chancery to foreign corpora-
tions, 22, 1242

FALSE PERSONATION, 8, 855

- Definition, 8, 855
- Indictment, 8, 855
 - Allegations, 8, 856
 - Description of property, 8, 856
 - Form, 8, 855
 - Ownership, 8, 856
 - Value of property, 8, 856
- Instructions, 8, 856

FALSE PLEADINGS, see SHAM AND FRIVOLOUS PLEADINGS.**FALSE PRETENSES, 8, 857**

- Carriers:
 - Jurisdiction and venue where delivery is by carrier, 8, 859
- Definition, 8, 857
- Description of money, 8, 875
- Description of property, 8, 873
- Embezzlement:
 - Joinder, 7, 450
- Feloniously, 8, 860
- Identification of written instrument, 8, 876

Indictment:

- Acquisition by defendant, 8, 879
- Averment of acts by accused, 8, 869
- Conclusion, 8, 881
- Connection between pretenses and obtaining property, 8, 873
- Description of all the property, 8, 874
- Description of money, 8, 875
- Description of written instruments, 8, 876
- Essential allegations, 8, 860
- Feloniously, 8, 860
- Identifying instrument, 8, 876
- Implied reliance upon representation, 8, 872
- Inducement to part with property, 8, 870
- Insufficient averment of inducement, 8, 871
- Intent, 8, 862
- Jurisdictional averments, 8, 860
- Language of statute, 8, 860
- Names of parties defrauded, 8, 869
- Negation of pretenses, 8, 880
- Obtaining instrument, 8, 879
- Ownership, 8, 877
- Reliance upon representation, 8, 870
- Scienter, 8, 861
- Setting out instrument, 8, 876
- Signature, 8, 876
- Specification of pretenses, 8, 863
 - Description of written instrument, 8, 868
 - Details of the fraud, 8, 867
 - In general, 8, 863

Index Pl. & Pr. — 25

FALSE PRETENSES, *cont'd.*

- Indictment, *cont'd.*
 - Specification of pretenses, *cont'd.*
 - Relation to existing facts, 8, 867
 - When the false pretenses consist in words, 8, 866
 - That the act was feloniously done, 8, 860
 - Value of instrument, 8, 877
 - Value of property, 8, 875

Intent, 8, 862

Joinder of counts and causes, 8, 881

Joinder of defendants, 8, 882

Joinder of offenses, 8, 881

Jurisdiction, 8, 858

Mail:

- Jurisdiction and venue where delivery by mail, 8, 858

Money, description of, 8, 875

Names:

- Names of parties defrauded, 8, 869

"Obtained," 8, 879

Ownership, 8, 877

Scienter, 8, 861

Signature, 8, 876

Venue, 8, 858

Writing, description and identification, 8, 868, 876

FALSE REPRESENTATIONS AND DECEIT, 8, 883**See SALES.**

Adequate remedy at law, 8, 891

Assumpsit, 8, 887

- Effect of allegation of fraud, 8, 888

- Effect of existence of other remedies, 8, 888

- In general, 8, 887

Contracts, necessity of pleading, 8, 909

Counterclaim, 8, 889

Damages, 8, 908

- Allegation, 8, 908

- Proof, 8, 908

Death:

- Death of defendant, 5, 828

Defense, 8, 888

- Pleading in defense, 8, 912

- Sufficiency of pleading and proof, 8, 912

Definiteness and certainty in pleadings, 6, 262

Election of remedies, 8, 894

- Effect, 8, 894

- Necessity, 8, 894

- Offer to restore, 8, 895

Equitable remedies, 8, 890

- Appropriate relief, 8, 893

- In general, 8, 890

- Rescission, 8, 892

Evidence, see *infra*, Proof.

FALSE REPRESENTATIONS AND DECEIT, *cont'd.*

- Executions against the body and arrest in civil cases, 8, 589
- False warranty, 8, 903, 904
- Fraud, 8, 897
- Inducement and reliance, 8, 906
 - Allegation, 8, 906
 - Proof, 8, 907
 - Rebutting inducement, 8, 908
- Infants:
 - Age, 10, 692
 - Sale of real estate, 10, 808
- Instructions, 8, 916
- Intent to deceive, 8, 897
- Joinder of counts and causes, 8, 910
- Joinder of parties, 8, 896
- Officers of private corporations, 15, 75
- Parties, 8, 896
- Pleading, 8, 897
 - Allegation of intent, 8, 897
 - Damage, 8, 908
 - Equity, 8, 913
 - Falsity of representation, 8, 899
 - Fraud, 8, 897
 - Inducement and reliance thereon*, see *infra*, Inducement and reliance.
 - Intent to deceive, 8, 897
 - Joinder of counts and causes, 8, 910
 - Necessity for pleading contract, 8, 909
 - Pleading in defense, 8, 912
 - Proof to correspond with allegations, 8, 900
 - Representation and falsity thereof, 8, 899
 - Scienter, 8, 898, 901
- Proof:
 - Damages, 8, 908
 - Equity, 8, 913
 - Inducement and reliance thereon, 8, 907
 - Pleading and proof, 8, 897
 - Scienter, 8, 905
- Questions of law and fact, 8, 914
- Reliance on false representations*, see *infra*, Inducement and reliance.
- Remedies, 8, 884
 - Action on the case, 8, 885
 - As by defense, 8, 888
 - Assumpsit, 8, 887
 - Availability in defense of false representations and deceit, 8, 888
 - Equitable remedies, 8, 890
 - Rescission, 8, 884
- Remedy at law, 8, 891
- Representation, 8, 899
 - Falsity, 8, 899
 - Pleading, 8, 899

FALSE REPRESENTATIONS AND DECEIT, *cont'd.*

- Rescission, 8, 884
 - Equitable remedies, 8, 892
- Scienter, 8, 898, 901
 - Actual knowledge, 8, 905
 - Allegations, 8, 901
 - Conclusiveness, 8, 898
 - False warranty, 8, 903
 - Manner of proof, 8, 905
 - Proof, 8, 903
 - Statement by one who should have known the truth, 8, 905
- Set-off, recoupment, and counterclaim, 8, 889
- Suit for damages, 8, 891
- Survival of actions, 21, 351
- Trespass on the case, 8, 885
 - Effect of express contract, 8, 885
 - In general, 8, 885
 - Warranty, 8, 885
 - Writing without representations, 8, 886
- Warranty:
 - Effect of, 8, 885
 - False warranty, 8, 903, 904
- FALSE SWEARING**, see PERJURY.
- FALSIFYING**, see SURCHARGING AND FALSIFYING.
- FALSIFYING RECORDS**:
 - Indictment, 8, 917
 - What constitutes, 8, 917
- FALSUS IN UNO, FALSUS IN OMNIBUS**:
 - Instructions*, see INSTRUCTIONS.
- FEDERAL PRACTICE**, see UNITED STATES COURTS.
- FEDERAL QUESTION**, see UNITED STATES COURTS.
- Appeals, 2, 38
- FEEs**, see ATTORNEY'S FEES; COSTS.
- Appeals*, see APPEALS.
- Costs (see FINES AND COSTS IN CRIMINAL CASES):
 - Fees distinguished from costs, 5, 107
- Debt, 5, 899
- Extortion*, see EXTORTION.
- Filing papers*, see FILING PLEADINGS AND PAPERS.
- Fines and costs in criminal cases*, see FINES AND COSTS IN CRIMINAL CASES.
- Guardians ad litem*, see GUARDIANS AD LITEM.
- Public officers*, see PUBLIC OFFICERS.
- Witnesses*, see WITNESSES.
- FEIGNED ISSUES**, 11, 605
 - See ISSUES TO JURY.
 - Abolition of feigned and substitution of direct issues, 11, 606
 - Bills of exceptions, 3, 381
 - Motions, 14, 168

FELLOW SERVANT, see MASTER AND SERVANT.**FELON**:

Affidavits, 1, 328

Ejectment, 7, 278

FELONY, see COMPOUNDING FELONY; CRIMINAL PROCEDURE; INDICTMENTS. *Compounding*, see COMPOUNDING FELONY; DURESS.**FENCES**, see BOUNDARIES AND FENCES.**FERRIES**, 8, 920

Actions, 8, 920

Actions against ferry owners, 8, 921

Actions by ferry owners, 8, 920

Ejectment, 7, 275

FIAT:

Replevin, 18, 520

FICTITIOUS:

Agreed case, 1, 304

FICTITIOUS ACTIONS:

Friendly suits, 9, 720

FICTITIOUS AMOUNT, see AMOUNT IN CONTROVERSY.**FICTITIOUS PARTIES**, see PARTIES TO ACTIONS.**FICTITIOUS SUIT** (see FRIENDLY SUIT):

Appeals, 2, 160

Dismissal of appeal, 2, 341

FIDUCIARIES (see AGENCY; EXECUTORS AND ADMINISTRATORS; GUARDIAN AND WARD; TRUSTS AND TRUSTEES):*Embezzlement*, see EMBEZZLEMENT.**FIERI FACIAS**, see EXECUTIONS.**FILING PLEADINGS AND PAPERS**, 8, 922

See APPEAL BONDS AND UNDERTAKINGS.

Affidavits of merits or defense, 1, 375

Answers in equity pleading, 1, 891

Appeals, see APPEALS.*Assignment of errors*, see ASSIGNMENT OF ERRORS.

Bail and recognizance, 3, 203

Bills in equity:

Authority to file the bill, 3, 373

Bills of exceptions, see BILLS OF EXCEPTIONS.*Briefs*, see BRIEFS.

Case made on appeal, 3, 904

Costs, 8, 930

Cross-bills, see CROSS-BILLS.

Cross-complaints, 5, 682

Definition, 8, 923

Demurrers in chancery, see DEMURRERS IN CHANCERY.*Depositions*, see DEPOSITIONS.

Duty to file pleadings and papers, 8, 929

Eminent domain:

Petition or complaint, 7, 516

Report of commissioners, 7, 596

FILING PLEADINGS AND PAPERS, *cont'd.*

Exceptions and objections, 8, 206

Failure of clerk to deposit papers on file, 8, 930

Fee, 8, 926

Findings of court, see FINDINGS OF COURT.

Indorsement, 8, 927

Antedating file mark, 8, 928

Generally, 8, 927

Statute, 8, 928

Indorsing papers, see INDORSING PAPERS.*Information*, see INFORMATION.*Orders*, see ORDERS.*Pleas in equity*, see PLEAS IN EQUITY.*Supplemental pleadings*, see SUPPLEMENTAL PLEADINGS.*Time to file*, see TIME TO PLEAD.

What constitutes filing, 8, 923

Delivery outside of clerk's office, 8, 924

Entry upon appearance docket, 8, 925

Entry upon record, 8, 925

Failure to make order-book entry, 8, 926

In general, 8, 923

Of instrument declared upon, 8, 926

Payment of fee, 8, 926

Withdrawal of papers from file, 8, 930

FILLING BLANKS:

Amendments, 1, 588

Negotiable instruments, 14, 402

Summons and process, 20, 1109, 1140

FINAL HEARING:

Costs, 5, 227

FINAL JUDGMENTS AND DECREES, 11, 964

See ERROR, WRIT OF.

Abatement in pleading, 1, 30, 31

Accounting, 2, 67, 70

Actions on, 11, 1104

Admiralty, 2, 67

Appeal, 1, 283

What is final decree, 1, 276

Appeal bonds and undertakings:

Decrees, 1, 1013

Appeals, 2, 52, 149

Alimony, 2, 136

Amendments, 2, 254

Appeal from order, 2, 255

Attachment proceedings, 2, 118

Attorney's fees, 2, 58

Bankruptcy, 2, 57

Costs, 2, 63, 64

Decisions affecting costs, 2, 133

Decisions affecting executions, 2, 142

FINAL JUDGMENTS AND DECREES, *cont'd.***Appeals, *cont'd.***

- Decisions affecting injunctions, 2, 123
- Decisions affecting reference, 2, 139
- Decisions affecting subrogation, 2, 142
- Decisions in actions of partition, 2, 144
- Decisions vacating judgments and decrees, 2, 107
- Decree, 2, 54; 5, 950
- Dismissal, 2, 54, 103
- Dismissal of appeal, 2, 61
- Eminent domain proceedings, 2, 136
- Entry of judgments, 2, 61
- Equitable decrees, 2, 64
 - Accounting, 2, 67, 70
 - Collateral decrees, 2, 69
 - Decision on relief demanded, 2, 66
 - Decrees affecting transfer of property, 2, 71
 - Decrees ordering reference, 2, 68
 - Divorce, 2, 68, 72
 - Double appeal, 2, 71
 - In general, 2, 64
 - Interlocutory decrees, 2, 66, 69
 - Must decide controversy, 2, 66
- Executions, 2, 55
- Final judgment on appeal, 11, 1058
- Final orders, 2, 72; 15, 327
- Form of decision, 2, 64
- Guardians, 2, 59
- Habeas corpus, 2, 127
- Infants, 2, 55
- Insolvency proceedings, 2, 57
- Interlocutory decisions, 2, 80
 - Abuse of discretion, 2, 94
 - Appeal from intermediate orders after final judgment, 2, 95
 - Case on appeal, 2, 95
 - Change of venue, 2, 83
 - Code practice, 2, 91
 - Conclusions, 2, 82
 - Construction of statutes allowing appeals, 2, 89
 - Continuance, 2, 86
 - Decisions resting in discretion, 2, 92
 - Discretionary decisions, 2, 92
 - Equity cases, 2, 88
 - Examples in discretionary decisions, 2, 92, 94
 - Findings, 2, 82

FINAL JUDGMENTS AND DECREES, *cont'd.***Appeals, *cont'd.*****Interlocutory decisions, *cont'd.***

- In general, 2, 80
- Instructions, 2, 88
- Matters of practice, 2, 85
- Rehearing, 2, 93
- Removal to United States courts, 2, 84
- Review on appeal from final judgment, 2, 90
- Summary relief, 2, 93
- Unappealable orders, 2, 84
- Irregular judgments, 2, 64
- Motion, 2, 252, 253
- Motion for new trial, 2, 252
- Necessity that judgment or decree be final, 2, 52
- New trial, motion of, 2, 137
- Nonappealable decree, 2, 253, 254
- Nonsuit, 2, 106
- Notice of entry, 2, 252
- Order for judgments, 2, 64
- Orders affecting receivership, 2, 121
- Orders of arrest, 2, 120
- Probate matters, 2, 56
- Reconsideration, 2, 253
- Sequestration, 2, 60
- Signature of judgments, 2, 63
- Statutory provisions, 2, 60
- Taxation of costs, 2, 252
- Universality of the rule, 2, 56
- What constitutes final decree, 2, 253
- What is a final judgment, 2, 53, 252
- When statute of limitations begins to run, 2, 252
- Writ of error, 2, 53
- Appellate review of orders, 15, 372
- Attorney's fees, 2, 58
- Bills of exceptions, 3, 383
- Bills of review, 3, 570
- Bills to enforce decrees, 3, 604
- Certified cases, 3, 931
- Certiorari*, see **CERTIORARI**.
- Contempt:
 - Appeal and writ of error, 4, 811, 812
- Costs, 2, 63, 64; 5, 202
- Death:
 - Death after final judgment, 5, 800
 - Death before final judgment, 5, 797
 - Death of defendant after final judgment, 5, 822
 - Death of defendant before final judgment, 5, 821
- Debt, 5, 934
- Decrees, 2, 54; 5, 950
 - Decrees *pro confesso*, 5, 999, 1029

FINAL JUDGMENTS AND DECREES, *cont'd.*

- Definition of final judgments, 11, 964
- Dismissal, 2, 54, 103
- Dismissal of appeal, 2, 61
- Divorce, 2, 67, 72
- Entry of judgments, 2, 61
- Examples, 11, 964, 966
- Executions, 2, 55
- Final judgments, 11, 964
- Guardians and wards, 2, 59
- Insolvency and bankruptcy, 2, 57
- Interlocutory judgments, 5, 999; 11, 964
- Justices of the peace 12, 756
- Opening decrees *pro confesso*, 5, 1029
- Orders, 2, 72; 15, 327
 - Appealable orders affecting the merits, 2, 76
 - Code procedure, 2, 79
 - Divorce, 7, 134
 - Examples, 2, 74
 - Motion for judgment, 2, 74
 - Orders affecting substantial rights, 2, 75
 - Orders unappealable as not affecting the merits, 2, 77
 - Special orders after judgment, 2, 76
 - Special proceedings, 2, 78
 - What constitute generally, 2, 72
- Partition, 15, 811
- Rehearing, 18, 30
- Review, 18, 994
- Sentence, 19, 500
 - Dismissal, 19, 502
 - In general, 19, 500
 - Necessity of sentence to complete judgment, 19, 501
- Procedendo*, 19, 502
- Record, 19, 505
- Statutes, 19, 502
- Sequestration, 2, 60
- Signature of judgments, 2, 62

FINDINGS OF COURT, 8, 931**See VERDICT.**

Amendments, 8, 950

Appeals, 2, 396, 486

Appeals from findings, see APPEALS.

Assumption as to facts, 2, 492

Beneficial error, 2, 585

Conclusion of law, 2, 492

Error in findings, 2, 584

General findings, 2, 491

Harmless error, 2, 584

Immaterial issue, 2, 285

In general, 1, 486

Interlocutory, 2, 82

Omission of findings, 2, 489

Presumption of correctness, 2, 486

Referee, 2, 489

FINDINGS OF COURT, *cont'd.***Appeals, *cont'd.***

Reversible error, 2, 584, 585

Special findings, 2, 488, 491

Ultimate conclusion right, 2, 585

Waiver, 2, 491

When record contains evidence, 2, 489

Where no finding is made, 2, 489

Argument, 8, 942

Bills of exceptions, 3, 403

Evidence, 3, 423

Necessity of bill, 3, 409

By whom prepared, 8, 938

Attorney for successful party, 8, 938

Successor of the trial judge, 8, 939

Conclusiveness, 8, 952

Construction, 8, 949

Decisions, see DECISIONS.

Defaults, 6, 115

Definition, 8, 932

Divorce, 7, 119

Duress, 7, 252

Error in findings, 2, 584

Exceptions and objections, see EXCEPTIONS AND OBJECTIONS.

Filing, 8, 948

Necessity for, 8, 948

Time of, 8, 949

Form, 8, 939

General finding, 8, 933

Insane persons, 10, 1195

Issues to the jury, see ISSUES TO THE JURY.

Judgment roll, 18, 477

Judgments (see JUDGMENTS), 11, 864

Finding of same effect as verdict, 11, 865

Findings necessary, 11, 864

In general, 11, 864

Supporting judgment, 8, 943

Justices of the peace:

Appeal where there is a finding without judgment, 12, 760

Kinds, 8, 933

Limitations, 13, 267

Finding as to application of specified section of code, 13, 268

Finding of probative facts sufficient, 13, 268

Prescription, 13, 293

Ultimate facts must be found, 13, 267

Mandate:

Amendment, 13, 849

Manner of making, 8, 939

Mechanics' liens, 13, 1026

Mistake in classification, 8, 940

Negotiable instruments, 14, 698

FINDINGS OF COURT, *cont'd.*

New trial:
 Decision contrary to law, 14, 789
 Decision not sustained by the evidence or contrary to the evidence, 14, 788
 Motion for new trial where findings are defective, 8, 951
 Opinions of courts:
 Relation of opinion to findings, 15, 309
 Partnership, 15, 951
 Conformity to judgment, 15, 954
 Examples, 15, 951, 952
 Responsiveness, 15, 951
 Supported by evidence, 15, 951
 Presumptions as to findings, 2, 486
 Public officers, 17, 227
 Quieting title, 17, 359
 Railroads:
 Injuries to animals, 17, 611
 Reasons, 8, 942
 Remedies for defective findings, 8, 950
 Generally, 8, 950
 Motion for new trial, 8, 951
 Motion for *venire de novo*, 8, 950
 Requisites, 8, 941
 Concise statement of several facts found by the court, 8, 941
 In support of judgment, 8, 943
 Reference to pleadings, 8, 942
 Responsiveness, 8, 944
 Signature, 8, 945
 Statement of reasons or argument, 8, 942
 Ultimate facts, 8, 941
 Within the issues, 8, 945
Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
 Responsiveness, 8, 944
 Sales, 19, 58
Separate findings, see *infra*, Special findings.
 Sheriffs and constables, 20, 158
 Signature, 8, 945
 Special findings (see *infra*, Requisites), 8, 933
 Essential as basis for judgment, 8, 936
 Failure to comply with request, 8, 935
 Findings not technically special regarded as general, 8, 935
 Necessity for special or separate findings, 8, 933
 Statutory requirements, 8, 935
 Specific performance, 20, 478
 Stipulations, 20, 635
Street railways, see STREET RAILWAYS.

FINDINGS OF COURT, *cont'd.*

Streets and highways, 20, 975
 Submission of proposed findings, 8, 946
 Generally, 8, 946
 Manner of making, 8, 947
 Noting disposition in margin, 8, 948
 Refusal to find, 8, 948
 Trespass on the case, 21, 923
Trespass to try title, see TRESPASS TO TRY TITLE.
Trover and conversion, see TROVER AND CONVERSION.
 Ultimate facts, 8, 941
 Usury, 22, 457
 Vendor and purchaser (see VENDOR AND PURCHASER):
 Purchaser's action for damages, 22, 761
 Vendor's liens, 22, 730
Venire de novo, 8, 950
 Waiver of findings, 8, 951
 Waters and watercourses, 22, 1155
 When findings are unnecessary, 8, 936
 Agreed statement, 8, 937
 Equity cases, 8, 938
 Examples, 8, 936, 938
 Immaterial issues, 8, 937
 In general, 8, 936
 Work and labor, 22, 1381
FINES AND COSTS IN CRIMINAL CASES, 8, 953
 See COSTS; FORFEITURE
 Action for recovery of fine, 8, 974
 In general, 8, 974
 Relation to forfeiture and penalty, 8, 975
 Statutory distribution of fine, 8, 975
 Waiver of proper proceeding, 8, 975
 Alternative punishment, 8, 963
 Appeals (see *infra*, Correction of errors):
 Judgment for costs, 8, 995
Capias pro fine, 8, 964
 Change of venue:
 Costs on change of venue, 8, 991
 Committal until after payment of fine, 8, 961
 Constitutional law:
 Imprisonment for costs, 8, 994
 Imprisonment to enforce fines, 8, 967
 Construction:
 Strict construction, 8, 956
 Contempt:
 Limitation of imprisonment in case of nonpayment of fines, 4, 802

FINES AND COSTS IN CRIMINAL CASES, *cont'd.*

- Correction of errors, 8, 976, 994
 - Appeal from final judgment, 8, 976
 - Appeal to inferior courts of appellate jurisdiction, 8, 977
 - Judgment on appeal, 8, 978
 - Jurisdictional matters, 8, 977
 - Objections not available to defendant, 8, 977
 - Review of discretion, 8, 977
 - When appeal lies, 8, 976
- Costs, 8, 979
 - Correction of errors, 8, 994
 - Correction of erroneous judgment, 8, 995
 - Retaxing costs, 8, 994
 - Costs on change of venue, 8, 991
 - Definition and nature, 8, 955
 - Comprehensive meaning, 8, 957
 - In general, 8, 955
 - Relation of fees, fines, and costs, 8, 957
 - Statutory creation, 8, 955
 - Strict construction of statute, 8, 956
 - Enforcement of payment of costs, 8, 991
 - Judgment*, see *infra*, Judgment for costs.
 - Plurality of costs and fees, 8, 980
 - Rules applying to taxation against prosecution*, see *infra*, Rules applying to taxation against prosecution.
 - Taxation against prosecuting witness, 8, 984
 - Taxation of costs, 8, 979
 - Taxation of costs against defendant, 8, 986
 - Witness fees, 8, 981
- Defendant:
 - Taxation of costs, 8, 983, 986
- Discharge of liability for fine, 8, 971
 - Discharge of fine by execution of promissory note, 8, 974
 - Relief against imprisonment, 8, 971
- Enforcement of fines, 8, 964
 - Application of money deposited as bail, 8, 967
 - Capias pro fine* or execution, 8, 964
 - Discharge of liability for fine, 8, 971
 - Execution after imprisonment, 8, 966
 - Imprisonment and execution concurrently, 8, 966
 - Imprisonment to enforce fine, 8, 967

FINES AND COSTS IN CRIMINAL CASES, *cont'd.*

- Enforcement of fines, *cont'd.*
 - Relief against imprisonment, 8, 972
- Enforcement of payment of costs, 8, 991
 - Execution, 8, 991
 - Imprisonment for costs, 8, 992
- Executions, 8, 964
 - At common law, 8, 964
 - Costs, 8, 991
 - Execution after imprisonment, 8, 966
 - Imprisonment and execution concurrently, 8, 966
 - United States, 8, 965
- Fees*, see *infra*, Witness fees.
- Fees, fines, and costs, 8, 957
- Fines, 8, 957
 - Action for recovery of fine*, see *infra*, Action for recovery of fine.
 - Correction of errors*, see *infra*, Correction of errors.
 - Definition and nature, 8, 954
 - Enforcement of fines*, see *infra*, Enforcement of fines.
 - Presence of accused in court, 8, 957
 - Verdict, judgment, and sentence*, see *infra*, Verdict, judgment, and sentence.
- Imprisonment, 8, 967
 - Constitutionality, 8, 967
 - Costs, 8, 992
 - Constitutional law, 8, 994
 - Defendant's costs, 8, 993
 - Hard labor, 8, 993
 - In general, 8, 992
 - Municipal charter, 8, 992
 - Prosecutor, 8, 992
 - Statutes, 8, 992
 - Discretion in ordering imprisonment, 8, 969
 - Fine and imprisonment as punishments, 8, 968
 - Imprisonment and execution concurrently, 8, 966
 - Judgment of imprisonment for costs, 8, 990
 - Relief against imprisonment, 8, 972
 - Discharge of fine by execution of promissory note, 8, 974
 - In general, 8, 972
 - Rearrest after compliance with statute, 8, 973
 - Rearrest after escape, 8, 974
 - Sentence to labor, 8, 970
 - Statutory authority, 8, 967
 - Term of imprisonment, 8, 970

FINES AND COSTS IN CRIMINAL CASES, *cont'd.*

- Imprisonment, *cont'd.*
 - Violation of municipal ordinances, 8, 969
- Judgment for costs, 8, 989
 - Correction of erroneous judgment, 8, 995
 - Designation of amount, 8, 989
 - Effect of judgment as a lien, 8, 990
 - In general, 8, 989
 - Joint indictment, 8, 989
 - Judgment of imprisonment for costs, 8, 990
 - Sufficiency of judgment, 8, 989
- Ordinances, see ORDINANCES.
- Pardon, 8, 998, 999
 - Effect of pardon upon costs, 8, 999
 - Remission of fine by executive pardon, 8, 998
 - Vested rights, 8, 999
- Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.
- Plurality of costs and fees, 8, 980
 - Under joint indictment, 8, 980
 - Under several counts against one defendant, 8, 980
 - Unnecessary number of indictments, 8, 981
- Presence of accused in court, 8, 957; 19, 454
 - Presence of attorney, 8, 958
 - Sentence, 8, 958
 - Trial, 8, 957
- Probable cause, 8, 986
- Prosecuting witness:
 - Taxation of costs against, 8, 984
 - In general, 8, 984
 - Minor or married woman, 8, 985
 - Necessity of sufficient finding under statutes, 8, 985
 - Probable cause, 8, 986
 - Public officer, 8, 986
- Prosecution, see *infra*, Rules applying to taxation against prosecution.
- Questions of law and fact:
 - Assessment of fine, 8, 959
- Quo warranto, 17, 391, 483
- Remission of fines and costs, 8, 997
 - Authority, 8, 997
 - Effect of pardon, 8, 999
 - Effect of remission upon vested rights, 8, 999
 - Legislative intervention, 8, 997
 - Pardon, 8, 998
 - Who may remit, 8, 997
- Review, see *infra*, Correction of errors.

FINES AND COSTS IN CRIMINAL CASES, *cont'd.*

- Rules applying to taxation against prosecution, 8, 982
 - Costs confined to those of prosecution, 8, 982
 - Effect of disposition of cause without trial, 8, 983
 - In general, 8, 982
 - Necessity or conviction, 8, 984
 - Number of witnesses, 8, 983
 - Taxation of defendant's costs, 8, 983
- Statutes:
 - Costs, 8, 955
 - Imprisonment, 8, 967
 - Strict construction, 8, 956
- Taxation of costs (see *infra*, Rules applying to taxation against prosecution), 8, 979
 - By whom taxed, 8, 980
 - Defendant, 8, 983, 986
 - Fees of salaried officers, 8, 979
 - In general, 8, 979
 - Prosecuting witness, 8, 984
 - In general, 8, 984
 - Minor or married woman, 8, 985
 - Necessity of sufficient finding under statutes, 8, 985
 - Probable cause, 8, 986
 - Public officer, 8, 986
 - Retaxing costs, 8, 994
- Verdict, judgment, and sentence, 8, 959
 - Against joint defendants, 8, 963
 - Alternative punishment, 8, 963
 - Assessment by court or jury, 8, 959, 960
 - Certainty of judgment, 8, 960
 - Committal until payment of fine, 8, 961
 - Judgment in excess of authority, 8, 962
 - Necessity of verdict or finding of guilty, 8, 959
 - Province of court and jury, 8, 959
 - Sufficiency of judgment, 8, 960
- Witness fees, 8, 981
 - In general, 8, 981
 - Number of witnesses, 8, 981
 - Per diem*, 8, 981
 - Several prosecutions, 8, 981
 - Witness held to testify, 8, 981

FIREARMS:

- Pointing, 16, 653

FIRE INSURANCE (see INSURANCE):

- Conditions precedent:
 - Notice and proofs of loss in contracts of insurance, 4, 640
 - Certificate of magistrate, 4, 641

FIRE INSURANCE, *cont'd.*Conditions precedent, *cont'd.*Notice and proofs of loss in contracts of insurance, *cont'd.*

How pleaded at common law, 4, 641

How pleaded under code, 4, 642

In general, 4, 640

FIRES, 9, 1*Allegations of negligence in defendant, see infra, Declaration and complaint.**Arson, see ARSON.*

Attorney's fees, 9, 9

Contributory negligence, 9, 6

Declaration and complaint, 9, 1

Alleging negligence in defendant, 9, 1

Description of property, 9, 7

Designating engine, 9, 7

In general, 9, 1

Insufficient allegations, 9, 2

Intent, 9, 7

Plaintiff's interest, 9, 6

Sufficient allegations, 9, 2

Time of fire, 9, 7

Value of property, 9, 6

Variance between pleading and proof, 9, 3

When negligence need not be alleged, 9, 3

Contributory negligence, 9, 6

Escape of fire from defendant's premises, 9, 4

When charge of negligence unnecessary, 9, 5

When negligence must be charged, 9, 4

Escape of fire from defendant's premises, 9, 4

Statutes, proceedings under, 9, 8

Statutory notice, 9, 8

Variance:

Allegations of negligence, 9, 3

FISH AND FISHERIES, 9, 10

Actions, 9, 13

In general, 9, 13

Kind of action, 9, 14

Trespass, 9, 14

Trespass on the case, 9, 14

Criminal procedure, 9, 10

Examples, 9, 10, 13

Exceptions in other statutes, 9, 11

Indictment, information, or complaint, 9, 10

Joinder of defendants, 9, 13

Declaration and complaint, 9, 14

Ejectment, 7, 267

Indictment, 9, 10

Waters and watercourses:

Actions and prosecutions for obstructing passage of fish, 22, 1178

FIXTURES, 9, 16

Actions, 9, 16

Declaration and complaint, 9, 17

Ejectment, 7, 269

Injunction, 9, 16

Instructions, 9, 17

Parties, 9, 17

Replevin, 9, 16

Trover and conversion, 9, 16

FLOODING LANDS, see WATERS AND WATERCOURSES.**FLOODS, see WATERS AND WATERCOURSES.****FLOWAGE ACTS, see WATERS AND WATERCOURSES.***Mills and milldams, see MILLS AND MILLDAMS.***FLOWING LANDS, see WATERS AND WATERCOURSES.**

Survival of actions, 21, 334

FOLIOING PAPERS, 9, 18

Appeal, 9, 18

FOOD (see HEALTH AND HEALTH REGULATIONS):

Health regulations, 10, 4, 6

FORCIBLE ENTRY AND DETAINER:

Abatement, 9, 64

Abatement of action, 9, 68

Actions for forcible injuries (see *infra*, Complaint; Parties plaintiff), 9, 34

As a punishment for the public wrong, 9, 34

Definition where force is required, 9, 41

Entry against will of occupant, 9, 40

Estate in plaintiff, 9, 36

Peaceable entry by one having no claim, 9, 38

Peaceable entry by one having right of possession, 9, 38

Peaceable or forcible entry by lessor, 9, 40

Statutory force, 9, 37

Actions not involving force (see *infra*, Complaint; Parties plaintiff), 9, 42

In general, 9, 42

Landlord and tenant, 9, 42

Title, 9, 43

Unlawful detainer, 9, 43

Amendments, 9, 67

Allowance and terms discretionary, 9, 68

Conform to proof, 9, 67

In general, 9, 67

On trial *de novo*, 9, 68

Process, 9, 64

Record, 9, 75

To cure misjoinder, 9, 68

To cure variance, 9, 68

FORCIBLE ENTRY AND DETAINER, *cont'd.*

Amendments, *cont'd.*

To remove jurisdictional objections, 9, 67

Answers in code pleading:

General denials, 1, 826

Appeal bonds, 9, 79

Appeals:

Amendment of record, 9, 75

Bills of exceptions, 9, 76

Determination, 2, 47

Exceptions and objections, 9, 77

How effected, 9, 74

Inferior appellate courts, 9, 77

Jurisdiction of inferior appellate courts, 9, 77

Objections not made below, 9, 77

Proceedings on review, 9, 75

Record, 9, 75

Stay of execution, 9, 79

Undertaking, 9, 79

Variance, 9, 79

Bills of exceptions, 9, 76

Certiorari, 9, 32, 74

Complaint, 9, 57

Allegations of damage, 9, 63

Double and treble damages, 9, 63

Examples, 9, 63

In general, 9, 63

Description of the premises, 9, 61

Examples, 9, 61, 62

In general, 9, 61

Land in cities and towns, 9, 61

Lands, tenements, etc., 9, 62

Metes and bounds, 9, 62

Part of larger tract, 9, 62

Premises that are capable of being entered upon or detained, 9, 62

Range, township, and section, 9, 61

Facts alleged conjunctively, 9, 58

Form, 9, 57

Necessary allegations, 9, 58

Necessary allegations in actions for forcible injuries, 9, 58

Averments in language of statute, 9, 60

Detainer, 9, 59

Duration of possession, 9, 59

Entry, 9, 59

Estate, 9, 58

Force, 9, 59

Joinder of actions, 9, 60

Possession, 9, 58

Necessary allegations in actions not involving force, 9, 60

Actions against vendee under contract to purchase, 9, 60

FORCIBLE ENTRY AND DETAINER, *cont'd.*

Complaint, *cont'd.*

Necessary allegations in actions not involving force, *cont'd.*

Landlord and tenant actions, 9, 61

Laying time, 9, 60

Purchasers at judicial sales, 9, 60

Particularity, 9, 57

Service of notice and demand, 9, 63

Verification, 9, 63

Writing, 9, 58

Criminal actions (see *infra*, Indictment):

Actions for forcible injuries, 9, 34

Statutes 15 Richard II., c. 2, and 8 Henry VI., c. 9, 9, 28

Complaint, 9, 29

Jurisdiction, 9, 28

Criminal statutes, 9, 22

Damages:

Allegations of, 9, 63

Double and treble damages, 9, 63

Examples, 9, 63

In general, 9, 63

Death:

Abatement of action, 9, 68

Declaration, see *infra*, Complaint.

Definition:

Where force is required, 9, 41

Demand, see *infra*, Notice to quit and demand for possession.

Description of premises, see *infra*, Complaint.

Disseizin, 9, 23

Dual civil and criminal proceeding, 9, 25

Early development, 9, 21

Entry, 9, 21

Exceptions and objections, 9, 77

Harmless error, 9, 78

Misjoinder of causes or parties, 9, 78

Objections not made below, 9, 77

Waiver of objections, 9, 78

Execution, 9, 73

Force (see *infra*, Actions for forcible injuries; Actions not involving force):

Allegations of the indictment, 9, 25

Averment, 9, 59

Forcible entry and forcible detainer as distinct offenses, 9, 24

Forcible injuries, see *infra*, Actions for forcible injuries.

Foreclosure of mortgages:

Purchaser's right, 9, 212

Historical sketch, 9, 34

FORCIBLE ENTRY AND DETAINER, *cont'd.*

- Husband and wife, 9, 54
- Indictment, 9, 25
 - Additional allegations to insure restitution, 9, 27
 - Averment of estate, 9, 27
 - Certainty in laying the estate, 9, 28
 - Estate in party injured, 9, 27
 - Force, 9, 25
 - General allegations, 9, 25
 - Pleas in defense, 9, 31
 - Recital of statute, 9, 26
 - Restitution, 9, 27
 - Restitution upon indictment, 9, 29
 - Trial, 9, 32
 - With strong hand, 9, 25
- Injunction, 9, 82
- Injuries, see infra*, Actions for forcible injuries.
- Inquisition, 9, 29
- Joinder of counts and causes, 9, 60
- Joinder of parties, 9, 52
- Judgment, 9, 71
 - Conclusiveness, 9, 72
 - Confession of judgment, 9, 72
 - Description of premises, 9, 72
 - Effect, 9, 72
 - Enforcement, 9, 73
 - Form of judgment, 9, 72
 - Justices of the peace, 9, 71
 - Satisfaction, 9, 72
 - Trial *de novo*, 9, 71
 - What judgment may be rendered, 9, 71
- Jurisdiction, 9, 46, 77
 - Appellate courts, 9, 77
 - Courts, 9, 47
 - Justices of the peace, 9, 46
- Jurors, 9, 69
- Justices of the peace, 9, 46
 - Constitutional limitations, 9, 71
 - Judgment, 9, 71
- Kentucky, special procedure in, 9, 83
- Landlord and tenant:
 - Action brought before termination of lease, 9, 66
 - Defenses, 9, 66
 - Necessary allegations, 9, 61
 - Parties, 9, 49, 53
- Mandamus, 9, 33, 82
- Married women, 9, 52
- Motion to quash, 9, 70
- Nature of the action, 9, 22
 - Modern action, 9, 45
- New trial, 9, 70
- Notice to quit and demand for possession, 9, 54
 - Abandonment of notice, 9, 56
 - Complaint, 9, 63

FORCIBLE ENTRY AND DETAINER, *cont'd.*

- Notice to quit and demand for possession, *cont'd.*
 - Distinct from notice to terminate tenancy, 9, 55
 - Form in general, 9, 57
 - Landlord and tenant, 9, 55
 - Service of notice, 9, 57
 - Waiver of notice, 9, 56
 - When required in general, 9, 54
 - Where right to re-enter exists for breach of a covenant, 9, 56
 - Who may give notice, 9, 57
- Origin, 9, 21
- Original process, 9, 64
- Parties defendant, 9, 52
 - Husband and wife, 9, 54
 - Landlord and tenant, 9, 53
 - One in possession under judicial process, 9, 53
 - Person in actual possession, 9, 52
 - Persons who hold in severalty, 9, 54
 - Purchasers at judicial sales, 9, 53
 - Trespasser, 9, 54
 - Vendee under contract to purchaser, 9, 53
- Parties plaintiff, 9, 48
 - Actions in which force is not an element, 9, 50
 - In actions involving force, 9, 48
 - Joinder, 9, 52
 - Landlord, 9, 50
 - Landlord or tenant, 9, 49
 - Married women, 9, 52
 - Possessor, his heirs or personal representatives, 9, 48
 - Servant or agent in possession, 9, 49
 - Successor in estate, 9, 50
 - Tenants in common, 9, 52
 - Trespasser, 9, 50
 - Vendee *pendente lite*, 9, 52
- Pleas in defense, 9, 31, 64
 - Bankruptcy, 9, 66
 - Counterclaim or set-off, 9, 66
 - Defense available only in equity, 9, 66
 - Defenses under the general issue, 9, 66
 - Eviction of defendant, 9, 67
 - In abatement, 9, 64
 - In bar, 9, 64
 - Landlord and tenant actions, 9, 66
 - Not guilty, 9, 64
 - Peaceable entry, 9, 65
 - Possession or right of possession, 9, 65
 - Termination of lease, 9, 66
 - Title in plaintiff or third person, 9, 64

FORCIBLE ENTRY AND DETAINER, *cont'd.*

- Present status of early law, 9, 25
- Process, 9, 31
 - Amendments, 9, 64
 - Original process, 9, 64
- Questions of law and fact, 9, 69
- Recordari*, 9, 74
- Records, 9, 75
 - Amendment, 9, 75
 - Bills of exceptions, 9, 76
 - Clerical errors, 9, 76
 - Contents in general, 9, 75
 - Findings, 9, 76
 - Necessary implications, 9, 75
 - Recitals, 9, 76
 - Summary proceedings, 9, 33
- Remedy by entry, 9, 21
- Re-restitution, 9, 30, 74
- Restitution, 9, 73
 - Against whom generally, 9, 73
 - Alias* writ of restitution, 9, 74
 - Allegations in indictment to insure restitution, 9, 27
 - Ex debito justitia*, 9, 74
 - Indictment, 9, 29
 - Re-restitution, 9, 30, 74
 - Statutes giving, 9, 23
- Review*, see *infra*, Appeals.
- Seizin, 9, 23
- Statutory action, 9, 45
- Stay of proceedings*, see *infra*, Supersedeas and stay of proceedings.
- Summary proceedings, 9, 31
 - Record, 9, 33
 - Trial, 9, 32
- Supersedeas and stay of proceedings, 9, 33, 79
 - Additional security, 9, 80
 - Extension of time to file bond, 9, 80
 - In general, 9, 79
 - Supersedeas *per se*, 9, 80
- Tenants in common:
 - Parties, 9, 52
- Trespasser, 9, 50, 54
- Trial, 9, 69
 - Indictment, 9, 32
- Undertaking on appeal, 9, 79
- Variance, 9, 79
- Vendor and purchaser:
 - Vendor's remedies, 22, 664
- Venue, 9, 48
- Verdict, 9, 70
- Verification, 9, 63
- Witnesses, 9, 69

FORECLOSURE:

Logs and lumber, see LOGS AND LUMBER.

Pledges, see PLEDGES.

FORECLOSURE OF MORTGAGES, 9, 84

See CHATTEL MORTGAGES.

GAGES, *cont'd.*

- Abatement and revivor, 9, 245
- Another suit pending, 9, 247
- Death of parties, 9, 245
 - Death after decree, 9, 246
 - Death of mortgagor, 9, 246
- Examples, 9, 245, 246
- Exceptions to the rule of abatement, 9, 246
- In chancery, 9, 245
- In general, 9, 245
- Method of revivor, and parties to bill of revivor, 9, 246
- Former judgment, 9, 247
 - Examples, 9, 247, 248
- Judgment at law as bar, 9, 248
- Statutory modification, 9, 248
- Accrual of the right to sue:
 - Averment of accrual of right to sue, 9, 380
- Accrual of the right to foreclose, 9, 222
- Accident, 9, 223
- Consideration for extension of time, 9, 229
- Construction of mortgage, 9, 223
- Covenant limiting right to foreclose, 9, 222
- Decree for sale, 9, 233
- Default in the payment of instalments, 9, 232
- Default in the payment of insurance, 9, 244
- Default in the payment of interest, 9, 235
 - Acceptance of interest after default, 9, 237
 - Effect of tender after default, 9, 237
 - Formal declaration of default, 9, 240
 - Mortgagee need not declare a default, 9, 238
 - Mortgage providing that the principal debt shall not become due, 9, 239
 - Mortgage provision to be strictly followed, 9, 240
 - No stipulation maturing the entire debt, 9, 240
 - Note given for interest, 9, 239
 - One foreclosure, 9, 239
 - Provision for compounding interest, 9, 240
 - Provision that the whole debt shall mature, 9, 235
 - Relief against default, 9, 236
 - Statutory provision for stay, 9, 238

FORECLOSURE OF MORTGAGES, *cont'd.*Accrual of the right to foreclose, *con.*Default in the payment of interest, *cont'd.*

When bondholders under trust deed may declare default, 9, 239

Default in the payment of principal, 9, 232

Default in the payment of taxes, 9, 242

Examples, 9, 242, 244

Nature of stipulation, 9, 242

Default, when cured by subsequent tender, 9, 235

Delay, 9, 223

Demand, 9, 227

Immediate accrual, 9, 227

Mortgage payable on demand, 9, 227

When demand is necessary, 9, 228

Effect of foreclosure upon default, 9, 234

Extension of time, 9, 228

Foreclosure, 9, 234, 235

Fraud, 9, 223

Immediate accrual, 9, 227

In general, 9, 222

Instalments, 9, 232

Insufficiency of consideration for extension of time, 9, 229

Mistake, 9, 223

Mortgage payable on demand, 9, 227

Mortgages for support, 9, 228

Parol extension of time, 9, 231

Pendency of proceedings at law, 9, 227

Receivership, 9, 235

Rights of separate bondholders, 9, 226

Several notes transferred to different parties, 9, 235

Stipulation for maturity of entire debt, 9, 224, 232

Successive foreclosures, 9, 234

Sufficiency of consideration for extension of time, 9, 230

Waiver, 9, 223

When demand is necessary, 9, 228

When no time for payment is specified, 9, 227

When two mortgages are held, 9, 231

Actions, see infra, The action.

Additional allowances of costs, 1, 215; 9, 438

Additional parties, 9, 361

Adjournment, 9, 529

Announcement, 9, 530

FORECLOSURE OF MORTGAGES, *cont'd.*Adjournment, *cont'd.*

Examples, 9, 529, 530

In general, 9, 529

Sale, 9, 188

*Advertisement, see infra, Notice and advertisement of sale.*Advertisement and sale under a power (see *infra*, Election of remedies), 9, 162

Adjournment, 9, 188

Affidavit of sale, 9, 195

Contents, 9, 196

Effect, 9, 198

Nature, 9, 195

Necessity of affidavit, 9, 195

Origin, 9, 195

Recording, 9, 197

Sufficiency, 9, 196

Bona fide purchaser, 9, 207

Construction of statute, 9, 210

Omission to record release, 9, 211

Remedies against purchaser, 9, 214

Remedies of purchaser for obtaining possession, 9, 212

Remedies of purchaser for relief from purchase, 9, 213

Rights of *bona fide* purchaser, 9, 209Who is *bona fide* purchaser, 9, 207

By whom sale conducted under deed of trust, 9, 180

By whom sale conducted under power of sale, 9, 181

Compliance with directions in mortgage or statute, 9, 166

Coupled with an interest, 9, 165

Court-house door, 9, 179

Damages, 9, 214

Death or disability of trustee, 9, 181

Deed, 9, 199

Effect of deed in evidence, 9, 204

Examples, 9, 199, 200

Form and contents of deed, 9, 199

Grantee, 9, 203

Grantor, 9, 200

In general, 9, 199

Recital, 9, 199

Title conveyed, 9, 205

Title of mortgagee transferred, 9, 206

Ejectment, 9, 212

Election to treat purchase as abandoned, 9, 215

FORECLOSURE OF MORTGAGES, *cont'd.*

Advertisement and sale under a power, *cont'd.*

England, 9, 162

Exercise of the power, 9, 166

Forcible entry and detainer, 9, 212

Grantor in the deed, 9, 200, 203

Administrators, 9, 202

Assignees, 9, 202

Auctioneer, 9, 203

Donee of power, 9, 200

Examples, 9, 202, 203

In general, 9, 200

Sheriff, 9, 202

Historical development of power of sale instruments, 9, 162

Holiday, 9, 178

Hour of sale, 9, 278

Irrevocable nature, 9, 165

Joint trustees, 9, 181

Lex rei sita governs, 9, 167

Nature of the power, 9, 165

Notice, 9, 166

Notice of sale, 9, 167

Amount of indebtedness, 9, 176

Description of mortgaged property, 9, 175

Description of the mortgage, 9, 173

Duration of publication, 9, 171

Instances of sufficient and insufficient notices, 9, 175

Names, 9, 174

Newspaper in which notice of sale must appear, 9, 170

Object of giving notice of sale, 9, 167

Personal notice, 9, 168

Place of sale, 9, 177

Posting notice of sale, 9, 169

Time of sale, 9, 177

To whom notice should be given, 9, 168

Order in which property is sold, 9, 182

As described in mortgage, 9, 184

In general, 9, 182

Sale *en masse* or in parcels, 9, 183

Sale sufficient to satisfy debt, 9, 185

Statutory provisions, 9, 184

Subsequent plating, 9, 185

Place of sale, 9, 178

Public or private sale, 9, 167

Remedies against purchaser, 9, 214

FORECLOSURE OF MORTGAGES, *cont'd.*

Advertisement and sale under a power, *cont'd.*

Remedies of purchaser for obtaining possession, 9, 212

Remedies of purchaser for relief from purchase, 9, 213

Resale at risk of purchaser, 9, 214

Sale by trustee, 9, 180

Specific performance, 9, 214

Sunday, 9, 178

Terms of sale, 9, 186

Check, 9, 187

Deposit, 9, 187

For cash or credit, 9, 186

Partner's power to authorize departure, 9, 188

Payment by set-off, 9, 187

Payment in specie, 9, 187

Who may not object for irregularity, 9, 188

Time of sale, 9, 178

Title conveyed, 9, 205

Title of mortgagee transferred, 9, 206

United States, 9, 164

Who may purchase, 9, 189

Agent of mortgagee, 9, 192

Agent of mortgagor, 9, 192

Attorney of mortgagee, 9, 192

Clerk of mortgagee, 9, 192

Consent to mortgagee purchasing, 9, 191

Creditors, 9, 193

Directors, 9, 193

Executors and administrators, 9, 193

Indirect proceedings by mortgagee, 9, 191

Junior mortgagee, 9, 193

Mortgagor, 9, 193

Personal representatives, 9, 193

Purchase by mortgagee, 9, 189

Purchase by mortgagee by terms of mortgage or by consent, 9, 191

Statutory provisions, 9, 191

Stockholders, 9, 193

Trustee, 9, 194

When mortgagee may not purchase, 9, 189

Wife of mortgagor, 9, 193

Affidavit of sale, 9, 195

Agency:

Purchase by agent of mortgagor, 9, 192

Purchase by mortgagee's attorney, 9, 192

FORECLOSURE OF MORTGAGES, *cont'd.*

Alabama:

Method of foreclosure, 9, 98
Amount of decree, see infra, Decree.
 Another suit pending, 9, 247
 Answer, 9, 391

In general, 9, 391
 Introductory statement, 9, 392
 Multifariousness, 9, 370
 Pleading fraud, 9, 393
 Pleading payment, 9, 392
 Pleading usury, 9, 393
 Sham denials and legal conclusions, 9, 391

Specific pleas, 9, 392

Appeals (see EXCEPTIONS AND OBJECTIONS), 2, 46, 48; 9, 497

Decree of foreclosure and sale, 9, 497
 Deficiency judgments, 9, 497
 Intervening bondholder, 9, 499
 Miscellaneous orders and decrees, 9, 498
 Miscellaneous parties, 9, 500
 Orders appealable, 9, 497
 Orders not appealable, 9, 498
 Parties to the appeal, 9, 499
 Purchaser at foreclosure sale, 9, 500

Questions considered on appeal, 9, 500

When appeal lies, 9, 497

Appraisement, 9, 505

Appraisers, 9, 506
 Duties of appraisers, 9, 506
 Necessity, 9, 505
 Purchase by appraisers, 9, 510
 Qualifications of appraisers, 9, 506
 Report, 9, 507
 Time of appraisement, 9, 506

Arizona:

Method of foreclosure, 9, 98

Arkansas:

Method of foreclosure, 9, 98

Assignments:

Assignee of mortgage foreclosed, 9, 272
 Assignment as collateral security, 9, 276
 Assignment in bankruptcy, 9, 277
 Assignment of debt only, 9, 275
 Assignment *pendente lite*, 9, 278
 Assignor, 9, 273
 Character of assignment, 9, 275
 Deed or conveyance by mortgagee, 9, 274
 Equitable assignment, 9, 277

FORECLOSURE OF MORTGAGES, *cont'd.*

Assignments, *cont'd.*

Assignee of mortgage foreclosed, *cont'd.*

Form of assignment, 9, 274
 Parol assignment generally sufficient, 9, 275
 Proper party to bring the bill, 9, 272
 Right in general, 9, 272
 Seal, necessity of, 9, 274
 Subrogation, 9, 277
 Use of name of assignor, 9, 273

Assignor of mortgage foreclosed, 9, 293

Assignment as collateral security, 9, 295

Exceptions to the rule, 9, 293

General rule, 9, 293

Averment of plaintiff's title where plaintiff is assignee of the mortgagee, 9, 383

Alleging assignment of bond or mortgage only, 9, 384

Sufficiency of general averment, 9, 383

Bid, 9, 526

Liability of guarantor of mortgage, 9, 481

Mortgagee who has assigned mortgage as party defendant, 9, 334

Mortgagor who has conveyed premises as party defendant, 9, 332

Whether assignee of mortgage only may assign, 9, 295

Assignments for benefit of creditors:

Assignees as parties defendant, 9, 315

Creditors as parties, 9, 316

Assistance, writ of, 2, 979; 9, 448

Assumption of mortgage, see infra, Deficiency judgments.

Attorneys:

Purchase by mortgagee's attorney, 9, 192

Attorney's fees, 9, 442

Allowance in excess of stipulation, 9, 442

Amount of attorney's fees, 9, 447

Authority to include, 9, 442

Construction of terms authorizing allowance of attorney's fees, 9, 444

Demand, necessity of, 9, 447

Pleading, 9, 448

Pleading and proof, 9, 446

Scope of the stipulation, 9, 447

Statutes, 9, 443

Stipulation, 9, 442

FORECLOSURE OF MORTGAGES, *cont'd.*

- Attorney's fees, *cont'd.*
 - When fee becomes due, 9, 445
 - Where plaintiff conducts his own case, 9, 445
 - Without stipulation or statute, 9, 443
- Auctioneer, 9, 507
 - Purchase by auctioneer, 9, 510
- Bankruptcy:
 - Assignees in bankruptcy, 9, 340
 - Assignees in bankruptcy as parties defendant, 9, 314
- Bidding*, see *infra*, Sales.
- Bill, petition, or complaint, 9, 367
 - Allegation of nonpayment, 9, 377
 - Allegations as to other proceedings at law, 9, 384
 - Allegations as to the interests of defendants, 9, 386
 - Executor's interest, 9, 388
 - In general, 9, 386
 - Interests of infant defendants, 9, 388
 - Wife's interest, 9, 388
 - Allegations regarding plaintiff's title, 9, 382
 - Alleging assignment of bond or mortgage only, 9, 384
 - Where plaintiff is an assignee of the mortgagee, 9, 383
- Allegation that mortgage was recorded, 9, 377
- Alleging performance of conditions and accrual of right to sue, 9, 380
- Ambiguity, 9, 367
- Delivery, 9, 372
- Description of mortgaged premises, 9, 374
- Execution, 9, 372
- Formal requisites in general, 9, 367
 - How objection of multifariousness is raised, 9, 370
- Misjoinder, 9, 367
- Multifariousness, 9, 367
- Names of the parties, 9, 371
- Prayer for relief, 9, 388
 - Contents of prayer, 9, 388
 - Decree conforming to prayer, 9, 388
 - Deficiency judgments under general prayer, 9, 390
 - In general, 9, 388
 - Prayer in bill by second mortgagee, 9, 389
 - Relief obtained under general prayer, 9, 389
- Setting out the debt, 9, 373

FORECLOSURE OF MORTGAGES, *cont'd.*

- Bill, petition, or complaint, *cont'd.*
 - Specific allegations, 9, 372
 - When foreclosure bill is multifarious, 9, 368
 - When foreclosure bill is not multifarious, 9, 369
- Bona fide* purchaser, 9, 207
 - Construction of statute, 9, 210
 - Omission to record release, 9, 211
 - Remedies against purchaser, 9, 214
 - Remedies of purchaser for obtaining possession, 9, 212
 - Remedies of purchaser for relief from purchase, 9, 213
 - Rights of *bona fide* purchaser, 9, 209
 - Who is *bona fide* purchaser, 9, 207
- California:
 - Method of foreclosure, 9, 99
- Change of venue, 4, 396; 9, 256
- Classification, 9, 97
- Collateral attack, 9, 449
 - Defects not jurisdictional, 9, 449
 - Examples, 9, 449, 450
 - In general, 9, 449
- Colorado:
 - Method of foreclosure, 9, 99
- Complaint*, see *infra*, Bill, petition, or complaint.
- Condition:
 - Averment of nonperformance of condition, 9, 380
- Conditional conveyance, 9, 120
- Confirmation of sale*, see *infra*, Sales; Venue.
- Connecticut:
 - Method of foreclosure, 9, 99
- Consolidation of actions, 4, 693
- Continuance, 9, 529
- Costs (see *infra*, Attorney's fees), 9, 437
 - Additional allowances, 9, 438
 - Discretion of court, 9, 437
 - From what fund payable, 9, 440
 - General rule, 9, 437
 - Items of costs, 9, 440
 - Prevailing party, 9, 437
 - Priority in awarding costs, 9, 438
 - Qualifications of the rule, 9, 439
 - Review of ruling relating to costs, 9, 441
 - Tender as affecting costs, 9, 441
 - Vexatious costs, 9, 439
 - Writ of entry, 9, 155
- Counsel fees*, see *infra*, Attorney's fees.
- Courts*, see *infra*, Jurisdiction.
- Credit, 9, 511

FORECLOSURE OF MORTGAGES, *cont'd.*

- Creditors, see infra, Parties.*
- Purchase by creditors, 9, 193
- Cross-bill, 5, 643; 9, 393
 - Formal sufficiency of cross-pleading, 9, 395
 - In general, 9, 393
 - Matters proper for cross-bill, 9, 394
- Cross-complaints, 5, 679
- Death, *see infra, Abatement and revivor.*
 - Death of defendant, 5, 834
 - Death of plaintiff, 5, 805
 - Trustee, 9, 181
- Declaration:
 - Scire facias, 9, 130
 - Writ of entry, 9, 150
- Declaration and complaint, see infra, Bill, petition, or complaint.*
- Decree, 9, 401
 - Amount of decree, 9, 423
 - Amounts falling due after commencement of suit and before decree, 9, 427
 - Attorney's fees, see infra, Attorney's fees.*
 - Costs, see infra, Costs.*
 - Debt exceeding penalty of bond, 9, 426
 - Debt only partially due, 9, 427
 - Decree upon default rendering whole debt due, 9, 428
 - Deficiency judgment, 9, 429
 - Effect of decree for matured instalment, 9, 430
 - Generally, 9, 423
 - Insurance advancements, 9, 432
 - Interest, 9, 430
 - Mortgage exceeding debt, 9, 425
 - Objections on appeal, 9, 426
 - Provision for instalment, 9, 429
 - Reference for computation, 9, 424
 - Specific finding required, 9, 423
 - Unmatured portions provided for in decree, 9, 429
 - Variance between amount due and evidence of indebtedness, 9, 425
- Appeals, 9, 497
 - Attorney's fees, see infra, Attorney's fees.*
- Collateral attack, 9, 449
- Contents, 9, 404
- Costs, see infra, Costs.*
- Index Pl. & Pr. — 26

FORECLOSURE OF MORTGAGES, *cont'd.*

- Decree, *cont'd.*
 - Deficiency judgments, see infra, Deficiency judgments.*
- Description of premises, 9, 405
 - By reference to mortgage or bill, 9, 405
- Defect cured by other parts of proceedings, 9, 405
- Examples, 9, 405, 408
- Identifying property, 9, 406
- Effect, 9, 403, 404
- Enrolment, 9, 403
- Form, 9, 404
- In general, 9, 401
- Instances of unwarranted relief, 9, 402
- Miscellaneous points relating to validity and effect, 9, 403
- Not based on pleadings, 9, 401
- Prayer for relief, conformity with, 9, 388
- Provisions as to order in which portions of premises must be sold, see infra, Order of sale.*
- Provisions for redemption, 9, 408
 - Examples, 9, 409, 411
 - Necessity of redemption clause, 9, 408
 - Omission rectified without reversal, 9, 410
 - Time for redemption, 9, 409
- Provisions peculiar to strict foreclosure, 9, 448
- Relief, 9, 402
- Sales:
 - Effect of reversal of decree, 9, 539
 - Scope of the decree, 9, 403
 - Validity, 9, 403
- Deed:
 - Deed of conveyance by mortgagee, 9, 274
 - Effect of deed in evidence, 9, 204
 - Examples, 9, 199, 200
 - Form and contents of deed, 9, 199
 - Grantee, 9, 203
 - Grantor, 9, 200
 - In general, 9, 199
 - Recital, 9, 199
 - Title conveyed, 9, 205
 - Title of mortgagee transferred, 9, 206
 - Deed of trust, see infra, Advertisement and sale under a power; Trust deed.*
 - Defaults, see infra, Accrual of the right to foreclose.*
 - Defendant, see infra, Parties.*
 - Deficiency judgments, 9, 451
 - Appeals, 9, 497

FORECLOSURE OF MORTGAGES, *cont'd.***Deficiency judgments, *cont'd.***

- Averment of leave obtained, 9, 486
- Basis of right to render, 9, 452
- Conveyance by mortgagor not a release, 9, 460
- Early chancery rule, 9, 451
- Effect of mortgagor alone in determining mortgagor's liability for deficiency, 9, 462
- Estate of deceased mortgagor, 9, 464
- Executors and administrators, 9, 464
- Extension of equity jurisdiction, 9, 452
- Extension of time to mortgagor's grantee, 9, 460
- Extension of time to non-assuming purchasers, 9, 461
- Granting of leave to sue discretionary, 9, 487
- Guarantor of mortgage, 9, 481
- In general, 9, 451
- Leave to sue, 9, 485
- Legatees, 9, 465
- Liens, 9, 492
- Married women, 9, 483
- Mortgagee required to collect deficiency by separate action at law, 9, 451
- Mortgagor in general, 9, 457
- Mortgagor's heirs, 9, 465
- Notice of application for leave to sue, 9, 487
- Origin of the practice of rendering, 9, 451
- Parties executing bond but not mortgage, 9, 482
- Parties liable, 9, 457
- Personal judgment, 9, 483
- Prayer for relief, 9, 390
- Purchaser assuming mortgage, 9, 465
 - Assumption by husband in deed to wife, 9, 473
 - Assumption in mortgage deed, 9, 470
 - Construction of recital, 9, 473
 - Cross-demand, 9, 477
 - Defenses by purchaser assuming mortgage, 9, 476
 - Exceptions to the general rule, 9, 469
 - Failure of title, 9, 477
 - Implied assumption, 9, 472
 - Infirmities in mortgage not available to purchaser, 9, 476
 - In general, 9, 465

FORECLOSURE OF MORTGAGES, *cont'd.***Deficiency judgments, *cont'd.***

- Purchaser assuming mortgage, *cont'd.*
 - Limitation of action, 9, 477
 - Limiting liability, 9, 467
 - Mere delay in foreclosing, 9, 478
 - Minority rule as to release, 9, 480
 - Mortgagee's right to enforce purchaser's liability, 9, 467
 - Mortgagor's right to enforce purchaser's liability, 9, 468
 - Parol evidence to contradict recital, 9, 472
 - Promise subsequent to conveyance, 9, 470
 - Questions of law and fact, 9, 475
 - Reason of the rule, 9, 467
 - Recital of assumption of payment, 9, 474
 - Reconveyance by purchaser to mortgagor, 9, 479
 - Release of purchaser from liability, 9, 478
 - Release where the mortgagor is insolvent, 9, 479
 - Usury, 9, 477
 - Verbal assumption, 9, 471
 - What constitutes an assumption, 9, 471
 - What does not constitute an assumption, 9, 474
 - Where grantor not liable, 9, 469
 - Who may enforce purchaser's liability, 9, 467
- Release by arrangement with grantee of mortgagor, 9, 459
- Release of mortgagor, 9, 458
- Rules of court, 9, 453
- Statutes allowing, 9, 454
- Statutes confining the remedy of the mortgagee to the property, 9, 463
- Statutory requirements, 9, 485
- Sufficiency of service to authorize deficiency judgment, 9, 487
- Time of rendition of deficiency judgments, 9, 488
 - After amount ascertained, 9, 488
 - Debt maturing upon default on instalment, 9, 491
 - Default on interest coupons, 9, 492
 - Execution for deficiency, 9, 490
 - In general, 9, 488

FORECLOSURE OF MORTGAGES, *cont'd.*

- Deficiency judgments, *cont'd.*
 - Time of rendition of deficiency judgments, *cont'd.*
 - Items maturing pending the suit, 9, 491
 - Judgment before maturity of entire debt, 9, 490
- Unincorporated associations, 9, 458
- United States courts, 9, 453
- Where there is no bond or note, 9, 482
- Definiteness and certainty in pleadings, 9, 367
- Definition, 9, 96
- Delaware:
 - Method of foreclosure, 9, 100
- Delegation of authority, 9, 507
- Delivery:
 - Averments of delivery, 9, 372
- Demand (see *infra*, Accrual of the right to foreclose):
 - Attorney's fees, 9, 447
 - Averment of demand, 9, 379
- Demurrer:
 - Multifariousness, 9, 370
 - Scire facias, 9, 130
- Deposit, 9, 187, 512
- Description of mortgaged premises:
 - Bill, petition, or complaint, 9, 374
 - Necessity of proper distribution, 9, 374
 - Reference to extraneous instruments, 9, 376
 - Remedies for insufficient description, 9, 377
 - Sufficiency of description, 9, 375
- Decree, 9, 405
 - By reference to mortgage or bill, 9, 405
 - Defect cured by other parts of proceedings, 9, 405
 - Examples, 9, 405, 408
 - Identifying property, 9, 406
- Notice of sale, 9, 175
- Description of the mortgage:
 - Notice of sale, 9, 173
- Deterring bidding, 9, 522
- Devisees of mortgagors as parties defendant, 9, 312
- Directing verdict, 9, 398
- Directors:
 - Purchase by directors, 9, 193
- District of Columbia:
 - Method of foreclosure, 9, 100
- Ejectment, 9, 140
 - Effect on right to redeem, 9, 141
 - Election of remedies, 9, 218
 - Evidence, 9, 142

FORECLOSURE OF MORTGAGES, *cont'd.*

- Ejectment, *cont'd.*
 - Examples, 9, 140, 141
 - In general, 9, 140
 - Judgment, 9, 142
 - Nature of the remedy, 9, 140
 - Parties, 9, 141
 - Remedies of purchaser for obtaining possession, 9, 212
- Election of remedies, 9, 215
 - Ejectment, 9, 218
 - Exercise of power of sale, 9, 215
 - Foreclosure in Georgia by rule nisi, 9, 218
 - Scire facias, 9, 217
 - Strict foreclosure, 9, 218
- En masse*, see *infra*, Order of sale.
- Enrolment:
 - Decree, 9, 403
- Entry and possession, 9, 156
 - Certificate of entry, 9, 159
 - Constructive entry in possession, 9, 157
 - Contents of certificate of entry, 9, 159
 - Duration of possession necessary, 9, 161
 - Foreclosure by, 9, 156
 - Married woman, 9, 159
 - Mortgagee remaining in possession as tenant at will, 9, 158
 - Nature of entry and possession, 9, 157
 - Personal representative, 9, 159
 - Registration of certificate, 9, 160
 - Remedy of mortgagor after payment, 9, 158
 - Second mortgagee, 9, 159
 - Sufficiency of entry, 9, 157
 - Waiver by commencement of an action upon mortgage, 9, 161
 - Waiver by receipt of part or all of the debt, 9, 161
 - Waiver of continued occupation by mortgagor, 9, 161
 - Waiver of foreclosure, 9, 161
 - When entry can be made, 9, 158
 - Where employed, 9, 156
 - Who may enter, 9, 159
- Entry, writ of, 7, 728; 9, 146
 - Accord not executed, 9, 152
 - Amount, 9, 145
 - Before breach of condition, 9, 145
 - Bill to foreclose, 9, 143
 - Costs, 9, 155
 - Declaration, 9, 150
 - Defenses, 9, 151
 - Equitable owner as party, 9, 146
 - Evidence, 9, 153
 - Fraud of mortgagee, 9, 152
 - Holder of legal title as party, 9, 146

- FORECLOSURE OF MORTGAGES, *cont'd.***
 Entry, writ of, *cont'd.*
 Husband and wife, 9, 148, 149
 In general, 7, 728; 9, 143
 Joint mortgagee as party, 9, 147
 Judgment, 9, 154
 Mortgagee of a reversion as party, 9, 147
 Nature and incidents, 9, 143
 Nature of writ, 7, 729
 Non-tenure, 9, 152
 Notice, 7, 729
 One who has entered to foreclose as party, 9, 147
 Parties, 7, 729
 Parties defendant, 9, 148
 Parties plaintiff, 9, 146
 Partners, 9, 148
 Personal representatives as parties, 9, 147
 Person in possession as defendant, 9, 148
 Pleadings, 9, 150
 Pleas, 9, 151
 Second mortgagee as defendant, 9, 149
 Second mortgagee as plaintiff, 9, 147
 Set-off, 9, 155
 Subsequent purchaser of equity of redemption, 9, 149
 Tenants in common as parties, 9, 147
 Usurious interest, 9, 155
 Usury, 9, 152
 When available, 9, 145
 Equitable assignments:
 Mortgagee as party, 7, 771
 Equitable foreclosure sale, 9, 127
 Growth of the practice of rendering deficiency judgments, 9, 129
 Sale substituted for strict foreclosure in the United States, 9, 128
 Transition from strict to equitable foreclosure, 9, 127
 When sales were decreed, 9, 127, 128
Equity, see *infra*, Jurisdiction; The action; Venue.
 Equity of redemption (see *infra*, Parties):
 Introduction, 9, 121
 Judicial foreclosure revived, 9, 121
 Origin, 9, 121
 Evidence, 9, 399
 Ejectment, 9, 142
 Exceptions to the rule requiring production of bond or note, 9, 400
- FORECLOSURE OF MORTGAGES, *cont'd.***
 Evidence, *cont'd.*
 Production of bond or note, 9, 399
 Writ of entry, 9, 153
 Exceptions and objections (see *infra*, Parties):
 Appeals, 9, 426
 Confirmation of sale, 9, 535
 Executions:
 Averment of execution of mortgage, 9, 372
 Deficiency judgments, 9, 490
 Special executions, 8, 393
 Executors and administrators, 9, 280
 Deficiency judgments, 9, 464
 Foreclosure by foreign personal representatives, 9, 298
 In foreclosure of land contracts, 9, 282
 Mortgages running to personal representatives, 9, 282
 Parties, 9, 280
 Personal representatives of deceased mortgagor as parties defendant, 9, 335
 Joinder of necessary parties, 9, 335
 Necessity of administration, 338
 Rule that personal representative is a necessary party, 9, 337
 Rule that personal representative is not a necessary party, 9, 335
 Right to foreclose ordinary cases, 9, 280
 Where mortgagee was a trustee, 9, 281
 Where there is more than one personal representative, 9, 281
Fees, see *infra*, Attorney's fees.
 Fire insurance:
 Allowance for insurance advancements in decree, 9, 432
 Florida:
 Method of foreclosure, 9, 100
 Forcible entry and detainer:
 Purchaser's right, 9, 212
 Foreign executors and administrators, 9, 298
 Forms and methods, 9, 97,
 Alphabetical summary by states of systems prevailing therein, 9, 97, 118
 Classification, 9, 97
 Fraud:
 Accrual of the right to foreclose, 9, 223
 Frauds, statute of:
 Binding, 9, 521

- FORECLOSURE OF MORTGAGES, *cont'd.***
- Gage, 9, 118
 - Georgia (see *infra*, Rule *nisi* in Georgia):
 - Method of foreclosure, 9, 100
 - Guaranty:
 - Liability of guarantor of mortgage for deficiency judgments, 9, 481
 - Guardians, 9, 282
 - Guardian of heir as party defendant, 9, 311
 - Hearing, see *infra*, Trial or hearing.
 - Heirs of mortgagee:
 - Heirs of junior mortgagee, 9, 323
 - Heirs of mortgagor:
 - Whether necessary parties defendant, 9, 310
 - Guardian of heir, 9, 311
 - Minority rule, 9, 311
 - Prevailing rule, 9, 310
 - Holidays, 9, 178
 - Homesteads and exemptions, 10, 88
 - Answer, 10, 89
 - Judgment of foreclosure, 10, 90
 - Order of sale where mortgaged premises include a homestead, 9, 422
 - Parties, 10, 88
 - Receivers, 10, 90
 - Sale, 9, 520
 - Wife as party, 9, 317
 - Husband and wife:
 - Assumption of mortgage by husband in deed to wife, 9, 473
 - Averment of wife's interest, 9, 388
 - Deficiency judgments, 9, 483
 - Husband of female mortgagor as party defendant, 9, 320
 - Married women as parties defendant, 9, 355
 - Parties, 9, 283
 - Scire facias, 9, 135
 - Wives of mortgagors as parties defendant, 9, 316
 - Allegation of wife's interest, 9, 317
 - Foreclosure of purchase-money mortgage, 9, 317
 - General rule, 9, 316
 - Homestead, 9, 317
 - When the wife is not a necessary party, 9, 317
 - Idaho:
 - Method of foreclosure, 9, 101
 - Illegal bidding, 9, 522
 - Illinois:
 - Method of foreclosure, 9, 101
 - Indiana:
 - Method of foreclosure, 9, 103
- FORECLOSURE OF MORTGAGES, *cont'd.***
- Infants, 10, 842
 - Averment of infant defendants, 9, 388
 - Infant's day in court, 10, 711
 - Sale *en masse* or in parcels, 9, 515
 - Service of process on infants, 9, 366
 - Insanity, 9, 353
 - Installments*, see *infra*, Decree.
 - Insurance:
 - Allowance for insurance advances, 9, 432
 - In the absence of a clause in the mortgage, 9, 432
 - Pleading and proof, 9, 434
 - Where the mortgage expressly provides for reimbursement, 9, 433
 - Insurance, default in payment of, 9, 244
 - Interest (see *infra*, Accrual of the right to foreclose):
 - Decree, 9, 430
 - From what date, 9, 431
 - In general, 9, 430
 - Interest upon the decree, 9, 431
 - Legal and contract rate, 9, 431
 - Rate of interest allowed, 9, 431
 - Iowa:
 - Method of foreclosure, 9, 103
 - Issues to the jury:
 - Setting aside or disregarding verdict, 11, 708
 - Joinder of counts and causes, 1, 203
 - Joint mortgagees:
 - Who may foreclose, 9, 268
 - Joint tenants and tenants in common, 9, 520
 - Judgments (see *infra*, Decree; Deficiency judgments):
 - Abatement and revivor, 9, 247
 - Examples, 9, 247, 248
 - Judgment at law as bar, 9, 248
 - Statutory modifications, 9, 248
 - Ejectment, 9, 142
 - Rents and profits, 9, 142
 - Writ of entry, 9, 154
 - Judicial foreclosure:
 - Necessity for, in early times, 9, 119
 - Judicial sales (see *infra*, Equitable foreclosure sale), 12, 7
 - Juries:
 - Right to jury trial, 9, 396
 - Directing verdict, 9, 398
 - In general, 9, 396
 - Questions of law and fact, 9, 398

FORECLOSURE OF MORTGAGES, *cont'd.*

- Jurisdiction (see *infra*, Venue), 9, 262
 - Ancient head of equity jurisdiction, 9, 262
 - Conflict of jurisdiction between state and federal courts, 9, 266
 - Inherent jurisdiction of chancery, 9, 262
 - Jurisdiction of United States courts, 9, 264
 - Jurisdiction of various state courts in foreclosure cases, 9, 263
 - Statutory modifications as to equity jurisdiction, 9, 263
 - United States courts following state practice, 9, 265

Kansas:

- Method of foreclosure, 9, 104

Kentucky:

- Method of foreclosure, 9, 104
- Landlord and tenant*, see *infra*, Leases.

Leases:

- Subsequent lessee as party, 9, 345

Leave to sue, 9, 485

- Legatees of mortgagors as parties defendant, 9, 313

Liens:

- As to parties necessary to cut off liens*, see *infra*, Parties.
- Deficiency judgments, 9, 492
- Subsequent judgment lienors as parties, 9, 324
- Subsequent mechanics' lienors, 9, 325

Limitation of actions:

- Defenses of purchaser assuming mortgage, 9, 477

***Lis pendens*, 9, 339**

- Local or transitory*, see *infra*, Venue.
- Locus*, see *infra*, Venue.

Louisiana:

- Method of foreclosure, 9, 105

Maine:

- Method of foreclosure, 9, 105

Manner of sale*, see ORDER OF SALE.*Marriage:**

- Marriage of a female mortgagee with the mortgagor, 9, 284

Married women (see *infra*, Husband and wife):

- Deficiency judgments, 9, 483
- Parties, 9, 283
- Parties defendant, 9, 355
- Service of process on married women, 9, 366

Maryland:

- Method of foreclosure, 9, 105

Massachusetts:

- Method of foreclosure, 9, 106

FORECLOSURE OF MORTGAGES, *cont'd.***Mechanics' liens:**

- Subsequent mechanics' lienors as parties, 9, 325

Mesne owners as parties, 9, 333**Methods (see *infra*, Election of remedies), 9, 97**

- Advertisement and sale under a power*, see *infra*, Advertisement and sale under a power.

Alphabetical summary by states of systems prevailing therein, 9, 97**Classification, 9, 97*****Ejectment*, see *infra*, Ejectment.*****Entry and possession*, see *infra*, Entry and possession.*****Equitable foreclosure*, see *infra*, Equitable foreclosure sale.****History discussed in order of development, 9, 118****Methods discussed in the order of their historical development, 9, 118*****Rule nisi in Georgia*, see *infra*, Rule nisi in Georgia.*****Scire facias*, see *infra*, Scire facias.****Special statutory methods, 9, 129****Stages in the evolution of mortgage law, 9, 118*****Strict foreclosure*, see *infra*, Strict foreclosure.*****Writ of entry*, see *infra*, Entry, writ of.****Michigan:**

- Method of foreclosure, 9, 106

Minnesota:

- Method of foreclosure, 9, 106

Mississippi:

- Method of foreclosure, 9, 107

Missouri:

- Method of foreclosure, 9, 108

Mistake:

- Accrual of the right to foreclose, 9, 223

Montana:

- Method of foreclosure, 9, 109

Mortgagor's heirs:

- Deficiency judgments, 9, 465

Multifariousness, 9, 367**Demurrer, 9, 370****How objection should be raised, 9, 370****In general, 9, 367****Objection at the hearing or appeal, 9, 371****Plea or answer, 9, 370****When foreclosed bill is multifarious, 9, 368****When foreclosed bill is not multifarious, 9, 369**

FORECLOSURE OF MORTGAGES, *cont'd.*

- Names, 9, 371
 - Bill, petition, or complaint, 9, 371
 - Examples, 9, 371, 372
 - Notice of sale, 9, 174
- Nebraska:
 - Method of foreclosure, 9, 109
- Nevada:
 - Method of foreclosure, 9, 110
- New Hampshire:
 - Method of foreclosure, 9, 110
- New Jersey:
 - Method of foreclosure, 9, 111
- New Mexico:
 - Method of foreclosure, 9, 111
- Newspaper*, see *infra*, Notice of sale.
- New York:
 - Method of foreclosure, 9, 111
- Nisi*, see *infra*, Rule *nisi* in Georgia.
- North Carolina:
 - Method of foreclosure, 9, 112
- North Dakota:
 - Method of foreclosure, 9, 112
- Notice and advertisement of sale, 9, 162, 502
 - Advertisement and sale under a power, 9, 166
 - Compliance with statute and effect of noncompliance, 9, 503
 - Construction of statutes, 9, 504
 - Contents, 9, 502
 - Description in notice, 9, 503
 - In general, 9, 502
 - Manner prescribed by statute, 9, 503
 - Notice of postponement, 9, 505
 - Postponement, 9, 505
 - Selection of newspaper, 9, 503
 - Statutes, 9, 166, 503
 - Time of publication, 9, 504
 - Waiver and estoppel, 9, 505
 - Weekly newspaper, 9, 505
 - When and how given, 9, 503
- Notice of adjournment, 9, 189
- Notice of sale, 9, 167
 - Amount of indebtedness, 9, 176
 - By whom notice should be given, 9, 168
 - Description of the mortgage, 9, 173
 - Description of the mortgaged property, 9, 175
 - Duration of publication, 9, 171
 - Instances of sufficient and insufficient notices, 9, 175
 - Names, 9, 174
 - Newspaper in which notice of sale must appear, 9, 170
 - Object of giving notice of sale, 9, 167
 - Place of sale, 9, 177

FORECLOSURE OF MORTGAGES, *cont'd.*

- Notice of sale, *cont'd.*
 - Posting notice of sale, 9, 169
 - Time of sale, 9, 177
- Objections*, see *infra*, Multifariousness; Parties.
- Officers:
 - Parties defendant, 9, 344
- Ohio:
 - Method of foreclosure, 9, 112
- Oklahoma:
 - Method of foreclosure, 9, 112
- Opening bidding, 9, 526
- Order in which property is sold*, see *infra*, Advertisement and sale under a power.
- Order of sale, 9, 512
 - Provisions in decree, 9, 411
 - Examples, 9, 411
 - Exceptions to the general rule, 9, 415
 - In general, 9, 411
 - Inverse order of alienation rule, 9, 411
 - Minority rule, 9, 416
 - Release, 9, 416
 - Rule where mortgaged premises have been alienated in parcels, 9, 411
 - Rule where mortgaged premises include a homestead, 9, 422
 - Rule where several mortgagees are unequally secured, 9, 417
 - United States practice, 9, 414
- Sale in parcels or *en masse*, 9, 512
 - Dedication, 9, 521
 - Description in mortgage followed, 9, 514
 - Discharge of part security, 9, 520
 - Discretion of court, 9, 512
 - Discretion of officer, 9, 513
 - Distinct tracts, 9, 513
 - Divisible tracts, 9, 514
 - Dower protected, 9, 520
 - Effect of waiver of right to redeem, 9, 521
 - En masse*, 9, 517, 519
 - Grounds for vacating sale *en masse*, 9, 519
 - Homestead reserved, 9, 520
 - Instalment of debt, 9, 516
 - Miscellaneous, 9, 520
 - Order of court must be followed, 9, 518
 - Property of infant defendants, 9, 515
 - Protection of junior incumbrancers, 9, 517

FORECLOSURE OF MORTGAGES, *cont'd.*Order of sale, *cont'd.*

- Sale in parcels or *en masse*, *cont'd.*
 - Rights of first mortgagee, 9, 520
 - Rights of lessee, 9, 520
 - Rights of second mortgagee, 9, 520
 - Sale after offer in parcels, 9, 518
 - Sale *en masse*, 9, 517
 - Sale *en masse* voidable only, 9, 519
 - Sale for instalment of debt, 9, 516
 - Sale of enough to satisfy debt, 9, 515
 - Sale of real and personal property together, 9, 519
 - School-fund mortgage, 9, 521
 - Tenants in common, 9, 520
 - Tracts used together, 9, 515
 - Two mortgages, 9, 520

Oregon:

Method of foreclosure, 9, 113

Owners of equity of redemption, see *infra*, Parties.

Parcels, see *infra*, Order of sale.

Parol evidence:

Assumption of mortgage, 9, 472

Parties, 9, 266

Additional parties, 9, 361

Adverse and paramount claimants, 9, 353

Dismissal as to improper party, 9, 355

General rule, 9, 353

Illustrations, 9, 354

Married women, 9, 355

Minority rule, 9, 357

Pleading and proof, 9, 359

Tax titles, 9, 355

Appeals, 9, 499

Creditors without liens, 9, 360

Defendants, 9, 303

Assignees and trustees for creditors, 9, 315

Assignees in bankruptcy, 9, 314

Beneficiaries, 9, 348

Cestuis que trustent, 9, 348

Devisees or legatees of mortgagors, 9, 312

Heirs of mortgagors, 9, 310

Holders of other notes, 9, 331

Husband and wife, 9, 316, 320

Mesne owners, 9, 333

Miscellaneous parties, 9, 351

Mortgagee having assigned mortgage, 9, 334

Mortgage trustees, 9, 313

FORECLOSURE OF MORTGAGES, *cont'd.*Parties, *cont'd.*Defendants, *cont'd.*

Mortgagor having conveyed premises, 9, 332

Officers of corporation, 9, 344

Owners of equity of redemption, 9, 303

Parties acquiring interest *pendente lite*, 9, 339

Parties contingently interested, 9, 350

Parties necessary to cut off liens, 9, 310

Personal representatives of deceased mortgagor, 9, 335

Prior incumbrances, 9, 327

Prior lessees and tenants in possession, 9, 326

Receivers, 9, 342

Stockholders, 9, 344

Subsequent judgment lienors, 9, 324

Subsequent lessees, 9, 345

Subsequent mechanics' lienors, 9, 325

Subsequent mortgagees, 9, 320

Tax purchasers, 9, 326

Who are necessary defendants, 9, 300

Who are not necessary defendants, 9, 332

Ejectment, 9, 141

Heirs of mortgagee, 9, 297

Who may not foreclose, 9, 297

Miscellaneous parties, 9, 360

Mortgagor who has disposed of his interest, 9, 352

Necessary defendants in general, 9, 300

Different results of omitting parties, 9, 300

How objection for omission of parties should be raised, 9, 302

Lienors, 9, 301

Owners of equity of redemption, 9, 300, 303

Parties necessary to cut off liens, 9, 310

Senses in which the term is used, 9, 300

Who are not necessary parties, 9, 332

Who are not proper parties, 9, 253

Who are proper parties, 9, 352

Who may object for omission of parties, 9, 302

- FORECLOSURE OF MORTGAGES, *cont'd.***
Parties; *cont'd.*
 Objections:
 How objection should be raised, 9, 303
 Who may object for omission of parties, 9, 302
 Owners of equity of redemption, 9, 303
 Conveyance after *lis pendens* in foreclosure suit, 9, 308
 Effect of omitting owners, 9, 300
 Fraudulent grantee, 9, 307
 Grantees by unrecorded conveyances, 9, 307
 Grantees of mortgagors, 9, 305
 Holder of contract to purchase, 9, 307
 In general, 9, 303
 Joint mortgagors, 9, 305
 Original mortgagors, 9, 305
 Part purchaser, 9, 306
 Purchaser at an attachment or execution sale, 9, 307
 Purchaser from an assignee in bankruptcy, 9, 307
 Parties necessary to cut off liens, 9, 310
 Assignees and trustees for creditors, 9, 315
 Assignees in bankruptcy, 9, 314
 Devises or legatees of mortgagor, 9, 312
 Heirs of mortgagors, 9, 310
 Holders of other notes, 9, 331
 Husband of female mortgagor, 9, 320
 Mortgage trustee, 9, 313
 Prior incumbrances, 9, 327
 Prior lessees and tenants in possession, 9, 326
 Subsequent judgment lienors, 9, 324
 Subsequent mechanics' lienors, 9, 325
 Subsequent mortgagees, 9, 320
 Tax purchasers, 9, 326
 Wives of mortgagors, 9, 316
 Plaintiffs, 9, 266
 Proper parties, 9, 352
 Rule *nisi* in Georgia, 9, 139
 Scire facias, 9, 133
 Who are proper parties, 9, 352
 Who may foreclose, 9, 266
 Amendment of complaint and form of decree, 9, 271
 Assignees of mortgage, 9, 272
- FORECLOSURE OF MORTGAGES, *cont'd.***
Parties, *cont'd.*
 Who may foreclose, *cont'd.*
 Assignee using assignor's name, 9, 273
 Assignment *pendente lite*, 9, 278
 Assignments, see *infra*, Assignments.
 Assignor, 9, 273
 Bank cashier, 9, 285
 Beneficiaries, 9, 285
 Character of assignment, 9, 275
 Deeds of trust, 9, 286
 Adverse attitude of trustee, 9, 290
 Bondholders' right, 9, 288
 Clause in mortgage requiring refusal, valid, 9, 289
 Death of trustee, 9, 290
 Exceptions, 9, 292
 Fellow bondholders, 9, 291
 Foreclosure for default of interest, 9, 291
 Refusal of trustee to sue, 9, 288
 Trustee generally the proper plaintiff, 9, 286
 Trustees named in mortgage, 9, 292
 Equitable assignment, 9, 277
 Executors and administrators, 9, 280
 Foreclosure of coupons of bonds sold, 9, 367
 Form of assignment, 9, 274
 Guardians, 9, 282
 In ordinary mortgages, 9, 266
 Joint mortgages, 9, 268
 Married women, 9, 283
 One mortgagee foreclosing a co-mortgagee, 9, 269
 Owners of mortgage in severalty, 9, 270
 Partners, 9, 272
 Personal representatives, 9, 280
 Public officers, 9, 284
 Sole mortgagee, 9, 266
 Subrogated lienors, 9, 279
 Sureties, 9, 279
 Surviving joint mortgagees, 9, 270
 Trustees, 9, 285
 Who may not foreclose, 9, 293
 Assignee of mortgage only, 9, 295

FORECLOSURE OF MORTGAGES, *cont'd.***Parties, *cont'd.***Who may not foreclose, *cont'd.*

Assignor of mortgage, 9, 293

Assignment as collateral security, 9, 295

Exceptions to the rule, 9, 293

General rule, 9, 293

Foreign personal representatives, 9, 298

Heirs of mortgagee, 9, 297

Partition, 15, 803

Partners:

Who may foreclose, 9, 272

Payment:

Allegations of nonpayment, 9, 377

Averment of demand, 9, 379

In general, 9, 377

Request and refusal, 9, 378

Strict foreclosure:Payment *pro tanto*, 9, 125***Pendente lite*:**Parties acquiring interest *pendente lite*, 9, 339**Pennsylvania:**

Method of foreclosure, 9, 114

Petition, see *infra*, Bill, petition, or complaint.**Place of sale, 9, 509**

In general, 9, 179

Notice of sale, 9, 177

Presumption of regularity, 9, 179

Sale at court-house door, 9, 179

Plea or answer, see *infra*, Answer.**Possession** (see *infra*, Entry and possession), 9, 118

Early gage gave possession, 9, 118

Powers, see *infra*, Advertisement and sale under a power.**Power to sell mortgage**, see *infra*, Trust deed.**Prayer for relief** (see *infra*, Bill, petition, or complaint), 16, 808**Prior incumbrancers:**

Prior incumbrancers as parties, 9, 327

Process, 9, 362

Form and contents of summons or subpoena, 9, 362

Return, 9, 367

Service, see *infra*, Service of process:**Production of bond or note, 9, 399**

Exceptions to the rule, 9, 400

General rule, 9, 399

Indemnity, 9, 401

Proper parties:

Who are not proper parties, 9, 353

FORECLOSURE OF MORTGAGES, *cont'd.*Publication (see *infra*, Notice and advertisement of sale; Notice of sale), 17, 31, 43

Public officers, 9, 284

Parties, 9, 284

Puffing bidding, 9, 523

Purchasers, see *infra*, Deficiency judgments.**Questions of law and fact:**

Assumption of mortgage, 9, 475

Railway mortgages:

Venue, 9, 259

Receivers:

Allegations necessary in application for receiver, 17, 731

Danger of impairment of security, 17, 732, 733

In general, 17, 731

Particular statutes, 17, 734

Requisite allegations in different states, 17, 732, 733

Appointment of receiver, 17, 692

Jurisdiction to appoint receiver, 9, 261

Parties defendant, 9, 342

Record:

Enrolment of decree, 9, 403

Recording acts:

Allegations that mortgage was recorded, 9, 377

In foreclosure against grantee of mortgagor, 9, 377

In foreclosure against mortgagor, 9, 377

Recording of affidavit, 9, 197

Redemption, see REDEMPTION.

References, 9, 398

Re foreclosure, 9, 539

Release:

Deficiency judgments, 9, 458

Arrangement with grantee of mortgagor, 9, 459

Extension of time to mortgagor's grantee, 9, 460

Extension of time to non-assuming purchasers, 9, 461

Mere conveyance by mortgagor, 9, 460

Release of mortgagor, 9, 458

Order of sale, 9, 416

Release of purchaser assuming mortgage from liability, 9, 478

Removal of causes, 18, 225

Reopening sale, 9, 189

Report:

Sales, 9, 531

Contents, 9, 531

Error in the report, 9, 531

Notice of sale, 9, 531

Time of filing, and effect, 9, 531

- FORECLOSURE OF MORTGAGES, *cont'd.***
 Resale, 9, 214, 528
Review, see infra, Appeals.
Revivor, see infra, Abatement and revivor.
 Rhode Island:
 Method of foreclosure, 9, 114
 Rule *nisi* in Georgia, 9, 138
 Defenses, 9, 139
 Election of remedies, 9, 218
 In general, 9, 138
 Nature of the proceeding, 9, 138
 Parties, 9, 139
 Service of the rule *nisi*, 9, 139
 Rules of court:
 Deficiency judgments, 9, 453
 Sales (see *infra*, Advertisement and sale under a power; Affidavit of sale; *Bona fide* purchaser; Deficiency judgments; Notice of sale; Order of sale; Scire facias), 9, 501, 510
 Adjournment, 9, 188, 529
 Announcement of adjournment or continuance, 9, 530
 Appeals, 9, 497
 Appraisement, 9, 505
 Auctioneer, 9, 507
 Bidding, 9, 521
 Agreements to bid, 9, 524
 Assignment of bid, 9, 526
 Combinations for bidding, 9, 425
 Deterring bidding, 9, 522
 Enforcing bid, 9, 527
 Enforcing bid where defect in title, 9, 528
 Illegal bidding, 9, 522
 Laches in making objection, 9, 529
 Letters, 9, 521
 Manner of bid, 9, 521
 Opening bidding, 9, 526
 Oral, 9, 521
 Puffing, 9, 523
 Resale at purchaser's expense, 9, 528
 Statute of frauds, 9, 521
 Valid agreements for bidding, 9, 524
 Withdrawing bid, 9, 526
 Conditions of sale, 9, 510
 Conduct of sale, 9, 507
 Confirmation, 9, 531
 Court refuses to confirm on its own motion, 9, 535
 Effect of confirmation, 9, 536
 Modifications of the general rule, 9, 532
 Necessity, 9, 531
 Objection of plaintiff or defendant, 9, 535
- FORECLOSURE OF MORTGAGES, *cont'd.***
Sales, cont'd.
 Confirmation, *cont'd.*
 Objection of purchaser, 9, 535
 Objections to confirmation, 9, 535
 Order of confirmation, 9, 536
 Sale incomplete until confirmation, 9, 531
 Waiver, 9, 535
 Who may not object, 9, 536
 Who may object, 9, 535
 Continuance, 9, 529
 Credit, 9, 511
 Decree, reversal of, 9, 539
 Delegation of authority, 9, 507
 Deposit, 9, 512
 Effect of reversal of decree, 9, 539
 Nature of the foreclosure sale, 9, 501
Notice and advertisement, see infra, Notice and advertisement of sale.
Order or manner of sale, see infra, Order of sale.
 Place of sale, 9, 509
 Report, 9, 531
 Contents, 9, 531
 Error in the report, 9, 531
 Notice of sale, 9, 531
 Time of filing, and effect, 9, 531
 Reversal of decree, 9, 539
 Sale on credit, 9, 511
 Terms of sale, 9, 510
 Time of sale, 9, 508
 Notice and advertisement, 9, 502
 Who may conduct sale, 9, 507
 Auctioneer, 9, 507
 Delegation of authority, 9, 507
 In general, 9, 507
 Statutory provisions, 9, 508
 Who may not purchase, 9, 510
 Deputy or clerk, auctioneer, appraisers, plaintiff's attorney, 9, 510
 General rule, 9, 510
 Officer conducting sale, 9, 510
 Scire facias, 9, 129; 19, 320
 Accrual of the right to sue, 9, 135
 A proceeding at law, 9, 132
 Caption, 9, 130
 Contents of judgment, 9, 137
 Debt payable in instalments, 9, 135
 Declaration, 9, 130

FORECLOSURE OF MORTGAGES, *cont'd.***Scire facias, *cont'd.***

- Defenses available, 9, 136
- Demurrer, 9, 130
- Election of remedies, 9, 217
- Fatal defects, 9, 132
- Heirs or terre-tenants, 9, 134
- Husband and wife, 9, 135
- Manner of sale, 9, 137
- Money mortgages only, 9, 131
- Nature of proceeding, 9, 130
- Nonpayment of mortgage debt, 9, 135
- Order of sale, 9, 137
- Parties to the suit, 9, 133
- Prior lienholders, 9, 134
- Proceedings *in rem*, 9, 133
- Process, 9, 130
- Return of sheriff, 9, 136
- Strict compliance with statute, 9, 131
- Subsequent incumbrancers, 9, 133
- Unrecorded mortgage, 9, 131
- Waiver of benefit of statute, 9, 131
- Where employed, 9, 129

Seals:

- Necessity of assignment of mortgage, 9, 274

Second foreclosure, 9, 539

- Abatement and revivor, 9, 247

Service of process, 9, 365

- Acknowledgment of service, 9, 365
- Actual service, 9, 365
- Appearance as a waiver of service, 9, 365
- Deficiency judgments, 9, 487
- Rule *nisi* in Georgia, 9, 139
- Service on infants, 9, 366
- Service on married women, 9, 366
- Sufficiency of service to authorize deficiency judgments, 9, 487

Set-off, recoupment, and counterclaim, 9, 155

- Payment by set-off, 9, 187

South Carolina:

- Method of foreclosure, 9, 114

South Dakota:

- Method of foreclosure, 9, 114

Specific performance:

- Purchaser, 9, 214

Stages in the evolution of mortgage development, 9, 118***Stay of proceedings*, see *infra*, Supersedeas and stay of proceedings.*****Stipulation*, see *infra*, Attorney's fees.****Stockholders:**

- Parties defendant, 9, 344

- Purchase by stockholders, 9, 193

FORECLOSURE OF MORTGAGES, *cont'd.***Strict foreclosure, 9, 122**

- Against junior incumbrancers, 9, 123
- Constitutes payment *pro tanto*, 9, 125
- Decree, 9, 448
- Effect of strict foreclosure, 9, 124
- Election of remedies, 9, 218
- Examples by decrees, 9, 448, 449
- Foreclosure of land contracts, 9, 123
- Nature of original foreclosure, 9, 122
- Property insufficient to pay debt, 9, 124
- Provisions peculiar to strict foreclosure, 9, 448
- Reasons held sufficient to justify foreclosure, 9, 124
- Relinquishment of possession and writ of assistance, 9, 448
- Title, 9, 124
- When strict foreclosure is now permitted, 9, 123

Subpoena, 9, 362**Subrogation:**

- Equitable assignment, 9, 277
- Rights of subrogated lienors to foreclose, 9, 279

Summons and process, 9, 362

- Examples, 9, 362, 365
- Form and contents, 9, 362

Sunday, 9, 178**Supersedeas and stay of proceedings, 9, 492**

- Purchaser's title not divested by reversal, 9, 497

- Statutory provisions not retroactive, 9, 492

- Stay by subsequent purchaser, 9, 495

- Strict compliance with statute, 9, 496

- Taking a stay is an appearance, 9, 494

- Upon filing undertaking, 9, 496

Support:

- Accrual of the right to foreclose, 9, 228

Suretyship:

- Rights of sureties, 9, 279

Surplus money*, see *SURPLUS MONEY*.*Taxes (see *infra*, Accrual of the right to foreclose).****Decree, 9, 434**

- Allowance for, in general, 9, 434

- Amendment of decree 9, 435

- Decree for assignment of tax certificate, 9, 437

- FORECLOSURE OF MORTGAGES, *cont'd.***
- Taxes, *cont'd.***
- Decree, *cont'd.*
- Express clause permitting mortgagee to be reimbursed, 9, 434
- New York statute, 9, 437
- Payment by others, 9, 436
- Proof of payment, 9, 435
- Valid charge, 9, 436
- Tax titles:**
- Holders of tax titles as parties, 9, 355
- Tenants in common, see *infra*, Joint tenants and tenants in common.
- Tender:**
- Costs, 9, 441
- Tennessee:**
- Method of foreclosure, 9, 115
- Terms of sale, see *infra*, Advertisement and sale under a power.
- Texas:**
- Method of foreclosure, 9, 115
- The action (see *infra*, Venue), 9, 219
- Abatement and revivor, see *infra*, Abatement and revivor.
- Accrual of the right to foreclose, see *infra*, Accrual of the right to foreclose.
- In rem* or *in personam*, 9, 220
- Introductory, 9, 219
- Miscellaneous points, 9, 220
- Nature of the action, 9, 219
- Originally an equity suit, 9, 219
- Time of foreclosure, see *infra*, Accrual of the right to foreclose.
- Time of publication, 9, 504
- Time of sale, 9, 178, 508
- Holiday, 9, 178
- Sunday, 9, 178
- The hour, 9, 178
- Title:**
- Averments regarding plaintiff's title, 9, 382
- Alleging assignment of bond or mortgage only, 9, 384
- In general, 9, 382
- Where plaintiff is an assignee of the mortgagee, 9, 383
- Early mortgage carrying title, 9, 119
- Title conveyed, 9, 205
- Title of mortgagee transferred, 9, 206
- Title vested in mortgagee upon strict foreclosure, 9, 124
- Transitory or local, see *infra*, Venue.
- Trial or hearing, 9, 396**
- Consolidation of foreclosure suits, 9, 399
- Evidence, 9, 399
- Method of trial, 9, 396
- FORECLOSURE OF MORTGAGES, *cont'd.***
- Trial or hearing, *cont'd.***
- Production of bond or note, 9, 399
- Reference of issues, 9, 398
- Right to jury trial, 3, 396
- Trust deed (see *infra*, Advertisement and sale under a power):
- Mortgage trustees as parties defendant, 9, 313
- Parties, 9, 286
- Adverse attitude of trustee, 9, 290
- Bondholder's right, 9, 288
- Clause in mortgage requiring refusal valid, 9, 289
- Death of trustee, 9, 290
- Exceptions, 9, 292
- Fellow bondholders, 9, 291
- Foreclosure for default of interest, 9, 291
- Refusal of trustee to sue, 9, 288
- Trustee generally the proper plaintiff, 9, 286
- Trustees named in the mortgage, 9, 292
- Trustees and beneficiaries as parties, 9, 285
- Trusts and trustees:**
- Beneficiaries and *cestuis que trustent* as parties defendant, 9, 348
- Beneficiaries inconveniently numerous, 9, 350
- General rule, 9, 348
- Remote interests, 9, 350
- Secret trust, 9, 349
- United States courts, 9, 264
- Conflict of jurisdiction between state and federal courts, 9, 266
- Deficiency judgments, 9, 463
- Following state practice, 9, 265
- Jurisdiction of federal courts in foreclosure cases, 9, 264
- Order of sale, 9, 414
- Usury, 9, 152, 155
- Defense of purchaser assuming mortgage, 9, 477
- Pleading usury, 9, 393
- Utah:**
- Method of foreclosure, 9, 115
- Venue (see *infra*, Jurisdiction), 9, 249; 22, 795
- Ancillary suits, 9, 260
- Change of venue, 9, 256
- Directory provisions, 9, 254
- Division of county before or after suit, 9, 255
- Early chancery rule, 9, 249
- Effect of bringing suit in wrong county, 9, 257

FORECLOSURE OF MORTGAGES, *cont'd.***Venue, *cont'd.***

Foreclosure of vendor's lien, 9, 255

Foreclosure suit personal and transitory, 9, 249

Mandatory provisions, 9, 254

Principal and ancillary suits, 9, 260

Railway mortgages, 9, 259

Receiver, 9, 261

Rule where land lies in different counties, 9, 256

Rule where mortgaged premises lie in another state, 9, 258

Statutory changes making foreclosure suit either transitory or local, 9, 251

Statutory changes making venue purely local, 9, 253

Venue determined at option of plaintiff, 9, 251

Venue local unless waived by defendant or changed by court, 9, 252

Verification, 9, 395

In chancery, 9, 395

Under the codes, 9, 396

Vermont:

Method of foreclosure, 9, 115

Virginia:

Method of foreclosure, 9, 116

Waiver:

Accrual of the right to foreclose, 9, 223

Washington:

Method of foreclosure, 9, 116

West Virginia:

Method of foreclosure, 9, 116

*Who may foreclose, see infra, Parties.**Who may not foreclose, see infra, Parties.*

Wisconsin:

Method of foreclosure, 9, 116

Writ of entry, see infra, Entry, writ of.

Writ of foreclosure, 9, 120

Wyoming:

Method of foreclosure, 9, 118

FOREIGN ATTACHMENT (see ATTACHMENT; GARNISHMENT):

Admiralty, 1, 258

Defendant's default, 1, 260

Garnishment, 1, 259

In general, 1, 258

Affidavits of merits or defense, 1, 348

Dismissal, discontinuance, and nonsuit, 6, 984

*Equitable attachment, see EQUITABLE ATTACHMENT.***FOREIGN CORPORATIONS (see CORPORATIONS):**

Appearances, 2, 642

FOREIGN CORPORATIONS, *con.*

Ejectment, 7, 280

Jurisdiction, 12, 147

In general, 12, 147

Subject-matter in residence of plaintiff, 12, 149

Quo warranto, 17, 397

Removal of causes, 18, 280

Security for costs, 19, 356

Service of process, see SERVICE OF PROCESS.

Winding up corporations:

Creditors' bills, 22, 1246, 1248

Jurisdiction of equity, 22, 1228

FOREIGN EXECUTORS AND ADMINISTRATORS, see EXECUTORS AND ADMINISTRATORS.**FOREIGN GUARDIANS, see GUARDIANS.****FOREIGN INSURANCE COMPANIES, see INSURANCE.****FOREIGN JUDGMENTS, see JUDGMENTS.****FOREIGN LAWS, 9, 542**

Legal conclusions, 12, 1041

Manner of pleading, 9, 543

Necessity of pleading, 9, 542

Presumption in absence of pleading, 9, 543

FOREIGN STATUTES (see STATUTES):

Limitations, 13, 277

Manner of pleading, 13, 277

Necessity of pleading, 13, 277

Statutes, 20, 598

Averments as to effect of foreign statutes, 20, 601

Definiteness and certainty, 20, 601

General rule as to necessity of pleading, 20, 598

Manner of pleading foreign statutes, 20, 600

Pleading construction of foreign statutes, 20, 602

Reference to title and date, 20, 601

What are foreign statutes within meaning of rule, 20, 600

Where foreign statutes are mere matters of evidence, 20, 599

FOREIGN WILLS, see PROBATE AND CONTEST OF WILLS.**FORESTALLING, see MONOPOLIES.****FORESTS, 22, 1358****FORFEITURE (see FINES AND COSTS IN CRIMINAL CASES; PENALTIES AND PENAL ACTIONS; PENALTIES AND FORFEITURES):**

Venue, 22, 791

FORGERY:

Accessories:

Joinder, 9, 602

FORGERY, *cont'd.*

- Acknowledgment, 9, 565
- Allegations of forgery, 9, 555
 - Disjunctive averments, 9, 557
 - Falsely, 9, 556
 - Feloniously, 9, 556
 - Generally, 9, 555
- Alteration of instruments, 9, 566, 605
 - In general, 9, 605
 - Receipts, 9, 605
 - Setting out alteration, 9, 606
 - Use of the word alter, 9, 607
 - Uttering and publishing, 9, 605
- Apparently fraudulent, 9, 559, 562
- Assumpsit, 2, 1023
- Averment of extrinsic facts, 9, 559
 - Acknowledgments, 9, 565
 - Alteration of order, 9, 566
 - Determination of the question whether the instrument is subject to forgery, 9, 564
 - Indorsements, 9, 565
 - Instrument apparently fraudulent, 9, 559
 - Instrument not apparently fraudulent, 9, 562
 - Instrument void on its face, 9, 561
 - Life insurance policy, 9, 563
 - Mortgage, 9, 565
 - Order, 9, 566
 - Passes, 9, 566
 - Receipt, 9, 564
 - Stating how instrument could have been used, 9, 561
 - Tickets, 9, 566
- Averment of intent to defraud, 9, 580
 - Charging the intention, 9, 586
 - General intent to defraud, 9, 582
 - In general, 9, 580
 - Intent to defraud particular person, 9, 581
 - Manner or means, 9, 586
 - Partner, 9, 586
 - Party whose name is forged, 9, 585
 - Prejudice of another's right, 9, 588
 - Reasonable certainty, 9, 582
 - Several persons, 9, 587
 - Terms stated disjunctively, 9, 588
- Bills and notes:
 - Description of instrument, 9, 569
- Bills to impeach decrees and judgments, 3, 631
- Bonds:
 - Description of instrument, 9, 569
- Corporations:
 - Existence of corporation, 9, 560
- Counterfeiting, see COUNTERFEITING.
- Deed:
 - Description of instrument, 9, 568

FORGERY, *cont'd.*

- Definiteness and certainty in pleadings, 9, 552
 - Examples, 9, 552, 554
 - Ground for quashal, 9, 554
 - Intent to defraud, 9, 582
 - Reasonable certainty, 9, 552
- Degree of crime, 9, 610
- Description of instrument (see *infra*, Setting out instrument), 9, 567
 - Bond, 9, 569
 - Check, 9, 569
 - Deed, 9, 568
 - Enumerations of statute disjunctive, 9, 571
 - Illustrations, 9, 567
 - Indorsement, 9, 569
 - In general, 9, 567
 - Mistake of pleader, 9, 569
 - Mortgage, 9, 568
 - Name by which it is generally known, 9, 568
 - Order, 9, 569
 - Promissory note, 9, 569
 - Receipt, 9, 569
 - Setting out instrument, 9, 570
 - Unnecessary minuteness, 9, 571
- Disjunctive averments, 9, 557
- Disjunctive enumeration of statute, 9, 571
- Dollar marks, 9, 573
- Effect of instrument, 9, 588
- Extrinsic facts*, see *infra*, Averment of extrinsic facts.
- Falsely, 9, 556
- Feloniously, 9, 556
- Figures, 9, 573
- Figures cut in draft, 9, 573
- Following language of statute*, see *infra*, Indictment following language of statute.
- Foreign language, 9, 574
- Fraud*, see *infra*, Averment of extrinsic facts; Averment of intent to defraud.
- Idem sonans*, 9, 599
- Indictment, 9, 550
 - Allegations of forgery*, see *infra*, Allegations of forgery.
 - Alteration of instrument*, see *infra*, Alteration of instruments.
 - Averment of extrinsic facts, 9, 559
 - Averment of intent to defraud*, see *infra*, Averment of intent to defraud.
 - Common law, 9, 551
 - Description of instrument, 9, 567
 - Generally, 9, 550
 - Indictment following language of statute, 9, 607
 - Joinder of counts and causes*, see *infra*, Joinder of counts and causes.

FORGERY, cont'd.

Indictment, *cont'd.*

Needless allegations, see infra.

Needless allegations.

Reasonable certainty, 9, 552

Scienter, 9, 558

Setting out instrument, see infra.

Setting out instrument.

Statute, 9, 551

Three essential elements, 9, 550

Variance, see infra, Variance.

Indictment following language of statute, 9, 607

Conclusion against statute, 9, 609

In general, 9, 607

Limitations of the rule, 9, 608

Indorsement, 9, 565

Description of instrument, 9, 569

Setting out instrument, 9, 573

Injury to another, 9, 559

Instrument, see infra, Alteration of instruments; Averment of extrinsic facts; Description of instrument; Setting out instrument.

Intent, see infra, Averment of intent to defraud.

Interest:

Variance, 9, 593

Issues to the jury, 11, 647

Joinder of counts and causes, 9, 600

Assisting in forging, 9, 602

Different grades of same offense, 9, 600

Different modes of committing offense, 9, 602

Distinct and substantive offenses, 9, 604

Remedy for misjoinder, 9, 604

Jurisdiction, 9, 547

Life insurance policy, 9, 563

Lost instrument and record, 9, 578

Examples, 9, 578, 580

In general, 9, 578

In hac verba, 9, 578

Marginal figures, 9, 573

Misspelling names, 9, 595

Mortgages, 9, 565

Description of instrument, 9, 568

Names:

Misspelling names, 9, 595

Name of person to whom instrument was passed, 9, 591

Variance, 9, 598

Idem sonans, 9, 599

In general, 9, 598

Initial or middle name, 9, 599

Misspelling names, 9, 595

Where the variance is plain, 9, 600

National bank officers, 9, 547

FORGERY, cont'd.

Needless allegations, 9, 588

Facts assumed in forged instrument, 9, 589

Generally, 9, 588

How instrument would have effect, 9, 588

Name of person to whom instrument was passed, 9, 591

School warrants, 9, 590

Value, 9, 590

Order, 9, 566

Alteration of instrument, 9, 566

Partnership, 9, 586

Person and a firm of which he is a member, 9, 588

Passes, 9, 566

Pencil, words added with, 9, 597

Prejudice, see infra, Averment of intent to defraud.

Prejudice of another, 9, 561

Purport, 9, 575, 578

Receipt, 9, 564

Alteration of instruments, 9, 605

Description of instrument, 9, 569

Scienter, 9, 558

Setting out instrument, 9, 571

Alteration, 9, 606

Dollar marks, 9, 573

Figures cut in draft, 9, 573

Generally, 9, 571

Indorsements, 9, 573

Instrument in foreign language, 9, 574

Literal copy of the instrument, 9, 576

Lost instrument, 9, 578

Marginal figures, 9, 573

Matters not essential to validity of instrument, 9, 572

Pasting instrument on indictment, 9, 575

Purport, 9, 575

Purport included in the tenor, 9, 578

Statutory modifications, 9, 576

Tenor, 9, 575

Variance, 9, 593

Statutes, see infra, Indictment following language of statute.

Subject to forgery, see infra, Averment of extrinsic facts.

Tenor, 9, 575, 578

Variance, 9, 593

Tickets, 9, 566

Variance, 9, 592

United States:

Venue, 9, 550

Use of instrument, 9, 561

Usury, 9, 561

Value of forged instrument, 9, 590

FORGERY, *cont'd.*

- Variance, 9, 592
 - Examples of immaterial vari-
ances, 9, 594, 596
 - Idem sonans*, 9, 599
 - Immaterial part of instrument,
9, 596
 - Immaterial variances, 9, 594
 - In general, 9, 592
 - Initial or middle name, 9, 599
 - Instrument set out by its tenor,
9, 593
 - Interest, 9, 593
 - Misspelling of names, 9, 595
 - Omission or insertion of a word,
9, 595
 - Repugnant allegations, 9, 593
 - Tickets, 9, 592
 - Variance as to names, 9, 598
 - Where the variance is plain, 9,
600
 - Words added in pencil, 9, 597
- Venue, 9, 548
 - Examples, 9, 548, 550
 - In general, 9, 548
 - Possession of forged instrument,
9, 549
 - United States, 9, 550
- Verdict, 9, 610
- Void on its face, 9, 561

FORM:

- Indictment:
 - Allegations of affray, 1, 382

FORMA PAUPERIS, 16, 675

See POOR PERSONS.

- Affidavit or oath, 16, 686
- Amendment, 16, 688
- Appeals, 16, 695
 - Affidavit as part of record,
16, 695
 - Criminal appeals, 16, 696
 - Form and sufficiency, 16, 695
 - In general, 16, 695
 - Before whom made, 16, 686
 - By whom made, 16, 686
 - Certificate of counsel, 16, 688
 - Compliance with statute, 16, 687
 - Form and sufficiency, 16, 687
 - Husband and wife, 16, 686
 - Inability to meet expenses, 16,
688
 - Infants, 16, 686
 - Partnership, 16, 686
- Amendments, 16, 692
- Affidavit or oath, 16, 688
- Appeal bonds and undertakings, 1,
999
 - Allegations, 1, 1000
 - Amendments, 1, 1000
 - Identified judgment, 1, 1000
 - Requisites of affidavit, 1, 999
 - Statutory authority necessary, 1,
999

Index Pl. & Pr. — 27

FORMA PAUPERIS, *cont'd.*

- Appeal bonds and undertakings, *con.*
Time for filing, 1, 1000
- Whether pauper is first relieved
from giving bonds, 1, 999
- Appeals *in forma pauperis*, 16, 693
 - Affidavit or oath, 16, 695
 - Appeal granted upon giving
bond, 16, 694
 - Certiorari, 16, 695
 - Criminal appeals, 16, 696
 - Form and sufficiency of affidavit
or oath, 16, 695
 - Recordari*, 16, 695
 - Right to, 16, 693
 - Supersedeas, 16, 695
- Attorneys, 16, 690
 - Certificate of counsel, 16, 688
 - Certificate of counsel, 16, 688
- Certiorari, 16, 695
 - Bonds, 4, 188
- Costs, 5, 157, 16, 691
 - Costs accruing before order in
former suit, 16, 693
 - Costs accruing before order in
same suit, 16, 692
 - In general, 16, 691
 - Interlocutory costs, 16, 691
- Counsel:
 - Assignment of counsel, 16, 690
 - Certificate of counsel, 16, 688
- Courts:
 - To what courts order extends,
16, 689
- Criminal cases, 16, 684
 - Affidavit on appeal, 16, 696
- Discretion of court, 16, 678
- Dispaupering, 16, 697
 - Ability to pay costs, 16, 698
 - In general, 16, 697
 - Unreasonable delay, 16, 697
 - Vexatious conduct, 16, 698
- Equity, 16, 676
- Executors and administrators, 16, 681
- Husband and wife, 16, 681
 - Affidavit or oath, 16, 686
- Infants, 16, 679
 - Affidavit or oath, 16, 686
- In what proceedings allowed, 16, 683
 - Criminal cases, 16, 684
 - In general, 16, 683
 - Qui tam* actions, 16, 684
 - Replevin, 16, 684
- Laches, 16, 685
- Married women, 16, 681, 686
- Next friend, 14, 1048
- Nonresidents, 16, 682
- Notice, 16, 685
- Oath, see *infra*, Affidavit or oath.
- Opposition to application, 16, 689
- Origin of right, 16, 675
- Partnership, 16, 686
- Penalties and penal actions, 16, 684

FORMA PAUPERIS, *cont'd.*

- Recordari*, 16, 695
- Replevin, 16, 684
- Security for costs, 19, 353
 - Effect of leave to sue as poor person, 19, 393
- Supersedeas and stay of proceedings, 16, 695
- Time at which application should be made, 16, 684
 - After commencement of suit, 16, 684
 - In general, 16, 684
 - Laches, 16, 685
 - Notice to adverse party, 16, 685
- To what persons privilege extends, 16, 676
 - Applicant must be without means, 16, 678
 - Discretion of court, 16, 678
 - Executors and administrators, 16, 681
 - Infants, 16, 679
 - In general, 16, 676
 - Married woman, 16, 681
 - Nonresidents, 16, 682
 - Not encouraged, 16, 677
 - Should be good cause of action, 16, 677
 - Statutes strictly construed, 16, 677

FORMEDON:

- Real actions:
 - Writ of formedon, 17, 671

FORMER ADJUDICATION, 9, 611

- See FORMER CONVICTION OR ACQUITTAL.
- Answers in code pleading, 1, 836, 843
- General denial, 1, 821
- Answers in equity pleading, 1, 882
- Appeals, 2, 354, 355
 - Application of *res adjudicata* to appeal on the decision, 2, 373
 - Error on prior decisions, 2, 379
 - Implied adjudication, 2, 380
 - Interlocutory appeals, 2, 332, 381
 - Law of the case, 2, 373
 - Second appeal, 2, 373
 - Unnecessary questions, 2, 381
- Assumpsit, 9, 615
- Bastardy, 3, 300
- Bills of peace, 6, 562
- Certiorari, 4, 320
 - Affirmance of the proceedings, 4, 321
 - Dismissal of the writ, 4, 320
 - In general, 4, 320
 - Vacation of the proceedings, 4, 321
- Codes, 9, 617
- Common law, 9, 613
- Contempt, 4, 794

FORMER ADJUDICATION, *cont'd.*

- Defaults, 6, 139
 - Available defense, 6, 141
 - Counterclaim, 6, 142
 - Effect on codefendant, 6, 143
 - Examples, 6, 135, 141
 - Foreign judgments by default, 6, 142
 - General rule, 6, 139
 - Judgment against corporation, 6, 143
 - Judgment of another state, 6, 142
 - Legality of claim, 6, 143
 - On whom binding, 6, 143
 - Requiring judgment to stand as security, 6, 222
 - Ruling on motion to open or vacate, 6, 208
 - State courts, 6, 142
 - United States courts, 6, 142
- Defense, 9, 612
 - Actions on the case, 9, 616
 - Assumpsit, 9, 615
 - Code, 9, 617
 - Common law, 9, 613
 - Defense set up by plaintiff, 9, 613
 - Demurrer, 9, 613
 - Equity, 9, 616
 - How made, 9, 612
 - In general, 9, 612
 - Judgment rendered after commencement of action, 9, 619
 - Justice's court, 9, 619
 - Manner of pleading, 9, 615
 - Motion to dismiss, 9, 613
 - Particular actions, 9, 615
 - Trespass, 9, 616
 - Waiver of special plea, 9, 612
 - When made, 9, 619
 - Where party has no opportunity to plead, 9, 619
- Definition, 9, 611
- Demurrer, 6, 324; 9, 613
- Dismissal, discontinuance, and nonsuit, 6, 932
- Equity, 9, 616
- Executions:
 - Motion to quash the writ, 8, 468
 - Successive motions to quash, 8, 475
- Extradition, 8, 825
- Foreign judgment, 9, 614, 627
- Identity of cause of action, 9, 622
 - Actions involving ownership, 9, 624
 - Actions setting out the record, 9, 625
 - In general, 9, 622
 - Parol proof, 9, 624
 - Question for jury, 9, 624
 - Sufficient identification, 9, 623
- Identity of parties, 9, 626

FORMER ADJUDICATION, *cont'd.*

Injunctions:

Preliminary injunctions, 10, 1011
 Successive motions to dissolve,
 10, 1089

Judgment:

Judgment upon issues not made,
 11, 881
 Judgment upon merits, 9, 621
 Judgment rendered after com-
 mencement of action, 9, 619

Jurisdiction, 9, 626

Justices of the peace, 9, 619

Jurisdiction, 9, 626

Mandamus, 13, 504

General effect of proceeding, 13,
 504

Second application, 13, 504

Merits, judgment on, 9, 621

Motions:

Decision of motions as *res judi-*
cata, 14, 176

Motion to dismiss, 9, 613

Necessary allegations in the plea, 9,
 619

Actions involving ownership, 9,
 624

Foreign judgments, 9, 627

Identity a question for jury, 9,
 624

Identity of cause of action, 9, 622

Identity of parties, 9, 626

In general, 9, 619

Judgment on the merits, 9, 621

Jurisdiction, 9, 626

Setting out the record, 9, 625

New trial:

Renewal of motion, 14, 947

No opportunity to plead, 9, 618

Official bonds, 15, 152

Opening, amending, and vacating
 judgments, 15, 301

Parent and child:

Actions by parent and actions
 by child, 15, 451

Partnership:

Judgment against one upon a
 joint contract, 15, 968

Judgment against one part-
 ner upon a joint contract,
 15, 968

Patents, 16, 133

Suit in equity for infringement,
 16, 133

Infringement, 16, 134

In general, 16, 133

Validity of patent, 16, 133

Preliminary examination, 16, 871

Records:

Setting out the record, 9, 625

Replication and reply:

Reply to the plea, 9, 627

Conclusion, 9, 629

FORMER ADJUDICATION, *cont'd.*Replication and reply, *cont'd.*

Reply to the plea, *cont'd.*

In general, 9, 627

Sufficiency of reply, 9, 627

Where special replications are
 not allowed, 9, 618

Set-off, recoupment, and counterclaim,
 see SET-OFF, RECOUPMENT, AND
 COUNTERCLAIM.

Settlement of decedents' estates:

Sales of realty, 19, 898

Specific performance, 20, 398, 399

Supplemental pleadings, 9, 619

Trespass, 9, 616; 21, 849

Trespass on the case, 9, 616

Trial of the issue, 9, 629

Trover and conversion, 21, 1103

FORMER CONVICTION OR AC-
QUITTAL, 9, 630

See FORMER ADJUDICATION.

Arraignment and plea, 2, 786

Burden of proof, 9, 637

Defense, 9, 630

Habeas corpus, 9, 632

How made, 9, 630

Motion, 9, 631

When defendant has no oppor-
 tunity for pleading, 9, 632

When made, 9, 632

Definition, 9, 630

Determination of the issue, 9, 641

Distinctness of the issue, 9, 638

Habeas corpus, 9, 632

Homicide:

Conviction of lower degree of
 homicide as acquittal of higher
 degree, 10, 157

Identity of offense, 9, 634

Identity of person, 9, 634

Indictments:

Charging, 10, 489

Instructions, 9, 641

Jurisdiction, 9, 635

Motion, 9, 631

Necessary allegations, 9, 633

Identity of offense, 9, 634

Identity of person, 9, 634

In general, 9, 633

Jurisdiction, 9, 635

Record, 9, 635

Nolle prosequi, 10, 561

Nul tiel record, 9, 637

Plea, 9, 632

In general, 9, 632

Nature, 9, 633

Necessary allegations, see *infra*,
Necessary allegations.

Variances, 9, 636

Verification, 9, 636

Preliminary examination, 16, 871

Waiver, 9, 633

Questions of law and fact, 9, 639

- FORMER CONVICTION OR ACQUITTAL, *cont'd.***
 Record, 9, 635
 Replication or reply, 9, 636
 Trial of the issue, 9, 638
 Variances, 9, 636
 Verdict:
 Responsiveness, 22, 867
 Verification, 9, 636
- FORMER SUIT PENDING, *see* ANOTHER SUIT PENDING.**
- FORM OF ACTION, *see* ACTIONS; AMENDMENTS; CODE PLEADING.**
- FORNICATION, 9, 642**
See SEDUCTION.
 Allegations, 9, 644
 Joint offense, 9, 645
 Marriage, 9, 644
 Race, 9, 645
 Sex, 9, 644
 Singleness of female, 9, 644
 Time, 9, 645
 Feloniously, 9, 643
 Form of indictment, 9, 642
 Indictment generally, 9, 642
 Joinder of counts and causes, 9, 645
 Joinder of parties, 9, 645
 Living together, 9, 643
 Marriage, 9, 644
 Open and notorious, 9, 643
 Verdict, 9, 646
- FORTHCOMING AND DELIVERY BONDS, 9, 647**
 Actions on, 9, 664
 Appeal, 9, 671
 Bond given under several executions or attachments, 9, 665
 Declaration and complaint, 9, 667
 Execution, 9, 671
 Form of notice of motion, 9, 666
 Judgment, 9, 670
 Notice of motion, 9, 665
 Ordinary actions at law, 9, 667
 Plea, 9, 669
 Summary remedy by motion, 9, 665
 Supersedeas to execution, 9, 672
 Who may sue, 9, 664
 Appeals:
 Judgment on forthcoming bond, 9, 671
 Attachment, 3, 86
 Appeal bond, 3, 84
 Distinguished from appeal bond 3, 86
 In general, 3, 86
 One bond for several executions or attachments, 9, 660
 Recitals, 9, 655
 Bill of exceptions:
 Judgment on forthcoming bond, 9, 671
- FORTHCOMING AND DELIVERY BONDS, *cont'd.***
 Blanks, 9, 659
 Bonds:
 Restitution to defendant, 3, 652
 Who may sue, 3, 644
 Coercion, 9, 651
 Common-law obligation, 9, 652
Coram nobis and *coram vobis*, 5, 29
 Creditors' bills, 5, 459
 Death:
 Bond executed after death of creditor, 9, 654
 Declaration and complaint:
 Action on bond, 9, 667
 Alleging breach, 9, 668
 Alleging order of sale, 9, 669
 Assessment of damages, 9, 670
 In general, 9, 667
 Definition, 9, 648
 Delivery:
 By whom delivery to be made, 9, 656
Detinue bonds, see DETINUE.
 Effect of executing, 9, 650
 Equitable attachment, 7, 795
 Equity:
 Relief against forfeiture in equity, 9, 673
 Error, writ of:
 Judgment on motion to quash forthcoming bond, 9, 662
 Writ of error to original judgment, 9, 663
 Executions (*see* EXECUTIONS), 9, 655
 Additional levies, 8, 571
 Judgment on forthcoming bond, 9, 671
 Manucaption and removal of goods, 8, 527
 One bond for several executions or attachments, 9, 660
 Recitals, 9, 655
 Executors and administrators, 9, 649
 Forfeiture:
 Relief against forfeiture in equity, 9, 673
 Form, 9, 651
 Inquests and inquiries, 10, 1150
 Judgment:
 Action on bond, 9, 670
 Appeal, 9, 671
 Assessment of damages, 9, 670
 In general, 9, 670
 Objection to original judgment after forfeiture, 9, 663
 Original judgment void or reversed, 9, 664
 Writ of error to original judgment, 9, 663

- FORTHCOMING AND DELIVERY BONDS, *cont'd.***
 Landlord and tenant:
 Attachment, 12, 920
 Mistake, 9, 653
 Motion:
 Summary remedy by motion, 9, 665
 Form of notice, 9, 666
 In general, 9, 665
 Notice of motion, 9, 665
 Motion to quash, 9, 661
 Grounds of the motion, 9, 661
 In general, 9, 661
 When made, 9, 661
 Writ of error, 9, 662
 Notice of motion, 9, 665
 Object of law, 9, 648
 Omissions, 9, 653
 Owner of property, 9, 656
 Plea, 9, 669
Quashal, see *infra*, Motion to quash.
Receptors, see *EXECUTIONS*.
 Recitals, 9, 651
 Amount due, 9, 655
 Attachment, 9, 655
 Bond executed after death of creditor, 9, 654
 Execution, 9, 655
 In general, 9, 651
 Mistakes, 9, 653
 Omissions, 9, 653
 Owner of property, 9, 656
 Payable to wrong person, 9, 654
 Property taken, 9, 655
 Sheriff's fee, 9, 654
 Strict technical accuracy, 9, 651
 Time of delivery, 9, 656
 To whom delivery to be made, 9, 656
 To whom payable, 9, 654
 Validity as common-law obligations, 9, 652
 Relief against forfeiture in equity, 9, 673
Replevin bonds, see *REFLEVIN*.
 Restitution to defendant, 3, 652
 Return, 9, 660
 Several defendants, 9, 649
 Several executions or attachments, 9, 660
 Action on bond, 9, 665
 Stranger, 9, 650
 Sufficiency, 9, 651
 Summary remedy by motion, 9, 665
 Form of notice, 9, 666
 In general, 9, 665
 Notice of motion, 9, 665
 Supersedeas and stay of execution, 9, 672
 Suretyship:
 Bond without sureties, 9, 659
 Time of delivery, 9, 656
- FORTHCOMING AND DELIVERY BONDS, *cont'd.***
 Variances, 9, 657
 Between bond and execution, 9, 657
 Between bond and officer's return, 9, 659
 Waiver, 9, 650
 Who may execute, 9, 649
 Who may sue, 3, 644
- FRANCHISES:**
 Appeals, 2, 43
 Executions, 8, 395
 Informations in equity, 10, 859
Quo warrant, see *QUO WARRANTO*.
- FRAUD, 9, 675.**
 See *ASSIGNMENT FOR BENEFIT OF CREDITORS; BILLS TO ENFORCE DECREES; BILLS TO IMPEACH DECREES AND JUDGMENTS; EX CONTRACTU AND EX DELICTO; FAISE REPRESENTATIONS AND DECEIT.*
 Accounts and accounting:
 Equity, 1, 98
 Against whom alleged, 9, 682
 Agency, 16, 922
 Allegation of fraud in terms, 9, 691, 694
 Allegation of acts *per se* fraudulent, 9, 695
 Answers in code pleading, 1, 833, 844
 General denial, 1, 820, 823
 General denial of replevin, 1, 823
 Joinder of fraud and breach of warranty, 1, 859
 Legal conclusions, 1, 806
 Answers in equity pleading, 1, 883
 Conclusive answer, 1, 914
 Appeal bonds and undertakings, 1, 1018
 Arrest in civil cases, 8, 589
 Agents, factors, or brokers, 8, 592
 Attorneys, 8, 595
 Avoiding debt honestly contracted, 8, 590
 Bankers, 8, 595
 Claim of third person, 8, 594
 Concealment of insolvency, 8, 591
 Debt contracted in another state, 8, 591
 Del credere commission, 8, 594
 Fraud in contracting or avoiding payment of debt, 8, 589
 Fraud in fiduciary capacity, 8, 592
 Fraud of agent, 8, 592
 Fraud of copartner, 8, 592
 Public officers, 8, 595
 Assumpsit, 2, 1023
 Attachment, 3, 55
 Audita querela, 3, 115

FRAUD, *cont'd.*

- Awards, 3, 145
 - Setting aside award, 3, 154
- Bonds, 3, 666
- Burglary, 3, 756
- By whom alleged, 9, 681
- Conspiracy, see CONSPIRACY.
- Corporations:
 - Joinder of parties, 9, 683
- Covenant:
 - Plea, 5, 384
- Creditors' bills, see CREDITORS' BILLS.
- Criminal procedure:
 - Particularity required in alleging, 9, 691, 694
- Deceit, see FALSE REPRESENTATIONS AND DECEIT.
- Declaration or complaint, 4, 618
- Decrees:
 - Particularity in alleging in proceedings to set aside judgments or decrees, 9, 691
- Defaults (see DEFAULTS):
 - Admissions, 6, 120
 - Application for relief, 6, 167, 175
 - Relief in equity, 6, 214
 - Fraud or laches of party seeking relief, 6, 216
 - How pleaded, 6, 216
 - In case where personal service is had, 6, 215
 - In general, 6, 214
 - What constitutes fraud, 6, 216
 - Where service was by publication, 6, 216
- Definiteness and certainty in pleadings, 6, 262; 9, 686
- Demurrers in chancery:
 - Where relief sought is based on fraud, 6, 404
- Denial of fraud in equity, 9, 685
- Detinue (see DETINUE), 6, 658
- Directing verdict, 6, 705
- Discovery, 9, 680
- Divorce (see DIVORCE):
 - Allegations, 7, 145
 - Applicant, 7, 144
 - Collateral attack, 7, 146
 - Defenses, 7, 146
 - Effect of vacating decree, 7, 147
 - Necessary parties, 7, 146
 - Permanent alimony instead of vacating decree, 7, 147
 - Proceedings to vacate decrees obtained by fraud, 7, 144
 - Showing defense, 7, 146
- Election of remedies (see ELECTION OF REMEDIES):
 - Sale induced by fraud, 7, 363
- Elections (see ELECTIONS):
 - Frauds of election officers, 7, 406
 - Fraudulent registration, 7, 403

FRAUD, *cont'd.*

- Elections, *cont'd.*
 - Petition, complaint, or notice, 7, 382
- Eminent domain, 7, 610
- Equity (see *infra*, Jurisdiction at law and in equity):
 - Denial of fraud, 9, 685
- Examination of witnesses:
 - Cross-examination of party charged with fraud, 9, 600
- Executions against the body and arrest in civil cases:
 - Moving papers, 8, 603
 - Second arrest, 8, 621
- Factors and brokers:
 - Actions against brokers for fraud or negligence, 8, 839
- False personation, see FALSE PERSONATION.
- False pretenses, see FALSE PRETENSES.
- False representations, see FALSE REPRESENTATIONS AND DECEIT.
- Forgery, see FORGERY.
- How pleaded, 9, 684
- Injunctions:
 - Participation in fraud, defendant, 10, 917
- Injury, allegation of, 9, 696
- Insufficiency of allegation, 9, 697
- Intent, allegation of, 9, 696
- Issues to the jury, 11, 645
 - Framing the issue, 11, 670
- Joinder of parties, 9, 682; 15, 542
 - Corporation, 9, 683
 - Defendants, 9, 682
 - Parties interested, 9, 684
- Judgments, 9, 682
 - Equitable relief against judgments, 11, 1180
 - Acts and representations of creditors, 11, 1181
 - Breach of agreements, 11, 1182
 - General allegations, 11, 1180
 - In general, 11, 1180
 - Perjury, 11, 1183
 - Sufficiency of averments, 11, 1181
 - Particularity in alleging in proceedings to set aside judgments or decrees, 9, 691
 - Plea of fraud in actions on judgments, 11, 1166
- Jurisdiction at law and in equity, (see JURISDICTION), 9, 676
 - Discovery, 9, 680
 - Extension of jurisdiction, 9, 680
 - In general, 9, 676
 - Patent for land, 9, 678
 - Proper forum, 9, 678
 - Remedy at law inadequate, 9, 678

FRAUD, *cont'd.*

- Jurisdiction at law and in equity, *con.*
 - Where fraud relates to obtaining of will, 9, 680
- Laches*, see LACHES.
- Legal conclusions, 12, 1041
- Limitations (see LIMITATIONS):
 - Particularity in alleging fraud 9, 692
- Lost instruments and records:
 - Jurisdiction in equity, 13, 356
- Mails*, see POST OFFICES.
- Marriage (annulment):
 - Allegations of fraud, 13, 876
- Misrepresentations*, see FALSE REPRESENTATIONS AND DECEIT.
- Necessity for alleging fraud, 9, 684
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- Particularity required in alleging, 9, 686
 - Allegations upon information and belief, 9, 694
 - Criminal cases, 9, 691
 - Facts must be stated, 9, 686
 - Facts unknown to party, 9, 690
 - Fiduciary relation, 9, 690
 - In avoiding the bar of the statute of limitations, 9, 692
 - In general, 9, 686
 - Order for arrest, 9, 691
 - Proceedings to set aside judgment or decree 9, 691
 - Where fraud relates to obtaining of instrument, 9, 692
- Parties injured, 9, 681
- Parties interested:
 - Joinder of parties, 9, 684
- Partnership*, see PARTNERSHIP
- Poor debtor acts*, see POOR DEBTOR ACTS.
- Post offices*, see POST OFFICES.
- Probate and contest of wills (see PROBATE AND CONTEST OF WILLS):
 - Averment of fraud, 16, 1022
- References, 17, 1004
- Rehearing*, see REHEARING.
- Release:
 - Collusion, 18, 94, 93
 - Procurement of release by fraud, 18, 95
 - Questions for jury, 18, 98
- Remedy at law, 9, 678
- Replevin, 18, 543, 566
- Representation*, see FALSE REPRESENTATIONS AND DECEIT.
- Rescission, cancellation, and reformation of contracts*, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
- Review, 18, 1005
- Sales*, see SALES.

FRAUD, *cont'd.*

- Set-off, recoupment, and counterclaim:
 - Averment of fraud, 19, 764
 - Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.
 - Splitting causes of action, 1, 158, 160, 162
 - Stipulations, 20, 663
 - Stock and stockholders*, see STOCK AND STOCKHOLDERS.
 - Supersedeas and stay of proceedings, 20, 1262
 - Survival of actions*, see SURVIVAL OF ACTIONS.
 - Trade-marks and trade names, 21, 760
 - Trover and conversion, 21, 1087
 - Vendor and purchaser*, see VENDOR AND PURCHASER.
 - Vendor's liens, 22, 733
 - Wills:
 - Jurisdiction, 9, 680
- FRAUDS, STATUTE OF, 9, 699**
- Amendments, 1, 497
 - Answer*, see *infra*, How the defense is made.
 - Answers in code pleading, 1, 837, 847
 - General denials, 1, 827
 - Assumpsit, 9, 699
 - Common counts where noncompliance with statute does not appear upon face of pleading, 9, 711
 - Declaration and complaint, 4, 615; 9, 699
 - Declaring on or pleading contract within the statute, 9, 699
 - Compliance with statute, 9, 700
 - Contract set up by defendant, 9, 702
 - Special or general assumpsit, 9, 699
 - Defense*, see *infra*, How the defense is made.
 - Demurrer:
 - Where noncompliance with statute appears upon face of pleading, 9, 704
 - Where noncompliance with statute does not appear upon face of pleading, 9, 708
 - Demurrers in chancery, 6, 406
 - Exceptions and objections, 8, 210
 - Foreclosure of mortgages:
 - Bidding, 9, 521
 - How the defense is made, 9, 704
 - Availability of statute where contract is admitted in plea or answer, 9, 712
 - Common counts, 9, 711
 - Demurrer, 9, 708

FRAUDS, STATUTE OF, *cont'd.*How the defense is made, *cont'd.*

Form of plea or answer, 9, 713

General denial of contract, 9, 709

Pleading statute where contract is admitted in plea or answer, 9, 713

Statute pleaded specially, 9, 705

Where no contract is alleged, 9, 712

Where noncompliance with statute appears upon face of pleading, 9, 705

Demurrer, 9, 704

Where matter avoiding the bar of the statute is alleged, 9, 705

Where noncompliance with statute does not appear upon the face of the pleading, 9, 705

Where the contract is admitted in plea or answer, 9, 712

Where the contract is void, not voidable, 9, 712

Pleas (see *infra*, How the defense is made), 9, 702

Pleas in equity, 16, 600

Recovery under voidable contract, 9, 717

Rescission, cancellation, and reformation of contracts, 18, 773

Sales, see **SALES**.

Specific performance, 20, 446

Vendor and purchaser, 22, 673

Waiver of the defense, 9, 715

Defense waived unless pleaded, 9, 716

Enforcement of the contract, 9, 717

In general, 9, 715

Where contract is admitted, 9, 716

Where contract is denied, 9, 717

Who may set up the statute, 9, 703

FRAUDULENT ASSIGNMENTS:*Alimonv*, 1, 445**FRAUDULENT CONVEYANCES**(see **CREDITORS' BILLS**):

Assignment for benefit of creditors:

Actions to set aside prior fraudulent conveyances, 2, 879

At common law, 2, 879

By statute, 2, 881

Equitable action to set aside conveyance, 2, 880

Exhaustion of legal remedies, 2, 880

Bills of particulars, 3, 547

Receivers, 17, 816

Winding up corporations, 22, 1243

FRAUDULENT REPRESENTATIONS, see FALSE REPRESENTATIONS AND DECEIT.**FREEHOLD:**

Appeals, 2, 47

FREEHOLDERS

Eminent domain:

Commissioners, 7, 559

Juries, 7, 551

FREIGHT, see CARRIERS.**FRIENDLY SUITS, 9, 719**See **AGREED CASE**.

Agreement to enter, 9, 720

Appeals, 9, 732

Arbitration, 9, 719

Attorneys, 9, 721

Cause of action, 9, 721

Character of action, 9, 720

Contempt, 9, 720

Entry of judgment, 9, 722

Fictitious actions, 9, 720

Necessity for pleadings, 9, 721

Necessity for writ, 9, 721

FRIEND OF THE COURT, 9, 723

Appeals, 2, 159

Arguments of counsel, 2, 758

Definition, 2, 758

How far recognized, 2, 759

Counsel for deceased party, 9, 726

Definition, 9, 723

Exception by party's attorney as *amicus curiæ*, 9, 726

Exceptions and objections, 8, 166

Executors and administrators:

Unauthorized letters of administration, 9, 724

Indictment:

Vicious indictment, 9, 724

Infants, 10, 590

Instances, 9, 724

Limitation of powers, 9, 725

Office, 9, 723

Powers, 9, 723

Setting aside verdict, 9, 725

Specific instances, 9, 724

Want of prosecution, 9, 724

FRIVOLOUS APPEAL:

Appeals, 2, 363

FRIVOLOUS DEMURRER, see DEMURRERS.**FRIVOLOUS PLEADINGS, see SHAM AND FRIVOLOUS PLEADINGS.****FUGITIVE FROM JUSTICE, see EXTRADITION.****FUNDS AND DEPOSITS IN COURT, 9, 727**

Admission, 9, 733

Action as to covenant, 9, 733

Action of assumpsit, 9, 733

Action on special contract, 9, 733

Actions on insurance policies, 9, 734

Common counts, 9, 735

Effect as an admission, 9, 733

FUNDS AND DEPOSITS IN COURT, *cont'd.*

Admission, *cont'd.*

Payment into court of equity on admission, 9, 740

Admission on affidavit, 9, 741

Motion made after decree, 9, 741

Of defendant's liability to pay, 9, 740

Of plaintiff's title, 9, 741

Statute of limitations, 9, 734

Affidavit of title, 9, 749

Attorneys:

Payment to solicitor, 9, 754

Chancery, see *infra*, Equity.

Clerks, 9, 736

Authority to receive, 9, 736

Money paid to clerk, 9, 736

Proceedings to recover, 9, 737

Codes, 9, 759

Payment into court, 9, 759

Payment out of court, 9, 760

Common law, see *infra*, Payment into court.

Costs:

Effect as to costs, 9, 731

In general, 9, 731

Payment out of court of equity, 9, 758

Payment to plaintiff, 9, 733

Where defendant proceeds, 9, 731

Discharge of mechanic's lien by payment of money into court, 13, 1020

Equity (see *infra*, Payment into court):

Payment out of court, 9, 748

Advancing part of fund to carry on litigation, 9, 757

Costs, 9, 759

In general, 9, 748

Order, 9, 748

Affidavit of title, 9, 749

Form of order, 9, 751

How obtained, 9, 748

In general, 9, 748

Insertion, 9, 752

Notice of petition or motion, 9, 750

Order made after abatement, 9, 753

Parties before the court, 9, 751

Payment to one of several, 9, 751

Prospective orders, 9, 752

Stay of order pending appeal, 9, 753

Successive life estates, 9, 752

When notice must be given, 9, 750

FUNDS AND DEPOSITS IN COURT, *cont'd.*

Equity, *cont'd.*

Payment out of court, *cont'd.*

Payment to a party, 9, 754

Payment to person not a party, 9, 753

Payment to whom, 9, 753

Payment under power of attorney, 9, 756

Payment without requiring letters of administration, 9, 756

Upon the contingency of a woman having issue, 9, 757

Executors and administrators, 9, 743

Payment out of court without requiring letters of administration, 9, 756

Payment to personal representative, 9, 755

Interpleader, 11, 470

Justices, 9, 731

Limitation of actions, 9, 734

Ne exeat, 14, 327

Notice of petition or motion, 9, 750

Orders, see *infra*, Equity.

Parties before the court, 9, 751

Payment into court:

Common law, 9, 728

Authority of clerk to receive, 9, 736

Effect as an admission, 9, 733

Effect as to costs, 9, 731

Effect of, in general, 9, 729

In general, 9, 728

In what actions allowed, 9, 729

Justice's court, 9, 731

Money paid to clerk, 9, 736

Proceedings to recover from clerk, 9, 737

When paid in, 9, 729

Costs, 16, 226

Costs accruing before payment into court, 16, 226

Costs subsequently accruing to payment into court, 16, 228

Set up in plea, 16, 228

Equity, 9, 738

Admission, 9, 740

Admission of defendant's liability to pay, 9, 740

Admission of plaintiff's title, 9, 741

Admission on affidavit, 9, 741

Executors, 9, 743

Fiduciary debts outstanding, 9, 744

Foundation for the order, 9, 738

FUNDS AND DEPOSITS IN FUNDS AND DEPOSITS IN COURT, *cont'd.***Payment into court, *cont'd.*****Equity, *cont'd.***

In case of stakeholders, 9, 748

In general, 9, 738

Injudicious investments, 9, 744

Master's report, 9, 742

Motion founded on admission after decree, 9, 742

Motion made after decree, 9, 742

No case of vendor and purchaser, 9, 745

On staying proceedings at law, 9, 747

Parties before the court, 9, 739

Payment by the party seeking relief, 9, 748

Suits by purchaser, 9, 747

Suits by vendor, 9, 745

Trustees, 9, 743

When the order will be made, 9, 739

Who may apply for order, 9, 739

Plea, 9, 737

Under the code, 9, 759

Payment out of court, see infra, Equity.

Petitions, 16, 504

By a stranger, 16, 505

Contents of petition, 16, 516

Examples, 16, 504, 505

Funds in the hands of a receiver, 16, 505

To affect a fund in court, 16, 504

Pleas, 9, 737

Payment into court, 9, 737

Power of attorney, 9, 756

Sheriff's sales, 20, 229

Specific performance, 20, 476

Stakeholders, 9, 748

Stay of order pending appeal, 9, 753

Supersedeas and stay of proceedings, 9, 747

Decree or judgment directing payment of fund in court, 20, 1221

Surplus money, 21, 221

Tender, 21, 553, 554, 571

Acceptance and withdrawal of money paid into court, 21, 580

Withdrawal by opposite party, 21, 581

Withdrawal of party making payment, 21, 580

Amount of payment, 21, 578

COURT, *cont'd.***Tender, *cont'd.***

Costs pending failure to pay money into court, 21, 596

Effect of tender and payment into court, 21, 582

Admission of liability, 21, 582

Effect on right of appeal, 21, 585

Necessity of order authorizing payment into court, 21, 580

Necessity of payment into court, 21, 571

Contracts of pledge, 21, 574

Effect of failure to pay into court, 21, 573

In general, 21, 571

Justice's court, 21, 572

Pleas of readiness to pay, 21, 573

Ponderous articles, 21, 573

Profert of deed, 21, 577

Rule in equity, 21, 575

Tender pending suit, 21, 572

Where tender operates to discharge lien, 21, 573

Necessity to keep money intact pending payment into court, 21, 579

Payment into court as a defense, 21, 565

Time of payment, 21, 578

To what court or officer payment should be made, 21, 577

Waiver of payment into court, 21, 580

Trusts and trustees (see TRUSTS AND TRUSTEES), 9, 743

Usury:

Payment into court in accordance with tender, 22, 476

Vendor and purchaser, 9, 745

GAMBLING, see GAMING.**GAMBLING HOUSES, see DISORDERLY HOUSES; GAMING.****GAME AND GAME LAWS, 9, 762**

See FISH AND FISHERIES.

Actions, 9, 764

Complaint, 9, 762

Defendant armed, 9, 763

Enclosed land, 9, 763

Form of indictment, 9, 762

Indictment, 9, 762

Joinder of counts and causes, 9, 764

Penalty, 9, 763

Trial, 9, 764

Verdict, 9, 764

Who may institute proceedings, 9, 762

GAMING, 9, 765

See DISORDERLY HOUSES.

GAMING, *cont'd.*

- Betting at gaming table, 9, 770
- Betting on horse race, 9, 801
- Billiards:
 - Permitting minors to play billiards, 9, 799
- Cards, 9, 775, 779, 782
- Chance, 9, 781
- Common gambler, 9, 800
- Definition, 9, 766
- Description of device, 9, 782
 - Generally, 9, 782
 - Statutory name, 9, 782
 - Where the device is not specifically named in the statute, 9, 783
- Description of game, 9, 778
 - Examples, 9, 778, 782
 - Game of chance, 9, 781
 - Generally, 9, 778
 - Name of game, 9, 779
 - Statutory name, 9, 780
- Description of wager, 9, 783
 - Amount, 9, 784
 - Generally, 9, 783
 - Money lost or won, 9, 784
 - Needless allegations, 9, 784
 - Variance, 9, 796
- Elections:
 - Betting on elections, 7, 404
- Faro, 9, 780, 782
- Following language of statute, 9, 789
 - Exact language, 9, 790
 - Generally, 9, 789
 - Negating exception in statute, 9, 791
- Gambling houses, see infra, Keeping gambling house.*
- Game of chance, 9, 781
- Horse races:
 - Betting on horse race, 9, 801
- Indictment, 9, 768
 - Betting at gaming table, 9, 770
 - Game played, 9, 772
 - Generally, 9, 768, 769
 - Information or indictment, 9, 767
 - Joint indictment, 9, 768
 - Keeping gambling house, 9, 772
 - Actual gambling, 9, 773
 - Averment of guilty knowledge, 9, 774
 - Descriptions, 9, 773
 - Feloniously, 9, 774
 - Gambling permitted, 9, 773
 - Generally, 9, 772
 - Needless allegations, 9, 773
 - Persons resorting, 9, 773
 - Unlawfully, 9, 774
 - Keeping gaming table, 9, 770
 - Game played, 9, 772
 - Generally, 9, 770
 - Needless allegations, 9, 771
 - Place of keeping, 9, 772
 - Purpose of gaming, 9, 771
 - Knowledge, 9, 774
 - Landlord and tenant:
 - Permitting gaming on premises, 9, 774
 - Monte, 9, 781
 - Name of game, 9, 779
 - Names of persons playing, 9, 776
 - By statute, 9, 777
 - Generally, 9, 776
 - Place, 9, 785
 - Alleging place generally, 9, 785
 - Character of the place at the time, 9, 786

GAMING, *cont'd.*

- Indictment, *cont'd.*
 - Needless allegations, 9, 771
 - Permitting gaming on premises, 9, 774
 - Generally, 9, 774
 - Renting house for gaming purposes, 9, 775
 - Person exhibiting table, 9, 772
 - Place of keeping, 9, 772
 - Purpose of gaming, 9, 771
 - Several betting, 9, 770
 - Statutes, 9, 769
- Infants:
 - Permitting minors to play billiards, 9, 799
- Information:
 - Information or indictment, 9, 767
- Intent, 9, 774
- Joinder of counts and causes, 9, 791
- Charging specific offenses, 9, 793
- Election of count by prosecution, 9, 792
- Generally, 9, 791
- Particularity required, 9, 792
- Joinder of parties, 9, 768
- Joint indictment, 9, 768
- Jurisdiction, 9, 766
 - Courts of general jurisdiction, 9, 767
 - In general, 9, 766
 - Municipal courts, 9, 766
- Keeping gambling house, 9, 772
 - Actual gambling, 9, 773
 - Averment of guilty knowledge, 9, 774
 - Descriptions, 9, 773
 - Feloniously, 9, 774
 - Gambling permitted, 9, 773
 - Generally, 9, 772
 - Names of persons, 9, 776
 - Needless allegations, 9, 773
 - Persons resorting, 9, 773
 - Unlawfully, 9, 774
- Keeping gaming table, 9, 770
 - Game played, 9, 772
 - Generally, 9, 770
 - Needless allegations, 9, 771
 - Place of keeping, 9, 772
 - Purpose of gaming, 9, 771
- Knowledge, 9, 774
- Landlord and tenant:
 - Permitting gaming on premises, 9, 774
- Monte, 9, 781
- Name of game, 9, 779
- Names of persons playing, 9, 776
 - By statute, 9, 777
 - Generally, 9, 776
- Place, 9, 785
 - Alleging place generally, 9, 785
 - Character of the place at the time, 9, 786

GAMING, *cont'd.***Place, *cont'd.***

- Description of place, 9, 789
- Needless allegations, 9, 789
- Place named in statute, 9, 787
- Publicity, 9, 786
- Questions of law and fact, 9, 788
- Room connected with public place, 9, 788
- Variance, 9, 797
- Poker, 9, 779, 781
- Pool rooms, 9, 802
- Public place, 9, 786
- Renting house for gaming purposes, 9, 775

Seizure:

- Destruction of gaming instruments, 9, 802

Seizure and destruction of gaming instruments, 9, 802**Statutes:**

- Following language of statute, 9, 789

Sunday, 9, 799**Variance, 9, 794**

- Common gambler, 9, 801
- Description of wager, 9, 796
- In general, 9, 794
- Matters of description, 9, 799
- Persons playing, 9, 795
- Place, 9, 797

GARNISHMENT, 9, 805**See ATTACHMENT; CREDITORS' BILLS; EQUITABLE ATTACHMENT; SUPPLEMENTARY PROCEEDINGS.****Admiralty, 1, 259****Admissions, 9, 850****Affidavit, 9, 816**

- Agency, 9, 817
- Alleging capacity of affiant, 9, 817
- Attorney, 9, 817
- Averments, 9, 819
- Before whom made, 9, 817
- By whom made, 9, 817
- Certainty, 9, 818
- Disjunctive affidavit, 9, 819
- Form, 9, 818
- In aid of execution, 9, 820
- In general, 9, 816
- Jurisdictional facts, 9, 819
- Separate affidavit, 9, 817
- Statement of plaintiff's claim, 9, 819

Agency (see *infra*, Corporations):**Affidavit, 9, 817****Amendments:**

- Answer, 9, 836
 - Answer technically defective, 9, 836
 - Evasive answers, 9, 837
 - Unavoidable mistake, 9, 827
- Records, 9, 873
- Return, 9, 829

GARNISHMENT, *cont'd.***Amount of claim:****Writ, 9, 822****Another suit pending:**

- Continuance, 1, 767
- Garnishments in foreign jurisdictions, 1, 765
- Identity of parties, 1, 760
- Stay of proceedings, 1, 770

Answer, 9, 829

- Amendment, 9, 836
- Answer must cover entire indebtedness, 9, 833
- Answer must state facts, 9, 833
- Assignment, 9, 836
- Categorical answer, 9, 833
- Certainty and sufficiency of the answer, 9, 832
- Defenses, 9, 834
- Denial of truth of answer, 9, 844
- Disclosure, 9, 837
- Evasive answers not amendable, 9, 837
- Exemptions of the defendant, 9, 834
- Form and requisites, 9, 831
- General denial, 9, 833
- Information and belief, 9, 833
- In general, 9, 829
- Insufficient answer, 9, 842
- May or may not be a pleading, 9, 829

Oath, 9, 831**Oath by corporation, 9, 832****Pleading any defense available against defendant, 9, 835****Pleading to the jurisdiction, 9, 834****Prior garnishment, 9, 836****Protecting creditor, 9, 834****Reasonable notice, 9, 831****Rectifying unavoidable mistakes, 9, 837****Set-off, 9, 835****Statutory time of filing, 9, 830****Subsequent pleadings, 9, 842****Supplemental complaint, 9, 845****Time for pleading to answer, 9, 846****Time of filing, 9, 830****Who must answer, 9, 831****Writing, 9, 831****Answer must state facts, 9, 833****Appeals, 9, 866****Action upon record in appellate court, 9, 874****Amendment and correction of record, 9, 873****Answer of garnishee, 9, 873****Appealable judgments or orders, 9, 867****Cases in which appeal will lie, 9, 868**

GARNISHMENT, *cont'd.***Appeals, *cont'd.***

- Certiorari, 9, 869, 875
- Claimant, 9, 870
- Construction of record, 9, 873
- Contents of record, 9, 872
- Effect of appeal of principal action by defendant, 9, 875
- Effect of appeal of principal action by plaintiff, 9, 876
- Errors not appearing upon record, 9, 872
- Garnishee, 9, 870
- Judgment in main action, 9, 866
- Necessity for exceptions, 9, 871
- Right of appeal, 9, 866
- What errors considered on appeal, 9, 870
- Who may appeal, 9, 869

Appearances, 2, 612

- Effect of defendant's appearance in garnishment proceedings, 9, 811
- Effect of defendant's appearance in principal suit, 9, 810

Assignments:

- Debts assigned, 9, 836

Attorneys:

- Affidavit, 9, 817

Bond, 9, 816

- Conditions, 9, 816
- In general, 9, 816

Certiorari, 9, 869, 875**Change of venue:**

- Garnishee, 4, 389

Claimants, 9, 838

- Claimant to be made party, 9, 838
- Disclosure by garnishee, 9, 839
- Garnishee may produce claimant, 9, 839
- In general, 9, 838
- Issue and trial, 9, 841
- Judgment, 9, 842
- Plaintiff showing title, 9, 841
- Pleading, 9, 840
- Procedure to be strictly followed, 9, 840
- Right to appear statutory, 9, 838

Contempt:

- Imprisonment for contempt, 9, 853

Corporations:

- Named in writ, 9, 822
- Oath, 9, 831
- Return showing service on proper agent, 9, 828
- Service of process, 9, 824

Costs, 5, 156; 9, 858

- Amount, 9, 863
- Appeal, 9, 368
- Claimant's costs, 9, 865
- Counsel fees, 9, 864

GARNISHMENT, *cont'd.***Costs, *cont'd.***

- Dissolution of proceedings, 9, 863
- Each for himself, 9, 860
- Errors and irregularities in main proceeding, 9, 862
- Garnishee's liability for, 9, 858
- How taxed, 9, 863
- Indebtedness larger than admitted, 9, 859
- Judgment affecting another party, 9, 861
- Judgment by default, 9, 865
- Liability for claimant's costs, 9, 865
- Plaintiff, 9, 865
- Reasonable expenses, 9, 864
- Right of garnishee to costs, 9, 862
- Right to claim costs, 9, 866
- Taxation, 9, 863
- Unnecessary litigation, 9, 859
- When taxed, 9, 864
- Where exempt property is garnished, 9, 861
- Who liable for, 9, 865

Courts (see *infra*, Jurisdiction):

- From what court writ issues, 9, 813

Creditors' bills, 5, 394

- Ouster of equitable jurisdiction, 5, 430

Death:

- Death of defendant, 5, 832

Defaults:

- Admissions, 6, 121
- Amount of damages, 6, 130
- Judgment against garnishee, 6, 14

Docket, 9, 813

- Equitable attachment (see EQUITABLE ATTACHMENT), 7, 788

Exceptions and objections, 9, 870

- Errors apparent in the record, 9, 872
- Necessity for exceptions, 9, 870
- What errors considered on appeal, 9, 870

Execution:

- Affidavit in aid of execution, 9, 820
- Judgment, 9, 853

Exemption:

- Answer setting forth exemptions, 9, 834
- Cost where exempt property is garnished, 9, 861

Following statute, 9, 827

- Writ, 9, 821

Garnishee.

- Description in writ, 9, 821
- Information and belief, 9, 833

GARNISHMENT, *cont'd.*

- Interrogatories, 9, 820
- Filing and service, 9, 821
- Form, 9, 820
- In general, 9, 820
- Issues to the jury, 11, 633
- Joinder of parties:
 - Joinder of defendants, 9, 815
- Judgment (see *infra*, Appeals), 9, 848
- Actions on judgments, 11, 1114
- Amount of judgment, 9, 851
- Execution, 9, 853
- Form, 9, 852
- Garnishee not a party to the suit, 9, 849
- In general, 9, 848
- Notice to show cause, 9, 850
- Personal judgment, 9, 848
- Protecting garnishee, 9, 848
- Recitals, 9, 852
- Stay of execution, 9, 849
- Subsequent to judgment in principal suit, 9, 849
- When to be rendered, 9, 849
- Jurisdiction, 9, 809
- Answer of garnishee, 9, 834
- Averment of jurisdictional facts, 9, 819
- Court must have jurisdiction of main action, 9, 810
- Dependent upon jurisdiction of principal case, 9, 810
- Effect of defendant's appearance in garnishment proceedings, 9, 810
- From what court writ issues, 9, 813
- Generally, 9, 809
- Incorporeal property garnished, 9, 812
- Jurisdiction of the property, 9, 811
- Jurisdiction over garnishee, 9, 811
- Objection to jurisdiction, 9, 813
- Pleading to the jurisdiction, 9, 834
- Where or how to bring suit, 9, 813
- Levy, 9, 826
- Liens:
 - Where plaintiff acquires, 9, 808
- Lis pendens*, see SUPERSEDEAS AND STAY OF PROCEEDINGS.
- Mandamus, 13, 597
- Delivery of attached property, 13, 599
- To appear and answer, 13, 598
- To grant new trial, 13, 597
- To pay over proceeds, 13, 598
- To quash proceedings, 13, 597
- To reinstate proceedings, 13, 598
- To release attached property, 13, 598
- To set aside continuance, 13, 598

GARNISHMENT, *cont'd.*

- Nature, 9, 807, 809
- Notice to show cause, 9, 850
- Distinct admission unnecessary, 9, 851
- Final judgment where garnishee has been served with notice, 9, 850
- Unqualified admission, 9, 850
- Oath, 9, 831
- Orders:
 - Appeals, 9, 867
- Parties, 9, 814
- Joinder of defendants, 9, 815
- Where garnishment suit is ancillary, 9, 815
- Where garnishment suit is independent, 9, 814
- Partnership*, see PARTNERSHIP.
- Payment:
 - Evidence of garnishment under plea of payment, 16, 213
 - Payment as garnishee, 16, 196
- Proceeding *in rem*, 9, 808
- Process, 9, 807
- Records*, see *infra*, Appeals.
- Removal of causes (see REMOVAL OF CAUSES), 18, 177
- Residence of defendant, 9, 814
- Return, 9, 827
- Amendment, 9, 829
- Averments, 9, 827
- Schedule, 9, 829
- Sheriff's declarations, 9, 828
- Showing service on proper agent, 9, 828
- Where to be made, 9, 827
- Review, 18, 995
- Service of process:
 - Interrogatories, 9, 821
 - Writ, 9, 823
 - Corporations, 9, 824
 - In general, 9, 823
 - Parties jointly liable, 9, 824
 - Partner, 9, 824
 - Personal service, 9, 824
- Set-off, recoupment, and counterclaim, 9, 835
- Stay of proceedings*, see *infra*, Superseas and stay of proceedings.
- Stock and stockholders (see STOCK AND STOCKHOLDERS):
 - Enforcement of stockholders' liability, 20, 699
- Subsequent pleadings, 9, 842
- Denial of truth of answer, 9, 844
- Insufficiency of answer, 9, 842
- Supplemental complaint, 9, 845
- Time for pleading to answer, 9, 846
- Suit, 9, 807
- Governed by rules applicable to other suits, 9, 808

GARNISHMENT, *cont'd.*

Supersedeas and stay of proceedings:

Garnishment as a stay of other proceedings, 9, 854

Actions in foreign jurisdiction, 9, 856

Actions in same jurisdiction, 9, 855

Actions not barred, 9, 855

Effect upon prior suits, 9, 855

In general, 9, 854

Subsequent suits in foreign jurisdiction, 9, 857

Subsequent suits in same jurisdiction, 9, 856

Judgment with a stay of execution, 9, 849

Supplemental complaint, 9, 845

Time of filing, 9, 830

Time of issuance of writ, 9, 822

Trial, 9, 846

As in other courts, 9, 846

In general, 9, 846

Principal case to be tried first, 9, 847

When to be tried, 9, 847

United States courts, 9, 813, 814; 22, 297

Venue, 9, 813

Docket, 9, 813

From what court writ issues, 9, 813

Residence of defendant, 9, 814

Verdict, 9, 851

Writ, 9, 821

Amount of claim, 9, 822

Averments in return, 9, 827

Corporations, 9, 822

Describing garnishee, 9, 821

Execution, 9, 823

Following statute, 9, 821, 827

Form, 9, 821

Issuance, 9, 822

Levy, 9, 826

Parties jointly liable should be named, 9, 822

Personal service, 9, 824

Return, 9, 827

Service, 9, 823

Substance, 9, 821

Time of issuance, 9, 822

Who may issue, 9, 823

Writing, 9, 831

GAS AND GAS COMPANIES, 9, 878

Actions against gas companies, 9, 878

Actions by gas companies, 9, 878

Mandamus, 9, 878

GENERAL APPEARANCE, see APPEARANCES.**GENERAL ASSIGNMENT, see ASSIGNMENT FOR BENEFIT OF CREDITORS.****GENERAL AVERAGE, 9, 880**

Admiralty, 9, 880

GENERAL DEMURRER, see DEMURRERS.**GENERAL DENIAL (see ANSWERS):**

Usury, 22, 424

Vendor and purchaser:

Vendor's action for price, 22, 682

Work and labor, 22, 1371

GENERAL ISSUE, 9, 881

See ANSWERS IN CODE PLEADING; ARRAIGNMENT AND PLEA.

Admission, 9, 882

Assumpsit, 2, 1027

Special pleas amounting to the general issue, 2, 1033

Carriers, 3, 858

Covenant, 5, 377

Criminal cases, see ARRAIGNMENT AND PLEA.

Criminal procedure, 9, 882

Damages:

Mitigation of damages, 5, 776

Definition, 9, 882

Ejectment, see EJECTMENT.

Frivolous, 29

Insane persons, 10, 1216

Joint or several pleas, 16, 580

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.*Notice or brief statement of defense*, see NOTICE OR BRIEF STATEMENT OF DEFENSE.

Partnership:

Putting partnership in issue, 15, 930

Patents, see PATENTS.

Payment, 16, 168

Evidence of payment, 16, 172

Evidence of payment under general issue, 16, 171

Penalties and penal actions, 16, 290

Performance, 16, 312

Pleas amounting to general issue, 9, 883

Pleas at law, see PLEAS AT LAW.

Pleas not amounting to general issue, 9, 884

Premature suits:

Manner of raising objection, 16, 876

Quo warranto, 17, 472

Replevin, 18, 547

Sales, see SALES.

Set-off, recoupment, and counterclaim:

Admissibility of evidence of recoupment under general issue, 19, 744

Admissibility of evidence of set-off under general issue, 19, 740

Counterclaim, 19, 745

Sham and frivolous pleadings, 20, 29

Sheriffs and constables, 20, 151

Special pleas, 9, 883

GENERAL ISSUE, *cont'd.*

Surplusage, irrelevant or redundant matter, 21, 275, 302

Tender:

General issue and tender, 16, 571

Title, ownership, and possession, 21, 738

Traverse of confession and avoidance, see PLEAS AT LAW.

Trespass, see TRESPASS.

Trespass on the case, 21, 920

Trover and conversion, see TROVER AND CONVERSION.

Usages and customs, see USAGES AND CUSTOMS.

Usury, 22, 424, 426

Vendor and purchaser:

Vendor's action for price, 22, 682

When a proper pleading, 9, 882

Work and labor, 22, 1371

GENERAL TERM, see TERMS OF COURT.

GOOD FAITH:

Dismissal, 1, 396

GOODS SOLD AND DELIVERED

see ASSUMPSIT; SALES.

GOVERNMENT:

Escheat, see ESCHREAT.

Injunctions:

Bonds, 10, 1016

GOVERNOR:

Extradition, see EXTRADITION.

Injunctions, 10, 911

Prohibition, 16, 1108

GRAND JURIES, see INDICTMENTS.

Adjournments, 10, 383

Aliens, 10, 357

Amendments:

Return of venire facias, 10, 361

Appointment of foreman, 10, 378

In general, 10, 378

Record of appointment, 10, 378

Variance in record and indictment, 10, 379

Challenge, see *infra*, Exceptions and objections.

Charge to the grand jury, 10, 380

Colored persons, 10, 354

Concurrence in finding, 10, 400

Constitutional law:

Number of persons required to constitute a grand jury, 10, 370

Description of grand jury in indictment, 10, 428

Names, 10, 429

Number, 10, 429

Of the county, etc., 10, 428

Qualifications, 10, 429

Drawing, 10, 365

Evidence, 10, 395

Affidavit of grand juror, 10, 396

Incompetent witness, 10, 396

Legality, 10, 396

GRAND JURIES, *cont'd.*

Evidence, *cont'd.*

Minutes of evidence, 10, 401

Necessity of evidence, 10, 395

Presence or interference of others than grand jurors, 10, 398

Self-incriminating testimony, 10, 397

Sufficiency, 10, 395

Testimony on behalf of accused, 10, 396

Exceptions and objections, 8, 181; 10, 402

After verdict, 8, 182

Challenge, 10, 404

In general, 10, 402

Jury composed of too many or too few members, 8, 182

Manner of objecting, 10, 404

Motion for new trial, 8, 182, 183

Motion in arrest of judgment, 8, 183

Motion to quash indictment, 10, 405

Motion to quash venire, 10, 406

Plea in abatement or motion, 10, 404.

Proceedings before grand jury, 10, 409

Qualifications of grand jurors, 10, 407

Right to challenge and when to exercise it, 10, 408

To grand juries and grand jurors, 8, 181

Waiver by plea to the merits, 8, 182

Who may challenge, 10, 409

Excusing jurors, 10, 374

Exemption:

Distinction between disqualification and exemption, 10, 359

Foreman, see *infra*, Appointment of foreman; Indorsement of finding and signature of foreman.

Freeholder, 10, 356

Habeas corpus, 9, 1059

Matters affecting the grand jury, 9, 1059

Householder, 10, 356

Identity of jurors, 10, 369

Impaneling:

Caption and commencement, 10, 427

Indorsement of finding and signature of foreman, 10, 437

Finding upon part of one count, 10, 437

Necessity for the indorsement, 10, 437

Notice required under statute, 10, 437

GRAND JURIES, *cont'd.*

Indorsement of finding and signature of foreman, *cont'd.*

Signature of foreman, 10, 439

Signature usual and advisable, 10, 439

Substantial compliance with statute, 10, 440

Sufficiency of indorsement, 10, 440

Waiver of objection, 10, 439, 440

Information:

Relation of filing the information to sitting or action of grand jury, 10, 456

Initiating proceedings, 10, 390

Inquisitorial powers, 10, 391

Instructions:

Charge to the grand jury, 10, 380

Interest, 10, 357

"Jurors" for "grand jurors," 10, 422

Minutes of proceedings, 10, 401

Necessity of grand jury, 10, 353

New indictment, see *infra*, Second or new indictment.

Number from which jury chosen, 10, 367

Number necessary to be sworn (see *infra*, Supplying deficiency), 8, 132; 10, 369

At common law, 10, 369

Constitutional law, 10, 370

Construction of statutes, 10, 370

United States, 10, 370

Oath, 10, 379

Affirmation instead of oath, 10, 422

Form of the oath, 10, 380

Necessity of averment that presentment on oath, 10, 422

Necessity of oath, 10, 379

"Oaths" for "oath," 10, 422

Presentment on oath, 10, 422

Record, 10, 380

Witnesses, 10, 394

Objections, see *infra*, Exceptions and objections.

Officer in attendance, 10, 381

Personal knowledge of grand jurors, 10, 392

Powers and duties of grand jury, 10, 382

Adjournment, 10, 283

In general, 10, 382

Second or new indictment, 10, 385

Secrecy, 10, 387

Special term, 10, 384

Term of court, 10, 383

Term to which defendant is held, 10, 384

Precept, 10, 360

Prejudice, 10, 357

Index Pl. & Pr. — 28

GRAND JURIES, *cont'd.*

Preliminary examination, see PRELIMINARY EXAMINATION.

Presentment, 10, 350

Presumption or record evidence of legal organization, 10, 367

Proceedings by and before grand jury, 10, 390

Conduct of proceedings, 10, 393

Initiating proceedings, 10, 390

Inquisitorial powers, 10, 391

Privacy, 10, 393

Scope of inquiry, 10, 391

Testimony of others than grand jurors, 10, 392

Trial on presentment, 10, 392

Prosecuting attorney, 17, 9

Examination of witnesses, 10, 400

Initiating proceedings, 10, 300

Presence and interference of, 10, 399

Qualifications of grand jurors, 10, 354

Alienage, 10, 357

Consideration of various qualifications and disqualifications, 10, 356

Distinction between disqualification and exemption, 10, 359

Exceptions and objections, 8, 182; 10, 407

Former service as juror, 10, 357

Freeholder, 10, 356

Householder, 10, 356

Incompetency of one grand juror, 10, 355

Interest, 10, 357

Negroes, 10, 354

Prejudice, 10, 357

Prior opinion of guilt, 10, 358

Qualified as of what time, 10, 354

Relationship, 10, 357

Residence in county, 10, 355

Records:

Minutes of proceedings, 10, 401

Oath, 10, 380

Record of appointment of foreman, 10, 378

Relationship, 10, 357

Residence in county, 10, 355

Return of indictment by grand jury, 10, 409

Amending the record, 10, 413

By whom presented, 10, 410

Identity of indictment, 10, 412

Indorsement of filing, 10, 416

Nature of the offense stated in record, 10, 412

Necessity, 10, 409

Presence of jury in court, 10, 410

Presentment by foreman, 10, 411

Recording and filing, 10, 414

GRAND JURIES, *cont'd.*

Return of indictment by grand jury, *cont'd.*

Record of return, 10, 410

Separate record entry for each particular item, 10, 412

Sufficiency of indorsement, 10, 411

Return of list, 10, 364

Scope of inquiry, 10, 391

Seal to venire facias, 10, 361

Second or new indictment, 10, 385

After bill ignored, 10, 385

Necessity of disposition of first indictment, 10, 386

Pending another indictment, 10, 385

Recalling witnesses, 10, 395

Secrecy, 10, 387

Examination of grand jurors, 10, 387

Examination of jurors to support finding, 10, 387

How many concurred in finding, 10, 388

Impeachment of grand jury findings, 10, 387

In general, 10, 387

Irregularities, 10, 388, 389

Presence or interference of others than grand jurors 10, 398

Privacy in general, 10, 393

Private counsel, 10, 400

Proof of testimony before grand jury, 10, 389

Prosecuting attorney, 10, 399

Punishment for divulging proceedings, 10, 387

Stenographer, 10, 399

Selection:

Caption and commencement, 10, 427

Statute, 10, 365

Summoning and impaneling, 10, 359

Time for, 10, 366

Signature, *see infra*, Indorsement of finding and signature of foreman.

Signature to venire facias, 10, 362

Statutes relating to the organization, 10, 362

Drawing or selecting, 10, 365

Effect of statutes, 10, 362

In general, 10, 362

Return of list, 10, 364

Time for selecting and impaneling, 10, 366

Supplying deficiency, 10, 375

After quashal of venire or discharge of jury, 10, 377

Bystanders, 10, 376

In general, 10, 375

Special venire, 10, 377

GRAND JURIES, *cont'd.*

Supplying deficiency, *cont'd.*

Supplying from petit jurors, 10, 375

Term of court, 10, 383

Adjournment, 10, 383

Adjournment of term, 10, 383

Court specially convened, 10, 384

In general, 10, 383

Order of postponement, 10, 383

Special term, 10, 384

Term to which defendant is held, 10, 384

Time for selecting and impaneling, 10, 366

Venire facias, 10, 360, 361, 377

After quashal of venire or discharge of jury, 10, 377

Special venire, 10, 377

Supplying deficiency in number, 10, 377

Witnesses:

Examination of, by prosecuting attorney, 10, 400

Incompetent witness, 10, 396

List of witnesses, 10, 402

Refusal to testify, 10, 394

Subpoena of witnesses, 10, 393

Swearing witnesses, 10, 394

GRAVES:

Cemeteries, 3, 911

GUARANTY (see SURETYSHIP):

Action by guarantor against principal, 16, 957

Parties, 16, 957

Pleading, 16, 958

Action by surety against principal:

Demand, 16, 953

Election of remedies, 16, 953

Form of action, 15, 953

Notice, 16, 953

Action to enforce contract of guarantyship, 16, 939

Assumpsit, 16, 939

Debt, 16, 940

Declaration and complaint, see infra, Declaration and complaint.

Form of action, 16, 939

Judgment, 16, 951

Parties, see infra, Parties to action.

Pleading, 16, 943

Plea or answer, see infra, Plea or answer.

Questions for jury, 16, 950

Answer, see infra, Plea or answer.

Assumpsit:

Action to enforce contract of guarantyship, 16, 939

Complaint, see infra, Declaration and complaint.

GUARANTY, *cont'd.*

Consideration, 16, 944
Plea of no consideration, 16, 949

Debt:

Action to enforce contract of guarantyship, 16, 940

Declaration and complaint, 16, 943

Action by guarantor against principal, 16, 958

Allegation of consideration, 16, 944

Allegations of performance of conditions precedent, 16, 945

Alleging breach of guaranty, 16, 949

Averment that guaranty was in writing, 16, 945

Default of principal, 16, 948

Demand on principal obligor, 16, 946

Diligence in pursuing principal, 16, 947

Notice of acceptance, 16, 945

Notice of default of principal obligor, 16, 947

Setting out terms of contract, 16, 943

Defaults:

Declaration and complaint, 16, 948

Alleging default of principal obligor, 16, 948

Alleging notice of default of principal obligor, 16, 947

Demands:

Allegation of demand on principal obligor, 16, 946

Election of remedies:

Action by surety against principal, 16, 953

Foreclosure of mortgages:

Liability of guarantor of mortgage for deficiency judgments, 9, 481

Form of action, 16, 939

Action by surety against principal, 16, 953

Joinder of parties, 16, 942

Judgments, 16, 951

Negotiable guaranty:

Parties to actions to enforce, 16, 941

Negotiable instruments, see **NEGOTIABLE INSTRUMENTS**.

Parties to action:

Action by guarantor against principal, 16, 957

Action to enforce contract of guarantyship, 16, 940

Defendants, 16, 941

Joinder of principal obligor, 16, 942

Negotiable guaranty, 16, 941

GUARANTY, *cont'd.*

Parties to action, *cont'd.*

Action to enforce contract of guarantyship, *cont'd.*

Party who may enforce principal contract, 16, 941

Plaintiffs, 16, 940

Plaintiffs at common law, 16, 940

Plaintiffs by statute, 16, 940

Pleading, 16, 943

Plea or answer:

Action to enforce contract of guarantyship, 16, 949

Consideration, 16, 949

In general, 16, 949

No consideration, 16, 949

Special plea, 16, 950

Questions of law and fact, 16, 950

Writing, allegation of, 16, 945

GUARANTY COMPANIES:

Appeal bonds and undertakings, 1, 1003

Where statute requires sureties, 1, 1005

GUARDIAN AD LITEM, 10, 616

Actions on guardians' bonds, 9, 983

Admissions, 10, 675, 720

Admissions of guardians *ad litem* generally, 10, 675

Admitting adversary's case, 10, 675

Answer, 10, 723

Answer not binding on infant, 10, 691

Beneficial and prejudicial admissions distinguished, 10, 676

Effect of admission on guardian, 10, 675

In general, 10, 675

Affidavits, 10, 651

Allowances, see *infra*, Fees and allowances.

Answer, see *infra*, Defense and answer.

Appeals, 10, 628

Questions as to appointment of guardian *ad litem* on appeal, 10, 731

Taking the appeal, 10, 729

Appearances, 2, 671

Necessity of appearance of infant before appointment, 10, 654

Application and proceedings for appointment, 10, 649

Affidavit, 10, 651

Antagonistic positions, 10, 660

Appearance of infant in court, 10, 654

Appointment by commission, 10, 654

GUARDIAN AD LITEM, *cont'd.*

- Application and proceedings for appointment, *cont'd.*
 - Appointment by court of its own motion, 10, 653
 - Appointment of general or testamentary guardian, 10, 658
 - Appointment of "John Doe" is error, 10, 658
 - Appointment of nearest relative, 10, 658
 - Appointment on application of plaintiff, 10, 655
 - Appointment without application, 10, 653
 - Attorney, 10, 659
 - Bond, 10, 663
 - By what court, 10, 649
 - Consent of guardian to act, 10, 662
 - Considerations affecting choice of appointee, 10, 658
 - Consulting infant as to appointment, 10, 661
 - Court's duty to appoint, 10, 656
 - Defense by general guardian, 10, 665
 - Defense by natural guardian, 10, 665
 - Discontinuance where no guardian is appointed, 10, 656
 - Discretion of court, 10, 655
 - Effect of acting without appointment, 10, 664
 - Facts equivalent to appointment, 10, 664
 - Financial ability of appointee, 10, 659
 - In general, 10, 649
 - Nomination by adverse party, 10, 659
 - Notice of application, 10, 653
 - Oath, 10, 663
 - Officer of court, 10, 659
 - Ore tenus*, 10, 650
 - Person having adverse interests, 10, 660
 - Plaintiff's duty to see that guardian *ad litem* is appointed, 10, 656
 - Prayer in bill for appointment, 10, 651
 - Presumption of regularity of appointment, 10, 666
 - Presumption that guardian was appointed, 10, 658
 - Proof of infancy, 10, 654
 - Rule or order *nisi*, 10, 656
 - Service of order, 10, 657
 - Time of application of plaintiff, 10, 656
 - What petition should allege, 10, 651

GUARDIAN AD LITEM, *cont'd.*

- Application and proceedings for appointment, *cont'd.*
 - Who may apply, 10, 652
 - Who should be appointed, 10, 658
 - Writing, 10, 650
- Appointment (see *infra*, Application and proceedings for appointment; Effect of failure to appoint or of irregular appointment; Necessity and propriety of appointment; Power to appoint; Time of appointment):
 - Appointment by commissioners without service, 10, 649
 - Effect of acting without appointment, 10, 664
 - Facts equivalent to appointment, 10, 664
- Attorneys:
 - Appointment of attorney as guardian, 10, 659
 - Attorney's fees, 10, 686
 - Bankruptcy, 22, 353
 - Bonds, 10, 663
 - Collateral attack on judgment, 10, 631, 633
 - Appointment before service of process, 10, 644
- Commission (see *infra*, Fees and allowances):
 - Appointment by commission, 10, 654
- Commissioners:
 - Appointment by commissioners without service, 10, 649
 - Appointment of guardian *ad litem* by commissioners, 10, 610
- Compensation*, see *infra*, Fees and allowances.
- Confession of judgment, 10, 727
- Consent judgments, 10, 727
- Consent of guardian to act, 10, 662
 - Appointment appearing on record, 10, 662
 - How shown, 10, 662
 - In general 10, 662
- Costs, 5, 155
 - Taxing allowance as costs, 10, 686
- Courts:
 - Appellate court, 10, 681
 - Control of court, 10, 681
 - Control over guardian, 10, 682
 - Discretion of court, 10, 655
 - Duty of court to appoint, 10, 656, 681
 - Removal of guardian, 10, 683
- Deeds:
 - Execution of deeds, 10, 670
- Defaults, 10, 678, 724
 - Effect of defaults in general, 10, 678

GUARDIAN AD LITEM, *cont'd.*Defaults, *cont'd.*

On appeal, 10, 679

Protecting infant notwithstanding failure to plead, 10, 679

View that guardian's defaults prejudice infant, 10, 680

Defense and answer, 10, 671, 687

Answer must be filed by guardian, 10, 687

Answer necessary, 10, 671

Answer not binding on infant, 10, 691

Duty of guardian, 10, 688

Effect of a failure, 10, 672

Error not jurisdictional, 10, 672

Form, 10, 688

Formal answer, 10, 689

In general, 10, 671

Judgment where guardian fails to answer or defend, 10, 672

Manner of making, 10, 687

Necessary defense, 10, 671

Necessity of appointment of guardian, 10, 687

Plea of infancy, 10, 691

Report of inability to defend 10, 674

Sufficiency, 10, 688

Time of making, 10, 687

Verification, 10, 690

Vigorous and real defense, 10, 673

When defense in answer unnecessary, 10, 674

Definition, 10, 616

Discretion of court, 10, 655

Dismissal, discontinuance, and non-suit:

Failure to appoint, 10, 656

Effect of acting without appointment, 10, 664

Effect of failure to appoint or of irregular appointment, 10, 627

Arrest of judgment, 10, 629

Codefendants taking advantage of error, 10, 635

Collateral attack, 10, 631, 633

Dismissal of cause, 10, 633

Error in fact, 10, 630

Ignorance of infancy immaterial, 10, 630

In general, 10, 627

Injunction against judgment, 10, 633

Irregularities cured or waived, 10, 634

Judgment vacated on motion, 10, 630

Judgment voidable but not void, 630

Jurisdiction not affected, 10, 632

GUARDIAN AD LITEM, *cont'd.*Effect of failure to appoint or of irregular appointment, *cont'd.*

Objection raised on appeal, 10, 634

Only in direct proceeding, 10, 631

Partition suits, 10, 632

Party in fault takes advantage of error, 10, 635

Release of errors after majority, 10, 635

Special statutory proceedings, 10, 633

Subsequent appointment, 10, 634

Vacation at subsequent term, 10, 630

Whether reversible error, 10, 627

Who may take advantage of error, 10, 635

Writ of error, 10, 628

Writ of error *coram nobis* or *coram vobis*, 10, 629

Error, writ of, 10, 628

Fees and allowances, 10, 683

Attorney's fees, 10, 686

Making the allowance, 10, 683

Payment by plaintiff, 10, 685

Payment out of property protected, 10, 684

Reasonable allowance, 10, 683

Reimbursement for expenses, 10, 684

Several defendants, 10, 684

Taxation of charges, 10, 684

Taxing allowances as costs, 10, 686

What court, 10, 683

General duties of guardian, 10, 617

Guardians:

Appointment of general or testamentary guardian, 10, 658

Defense by general guardian equivalent to appointment as guardian *ad litem*, 10, 665Necessity of appointing guardian *ad litem* where there is a

general guardian, 10, 622

Appointment notwithstanding general guardian, 10, 623

General guardian adversely interested, 10, 624

General guardian also a party, 10, 622

In general, 10, 622

Making general guardian a party, 10, 624

States in which defense may be made by general guardian, 10, 622

Power to appoint in absence of general guardian, 10, 636

Power to appoint notwithstanding general guardian, 10, 636

GUARDIAN AD LITEM, *cont'd.*

- Insane persons, 10, 1230
 - Cases necessitating guardian *ad litem*, 10, 1230
 - Committee's interests conflict, 10, 1231
 - Defense of lunatic, 10, 1230
 - Determination of insanity before appointment, 10, 1232
 - Duty of court to appoint and effect of failure, 10, 1231
 - Where there is committee, 10, 1230
 - Where there is no committee, 10, 1230
 - Who appointed, 10, 1232
- Judgments (see *infra*, Collateral attack on judgment; Effect of failure to appoint or of irregular appointment):
 - Effect of failure of guardian to answer or defend, 10, 672
- Necessity and propriety of appointment, 10, 618
 - Appearance by next friend, 10, 622
 - General guardian adversely interested, 10, 624
 - Instances where necessary, 10, 620
 - Instances where unnecessary, 10, 621
 - No proceedings without guardian, 10, 620
 - Probate proceedings*, see *infra*, Probate and contest of wills.
 - Removal of disabilities, 10, 621
 - Statement of the rule, 10, 618
 - Statutory requirements, 10, 620
 - Suits in chancery, 10, 619
 - Where there is a general guardian, 10, 622
- Next friend (see NEXT FRIEND), 14, 997
 - Appearance by guardian or next friend, 10, 594
 - Guardian *ad litem* or next friend, 14, 1011
 - Infant may sue by guardian *ad litem* although there is a general guardian, 14, 1007
- Notice of application for appointment, 10, 653
- Oath, 10, 663
- Officer of court, 10, 617
- Orders:
 - Order of appointment, 10, 667
 - Directions as to service of order, 10, 668
 - Examples, 10, 667, 668
 - In general, 10, 667
 - Naming infants in order, 10, 668

GUARDIAN AD LITEM, *cont'd.*

- Parties, 10, 617
- Partition, 15, 783
- Petition for appointment*, see *infra*, Application and proceedings for appointment.
- Plaintiff:
 - Appointment on application of plaintiff in general, 10, 655
 - Duty of plaintiff to see that guardian is appointed, 10, 656
 - Payment of allowance, 10, 685
- Powers and duties of guardians *ad litem*, 10, 669
 - Admissions, 10, 675
 - Defense and answer, 10, 671
 - Effect of default, see *infra*, Defaults.
 - Execution of deeds, 10, 670
 - Nature of duties, 10, 669
 - Particular powers, 10, 676
 - Powers limited and strictly construed, 10, 669
 - Powers limited to claim set up, 10, 670
 - Powers limited to particular suit, 10, 670
 - Powers which the guardian has, 10, 676
 - Powers which the guardian has not, 10, 677
 - Waivers, 10, 675
- Power to appoint, 10, 635
 - After majority, 10, 638
 - Appearance of minor in court, 10, 637
 - By what court made, 10, 637
 - County judge, 10, 637
 - In absence of general guardian, 10, 636
 - Infant defendants, 10, 637
 - Infant plaintiffs, 10, 637
 - In general, 10, 635
 - Nonresident infants, 10, 637
 - Notwithstanding general guardian, 10, 636
 - Unknown infants, 10, 637
- Prayer in bill for appointment, 10, 651
- Presumption of regularity of appointment, 10, 666
 - Collateral proceedings, 10, 667
 - Direct proceeding, 10, 667
 - In general, 10, 666
- Presumptions:
 - Presumption that guardian was appointed, 10, 658
- Probate and contest of wills, 10, 625; 16, 1028
 - Administration sales, 10, 626
 - Appointment before service of process, 10, 647
 - Guardians' sales, 10, 627

GUARDIAN AD LITEM, *cont'd.*

- Probate and contest of wills, *cont'd.*
 - In general, 10, 625
 - Necessity of appointment, 10, 625
 - Probate of will, 10, 626
 - Settlement of decedent's estate, 10, 626
- Proceedings for appointment, see infra.*
- Application and proceedings for appointment.
- Purchaser at sale of infant's property, 10, 809
- Removal of guardian, 10, 683
- Sale of infant's real estate, 10, 765
 - Appointment of, 10, 765
 - Consideration governing appointment, 10, 766
 - Duties, 10, 766
 - In general, 10, 765
 - Statute providing for notice to ward, 10, 766
 - Whether necessary, 10, 765
- Security for costs, 19, 352
- Service of process (see *infra*, Time of appointment):
 - Order to infant, 10, 657
 - Service on guardian *ad litem*, 10, 668
- Settlement and accounting of guardian, 9, 964
- Settlement of decedents' estates, 19, 832
 - Distribution, 19, 1085
 - Objections to personal representative's account, 19, 1040
- Surrogate, see infra*, Probate and contest of wills.
- Termination of office, 10, 687
- Time of appointment, 10, 638
 - After judgment, 10, 639
 - Before or after return day, 10, 639
- Before service of process, 10, 639
 - Appointment by commissioners without service, 10, 649
 - Appointment for infant not a party, 10, 648
 - Collateral attack, 10, 644
 - Distinction between personal actions and actions *in rem*, 10, 646
 - Effect of subsequent service, 10, 648
 - Effect to render proceedings erroneous, 10, 640
 - Effect to render proceedings void, 10, 641
 - In general, 10, 639
 - North Carolina curative act, 10, 645
 - Probate proceedings, 10, 647
- In general, 10, 638

GUARDIAN AD LITEM, *cont'd.*

- Time of appointment, *cont'd.*
 - Nunc pro tunc*, 10, 639
 - On appeal from probate court, 10, 639
 - On rehearing, 10, 639
 - Pending proceedings, 10, 638
 - Waiver, 10, 675, 720
 - Waiver of service of process, 10, 613
 - Who may apply for appointment, 10, 652
 - Who should be appointed, 10, 658
 - Antagonistic positions, 10, 660
 - Appointment of nearest relative, 10, 658
 - Attorney or officer of court, 10, 659
 - Financial ability of appointee, 10, 659
 - General or testamentary guardian, 10, 658
 - In general, 10, 658
 - Nomination by adverse party, 10, 659
 - Person having adverse interests, 10, 660
 - Writing:
 - Application for appointment, 10, 650
- GUARDIANS, 9, 886**
- See **GUARDIAN AD LITEM; INFANTS.**
- Accounting and settlement, 9, 949
 - Action of account, 9, 961
 - Action on bond, 9, 961
 - Appeals, 9, 970
 - In general, 9, 970
 - Presumption in favor of correctness, 9, 972
 - Remanding cause for correction of errors, 9, 970
 - Trial *de novo*, 9, 971
 - What will be considered, 9, 971
 - When appeal lies, 9, 972
 - Costs, 9, 974
 - Against guardian, 9, 975
 - Against sureties, 9, 975
 - In favor of guardian, 9, 974
 - Equitable or legal proceedings, 9, 956
 - Equitable remedy for failure to account, 9, 961
 - Failure to account:
 - Declaration and complaint, 9, 987
 - Forms of procedure, 9, 956
 - Judgment or decree, 9, 968
 - Against whom, 9, 969
 - Enforcement, 9, 970
 - Guardian of several wards, 9, 970
 - In general, 9, 968
 - In whose favor, 9, 969

GUARDIANS, *cont'd.*Accounting and settlement, *cont'd.*

- Jurisdiction, 9, 949
 - Concurrent, 9, 955
 - County courts, 9, 953
 - Death of ward, 9, 951
 - Equitable jurisdiction, 9, 951
 - Extent of equitable jurisdiction, 9, 951
 - Extent of jurisdiction, 9, 953
 - In general, 9, 949
 - Majority of ward, 9, 953
 - Minority of ward, 9, 953
 - Ordinary, 9, 955
 - Probate courts, 9, 952
 - Statutory jurisdiction, 9, 952
 - Surrogate, 9, 953, 954
 - Whether statutory jurisdiction is concurrent or exclusive, 9, 955
- Nature of proceedings, 9, 956
- Notice of settlement, 9, 957
- Notice to guardian, 9, 957
- Notice to ward, 9, 958
- Parties, 9, 953
 - Guardian *ad litem* for infant ward, 9, 964
 - Infant ward suing by next friend, 9, 964
 - In general, 9, 963
 - Parties defendant, 9, 963
 - Parties plaintiff, 9, 963
- Plea or answer, 9, 991
- Remedies for failure to account, 9, 961
- Remedy in equity, 9, 961
- Removal, 9, 827
- Reviewing and correcting, 9, 966
 - Final accounts, 9, 967
 - Intermediate accounts, 9, 966
- Service of notice, 9, 958
- Settlement by guardian as personal representative, 9, 960
- Settlement by guardian *de son tort*, 9, 960
- Settlement by personal representative or guardian, 9, 959
- Settlement by sureties, 9, 960
- Settlement by whom, 9, 959
- Statement of account, 9, 964
 - Guardian of several wards, 9, 965
 - In general, 9, 964
 - Restatement, 9, 966
 - Statement by court, 9, 966
- Summary proceedings, 9, 963
- Waiver of notice, 9, 958
- What will be considered, 9, 957

Actions (see *infra*, Accounting and settlement; Service of process), 9, 929

Amendments on death of guardian, 9, 944

GUARDIANS, *cont'd.*Actions, *cont'd.*

- Appeal and review*, see *infra*. Appeals.
- Appointment of guardian *pendente lite*, 9, 944
- By guardian against ward, 9, 934
- By guardian in his own name, 9, 932
- By guardian in name of ward, 9, 929
- By third person against guardian, 9, 936
- By third person against ward, 9, 935
 - Attachment, 9, 935
 - Joinder of guardian, 9, 935
 - Ward as sole defendant, 9, 935
- By ward against guardian, 9, 934
- Costs*, see *infra*. Costs.
- Death of guardian, 9, 944
- Declaration and complaint*, see DECLARATION AND COMPLAINT.
- Divorce proceedings, 9, 831
- Enforcement of judgment, 9, 946
- Generally, 9, 927
- Insane persons, 9, 931
- Judgment, 9, 945
- Majority of infant ward, 9, 945
- Pleading, 9, 939
- Probate proceedings, 9, 931
- Suits to avoid acts of wards, 9, 931
- Termination of guardianship *pendente lite*, 9, 944
- "Trustee of express trust," 9, 934
- Actions on guardians' bonds, 9, 975
- Appeal, 9, 996
- Ascertainment of liability of guardian as prerequisite to action, 9, 976
- Breach of conditions, 9, 975
- Costs, 9, 997
- Declaration and complaint, 9, 984
 - Appointment of guardian, 9, 985
 - Assignment of several breaches, 9, 986
 - Breach of conditions, 9, 986
 - Conversion of assets, 9, 988
 - Delivery bond, 9, 986
 - Demand of payment, 9, 988
 - Execution bond, 9, 986
 - Failure to account, 9, 987
 - Failure to pay over, 9, 987
 - Filing copy of bond, 9, 985
 - Identification, 9, 985
 - In general, 9, 984
 - Leave to sue, 9, 989
- Decree, 9, 995

GUARDIANS, *cont'd.*Actions on guardians' bonds, *cont'd.*

Findings, 9, 994

Judgment, 9, 995

Jurisdiction of inferior court, 9, 979

Leave to sue, 9, 979

Misconduct, 9, 975

Necessity of leave to sue, 9, 979

Objections not taken below, 9, 997

Parties, 9, 979

Action on behalf of incompetent, 9, 983

Bond to several wards, 9, 980

Creditors of ward as plaintiffs, 9, 982

Defendants, 9, 983

Guardian, 9, 983

Insolvent guardian, 9, 984

Next friend, 9, 983

Personal representative of insolvent guardian, 9, 984

Plaintiffs, 9, 979

Representatives of deceased guardian, 9, 983

State as plaintiff, 9, 981

Successor to guardian, 9, 979

Suit in name of judge or court, 9, 982

Sureties, 9, 983

Sureties on different obligations, 9, 983

Pleading, 9, 993

Plea or answer, 9, 989

Accounting and settlement, 9, 991

Attack on appointment, 9, 991

Denial of breach, 9, 990

In general, 9, 989

Misconduct of ward, 9, 992

Nonjoinder of parties, 9, 989

Performance, 9, 990

Set-off, 9, 992

Statute of limitations, 9, 992

Proof, 9, 993

Questions of law and fact, 9, 994

Reply, 9, 993

Review, 9, 996

The hearing, 9, 994

When action lies, 9, 975

Alienation of ward's estate:

Supervision of guardian, 9, 921

Amendments, 1, 539

Death of guardian, 9, 944

Declaration and complaint, 9, 942

Ancillary letters of guardianship, 9, 917

Answer, see *infra*, Actions on guardian's bonds; Plea or answer.**GUARDIANS, *cont'd.***

Appeals, 9, 947

Accounting:

As to review of accounting, see *infra*, Accounting and settlement.

Actions on guardians' bonds, 9, 996

Appointment, 9, 910

Effect of appeal, 9, 911

In general, 9, 910

Judgment, 9, 914

Parties to appeal, 9, 911

Presumptions, 9, 912

The record, 9, 911

Trial *de novo*, 9, 913

What will be reviewed, 9, 912

Who may appeal, 9, 911

Dismissal of appeal, 9, 948

Hearing, 9, 948

In general, 9, 947

Parties to appeal, 9, 947

Removal and revocation, 9, 928

In general, 9, 928

Province of reviewing court, 9, 928

Security, 9, 928

Security on appeal, 9, 947

Appearances, 2, 672

Appearance by guardian, 9, 937; 10, 594

Adverse interest of guardian, 9, 938

In general, 9, 937

Waiver of process by appearance, 9, 938

Appearance by guardian or *prochein ami*, 10, 594Appointment (see *infra*, Jurisdiction to appoint; Order or decree of appointment; Selection of guardian), 9, 890

Allegations in actions on guardians' bonds, 9, 985

Appeals, see *infra*, Appeals.

Application, 9, 897

Form, 9, 897

Signature, 9, 899

Sufficiency, 9, 897

Verification, 9, 899

Averment in pleadings, 9, 940

Notice of hearing, 9, 900

Appointment for infants, 9, 901

Appointment for insane persons and incompetents, 9, 900

Chancery practice, 9, 804

Discretion of court, 9, 902

Dispensing with notice, 9, 902

Form and sufficiency, 9, 902

GUARDIANS, *cont'd.***Appointment, *cont'd.***

- Plea or answer, 9, 991
- Record of appointment, 9, 909
- Who may apply, 9, 897

Attachment:

- By third persons against ward, 9, 935

Audita querela, 3, 116**Bonds:**

- Actions on bonds (see *infra*, Actions on guardians' bonds), 9, 961

Appeals, 9, 928**Foreign guardians, 9, 917****Citations, 4, 540****Civil damage acts, see CIVIL DAMAGE ACTS.****Commitment of infants, see COMMITMENTS.****Costs, 5, 155; 9, 948****Accounting and settlement, 9, 974****Against guardian, 9, 975****Against sureties, 9, 975****In favor of guardian, 9, 974****Actions on guardians' bonds, 9, 997****Removal or revocation, 9, 927****When guardian chargeable, 9, 948****When guardian not chargeable, 9, 949****Courts, see *infra*, Selection of guardian; Supervision of guardianship.****Death:****Of guardian pending action, 9, 944****Of ward, 9, 950****Declaration and complaint, 9, 939****Actions on guardians' bonds, see *infra*, Actions on guardians' bonds.****Amendments, 9, 942****Appointment of guardian, 9, 940****Averment of special admission, 9, 940****Entitling cause, 9, 939****Necessaries, 9, 941****Necessary averments, 9, 939****Pleading, 9, 942****Proof, 9, 942****Sufficiency of allegations, 9, 940****Decree, see *infra*, Accounting and settlement; Order or decree of appointment.****Divorce, 9, 931****Insanity, 7, 62****Right to sue for ward, 7, 61, 62****Domicil, 9, 894****Domicil of deceased parents, 9, 894****Domicil of ward, 9, 894****GUARDIANS, *cont'd.*****Dower:****Demand, 7, 155****Ejectment, 7, 286****Who may be let in to defend, 7, 311****Equity, see *infra*, Jurisdiction; Supervision of guardianship.****Exceptions and objections:****Objections not taken below, 9, 997****Insolvent guardian, 9, 984****Representatives of deceased guardians or sureties, 9, 983****Settlement by guardian as personal representative, 9, 960****Settlement by personal representative, 9, 959****Failure to account, see *infra*, Accounting and settlement.****Final judgments and decrees, 2, 59****Foreclosure of mortgages, 9, 282****Foreign guardianship, 9, 914****Ancillary letters, 9, 917****Bond, 9, 917****Clandestine removal of ward, 9, 916****In general, 9, 914****Transmission of funds, 9, 916****Guardian *ad litem*:****Appointment of general or testamentary guardian, 10, 658****Defense by general guardian equivalent to appointment as guardian *ad litem*, 10, 665****Necessity of appointing guardian *ad litem* where there is a general guardian, 10, 622****Appointment notwithstanding general guardian, 10, 623****General guardian adversely interested, 10, 624****General guardian also a party, 10, 622****In general, 10, 622****Making general guardian a party, 10, 624****States in which defense may be made by general guardian, 10, 622****Power to appoint in absence of general guardian, 10, 636****Power to appoint notwithstanding general guardian, 10, 636****Habeas corpus, 9, 1018****Petition, 9, 1020****Infants:****Infants as wards of court, 10, 589****Selection of guardian by infant over fourteen, 9, 906**

GUARDIANS, *cont'd.*

Insane persons, 9, 891

Actions by guardian in name of ward, 9, 931

Notice of hearing, 9, 900

Suits against lunatics under guardianship, 10, 1226

Investment of ward's estate:

Supervision of guardian, 9, 921

Joinder of parties:

Actions by third persons against guardian, 9, 936

Actions by third persons against ward, 9, 935

Judgment (see *infra*, Appeals):*Accounting and settlement*, see *infra*, Accounting and settlement.

Action on contract of ward or concerning his estate, 9, 946

Action on guardian's bond, 9, 997

Action on obligation of guardian, 9, 945

Appeals, 9, 914

Enforcement of judgment, 9, 946

Form and sufficiency, 9, 945

Judgment against guardian, 9, 946

Judgment against ward, 9, 947

Judgment in name of guardian, 9, 946

Judgment in name of ward, 9, 946

Judicial sales, 12, 8

Jurisdiction (see *infra*, Removal and revocation; Supervision of guardianship):

Accounting and settlement, 9, 949

Concurrent, 9, 955

County courts, 9, 953

Death of ward, 9, 950

Equitable jurisdiction, 9, 951

Extent of equitable jurisdiction, 9, 951

Extent of jurisdiction, 9, 943

In general, 9, 949

Majority of ward, 9, 953

Minority of ward, 9, 953

Ordinary, 9, 955

Probate courts, 9, 952

Statutory jurisdiction, 9, 952

Surrogate, 9, 953, 954

Whether statutory jurisdiction is concurrent or exclusive, 9, 955

Actions on guardians' bonds, 9, 979

Jurisdiction to appoint, 9, 890

Chancery jurisdiction, 9, 890

Chancery jurisdiction in the United States, 9, 892

GUARDIANS, *cont'd.*Jurisdiction to appoint, *cont'd.*

Infants entitled to legacies, etc., 9, 891

Jurisdiction determined by residence, 9, 893

Jurisdiction determined by *situs* of property, 9, 896

Jurisdiction in the United States, 9, 892

Origin of jurisdiction in England, 9, 890

Residence, 9, 893

Situs of property, 9, 896

Statutory jurisdiction in the United States, 9, 892

Leases, 10, 843

Leave to sue, 9, 979, 989

Legacies, infants entitled to, 9, 891

Letters of guardianship (see *infra*, Removal and revocation), 9, 909

Ancillary letters required, 9, 917

Limitation of actions, 9, 992

Majority of ward, 9, 953

Marriage (annulment), 13, 874

Mortgages, 10, 839

Necessaries, 9, 941

Negotiable instruments:

Guardians as parties plaintiff, 14, 439

Next friend (see NEXT FRIEND), 9, 983

Notice:

Removal and revocation, 9, 925

Settlement, 9, 957

Notice by publication, 9, 959

Notice to guardian, 9, 957

Notice to ward, 9, 958

Service of notice, 9, 958

Waiver of notice, 9, 958

Notice of hearing, 9, 900

Appointment for infants, 9, 901

Appointment for insane persons or incompetents, 9, 900

Chancery practice, 9, 904

Discretion of court, 9, 902

Dispensing with notice, 9, 902

Form and sufficiency, 9, 902

Order or decree of appointment, 9, 907

Designation of parties to guardianship, 9, 908

Form, 9, 907

Imposition of conditions, 9, 908

Sufficiency, 9, 907

Parties to action (see *infra*, Accounting and settlement: Actions on guardians' bonds):

Codes and practice acts, 15, 724

Pendente lite:Appointment of guardian *pendente lite*, 9, 944

GUARDIANS, *cont'd.*

Petitions:

Bill in equity or petition, 15, 511

Plea, see *infra*, Actions on guardians' bonds.

Plea or answer, 9, 943

Agreement of guardian to ratify act of ward, 9, 943

Examples, 9, 943, 944

In general, 9, 943

Necessary averments, 9, 943

Probate courts, see *infra*, Jurisdiction.

Probate proceedings, 9, 931

Questions of law and fact (see *infra*, Selection of guardian):

Actions on guardians' bonds, 9, 994

Record:

Appeals, 9, 911

Appointment, 9, 909

Removal and revocation, 9, 922

Account, 9, 927

Application, 9, 923

Bond on appeal, 9, 928

Costs, 9, 927

Determination, 9, 926

Form of application, 9, 923

Grounds for removal, 9, 923

Jurisdiction, 9, 922

Notice of application, 9, 925

Notice to ward, 9, 926

Order, 9, 926

Province of reviewing court, 9, 928

Review, 9, 928

Sufficiency of application, 9, 924

The hearing, 9, 926

To whom application made, 9, 924

Unsuitability, 9, 924

Who may apply, 9, 923

Removal of causes:

Citizenship, 18, 190

Removal of ward:

Foreign guardians, 9, 916

Replication and reply:

Actions on guardians' bonds, 9, 993

Residence, 9, 893; 22, 263

Actual or constructive residence, 9, 894

Change of residence, 9, 895

Domicil of deceased parents, 9, 894

Domicil of ward, 9, 894

Jurisdiction determined by, 9, 893

Removal of ward, 9, 916

State divided into counties or districts, 9, 895

Review, see *infra*, Accounting and settlement; Appeals.

GUARDIANS, *cont'd.*

Revocation, see *infra*, Removal and revocation.

Sale of real property, see *infra*, Infants.

Selection of guardian, 9, 904

Approval of selection by infant, 9, 907

Ascertainment of fitness, 9, 905

Discretion of court, 9, 906, 907

Notice of application for appointment of guardian for infant over fourteen, 9, 907

Province of court, 9, 904

Selection by infant over fourteen, 9, 906

Wishes of deceased parents, 9, 905

Service of process, 9, 937

Appearance by guardian, 9, 937

Service on guardian, 9, 937

Service on guardian without service on minor, 10, 602

Service on ward, 9, 938

Waiver by guardian, 10, 612

Set-off, recoupment, and counterclaim, 9, 992

Settlement, see *infra*, Accounting and settlement.

Settlement of decedents' estates, 19, 853

Signature:

Application for appointment, 9, 899

Situs of property:

Jurisdiction determined by, 9, 896

State as plaintiff in actions on guardians' bonds, 9, 981

Suits, see *infra*, Actions.

Summary proceedings:

Failure to account, 9, 963

Supervision of guardianship (see *infra*, Removal and revocation), 9, 918

Alienation and investment of ward's estate, 9, 921

Control of guardian, 9, 919

Equitable powers, 9, 918

Expenditures by guardian, 9, 920

Statutory jurisdiction, 9, 918

Sureties, see *infra*, Actions on guardians' bonds.

Suretyship (see *infra*, Actions on guardians' bonds):

Settlement by sureties, 9, 960

Surplusage, irrelevant or redundant matter, 21, 295

Surrogate, see *infra*, Jurisdiction.

Termination of guardianship *pendente lite*, 9, 944

Death, 9, 944

Majority of infant ward, 9, 945

GUARDIANS, *cont'd.*

Trove and conversion:

Parties to actions, 21, 1046

United States courts:

Citizenship, 9, 893; 22, 263

Verification:

Application for appointment, 9, 899

Waiver of process against infants, 10, 612

HABEAS CORPUS, 9, 998

Affidavits:

Contradicting return, 9, 1041

Fortifying return by affidavit, 9, 1041

Amendments, 9, 1028

Appeals, 2, 35, 127, 147

Review by appellate habeas corpus, 9, 1084

Review by writ of error or appeal, 9, 1072

Appellate practice and procedure, 9, 1081

Death of party pending appeal, 9, 1084

Exceptions and objections, 9, 1080

General appellate regulations, 9, 1079

Independent of statutory provisions, 9, 1072

Parties entitled to appeal or error, 9, 1081

Party regaining liberty pending appeal, 9, 1084

State courts, 9, 1072

Statement of facts, 9, 1079

Status of party not affected by determination, 9, 1083

Statutory provisions, 9, 1072

Supersedeas and stay of proceedings, 9, 1080

Transcript, 9, 1079

Trial and examination, 9, 1082

United States courts, 9, 1074

Appearances, 9, 1051

Apprentices, 9, 1017

Argument of counsel:

Order of argument of counsel, 9, 1051

Bail:

To establish grade of offense for bail, 9, 1054

Burden of proof, 9, 1054

By whom application made, 9, 1016

Guardian and ward, 9, 1018

Husband and wife, 9, 1018

In general, 9, 1016

Minors, 9, 1017

One claiming right of custody, 9, 1017

Parent and child, 9, 1017

HABEAS CORPUS, *cont'd.*By whom application made, *cont'd.*

Party restrained, 9, 1016

Third person, 9, 1016

Certiorari, 9, 1084

As ancillary to habeas corpus, 9, 1084

Certiorari in connection with habeas corpus, 4, 127

As ancillary to habeas corpus, 4, 127

Common law, 4, 127

Discretion not reviewed, 4, 130

Evidence, 4, 130

Final adjudication necessary, 4, 130

In favor of the prosecution, 4, 130

State courts, 4, 128

To review proceedings on habeas corpus, 4, 129

United States courts, 4, 128

Contempt, 4, 127

For review of decision on habeas corpus, 9, 1084

Chambers and vacation, 4, 360

Custody of minor, 4, 362

In general, 4, 360

Command for production of body, together with cause of restraint, 9, 1026

Commitments, 4, 581

After indictment, 9, 1058

Discharge for defect in commitment, 9, 1043

Extent of inquiry, 9, 1049

Jurisdiction, 4, 581

Legality of commitment, 4, 581

Necessity of commitment and inquiry where none exists, 9, 1048

Probable cause, 4, 582

Review on habeas corpus, 4, 581

Scope of inquiry before indictment, 9, 1055

United States courts, 9, 1048

Constitutional law:

Inquiry into constitutionality of the law, 9, 1046, 1060

Contempt, 4, 815

Arrest by wrong officer, 4, 817

Attachment without prior order, 4, 783

Commitments and convictions for contempt, 9, 1064

Conflict of jurisdiction between federal and state courts, 4, 816

Contempt of court by nonreturn or insufficient return, 9, 1033

Enforcing return by attachment, 9, 1033

For want of jurisdiction, 4, 815

HABEAS CORPUS, *cont'd.*

- Contempt, *cont'd.*
 - Illegal imprisonment, 4, 816
 - Jurisdictional questions, 4, 818
 - Matters examinable, 4, 818
 - Mere irregularities, 4, 818
 - No contempt, 4, 817
 - Perpetual imprisonment, 4, 817
 - Statutory provisions, 4, 819
 - Void judgment, 4, 816
 - When appropriate, 4, 815
 - When inappropriate, 4, 817
- Continuance, 9, 1052
- Contradicting return, 9, 1041
- Costs, 9, 1068
 - Security, 9, 1069
 - State courts, 9, 1069
 - United States courts, 9, 1068
 - Where respondent dies, 9, 1069
- Courts (see *infra*, Jurisdiction; United States courts):
 - Application of supreme court, 9, 1016
 - Denial of writ, 9, 1023
 - Discretion of court, 9, 1023
 - Granting of writ, 9, 1024
 - Mandamus to compel issuance, 9, 1024
 - Matters for court to adjudicate, 9, 1064
 - Penalty for refusal to issue, 9, 1024
 - Procedure and determination of case by state courts, 9, 1049
 - To whom application made, 9, 1015
- Custody of prisoner, 9, 1030
- Declaration and complaint*, see *infra*, Petition.
- Definition, 9, 1002
- Denial of writ, 9, 1023
- Directing the return, 9, 1035
- Direction of writ, 9, 1026
- Discharge, effect of, 9, 1068
- Discretion of court, 9, 1023
- Dismissal, 9, 1050
- Disposition of party, 9, 1065
 - Where commitment is informal or insufficient, 9, 1066
 - Where detention is irregular or erroneous, 9, 1066
 - Where party is not in custody, 9, 1067
 - Where return is insufficient, 9, 1065
 - Where return shows lawful custody, 9, 1065
 - Where return shows unlawful custody, 9, 1065
 - Where there are errors or irregularities in proceedings, 9, 1066
 - Where there is jurisdictional defect, 9, 1065

HABEAS CORPUS, *cont'd.*

- Disposition of party, *cont'd.*
 - Where there is not illegal detention in general, 9, 1065
- Effect of writ, 9, 1029
 - As supersedeas, 9, 1029
 - As to custody of prisoner, 9, 1030
 - As to priority over other writs and proceedings, 9, 1030
- Errors and irregularities, 9, 1062
- Error, writ of, 9, 1062
 - Review by writ of error or appeal, 9, 1072
- Appellate practice and procedure, 9, 1081
- Death of party pending appeal, 9, 1084
- Exceptions and objections, 9, 1080
- General appellate regulations, 9, 1079
- Independent of statutory provisions, 9, 1072
- Parties entitled to appeal or error, 9, 1081
- Party regaining liberty pending appeal, 9, 1084
- State courts, 9, 1072
- Statement of facts, 9, 1079
- Status of party not affected by determination, 9, 1083
- Statutory provisions, 9, 1072
- Supersedeas and stay of proceedings, 9, 1080
- Transcript, 9, 1079
- Trial and examination, 9, 1082
 - United States courts, 9, 1074
- Evidence (see *infra*, Hearing on evidence and testimony):
 - Inquiry extending to proceedings and evidence before indictment, 9, 1056
 - Legality of evidence, 9, 1048
 - Exceptions and objections, 9, 1080
- Extradition, 8, 811, 822; 9, 1010
 - Consideration of the charge of crime, 9, 822
 - Effect of recitals in executive warrant, 8, 824
 - Guilt or innocence of accused, 8, 823
 - Identity of accused, 8, 824
 - In general, 8, 811
 - Interstate extradition, 8, 822
 - Jurisdiction, 8, 822
 - Manner of arrest and removal, 8, 824
 - Motive of extradition proceedings, 8, 823
 - Res adjudicata*, 8, 825
 - To effect arrest of party held in civil suit, 8, 812

HABEAS CORPUS, *cont'd.*Extradition, *cont'd.*

Warrant of surrender subject to review, 8, 812

Whether accused is a fugitive from justice, 8, 823

Former conviction or acquittal, 9, 632

Grand juries, 9, 1059, 1063

Matters affecting the grand jury, 9, 1059

Granting of writ, 9, 1024

Guardians, 9, 1018

Petition, 9, 1020

Guilt or innocence, 9, 1053, 1059

Hearing on evidence and testimony, 9, 1052

Burden of proof, 9, 1054

In general, 9, 1052

Preparatory statement, 9, 1052

Return traversed, 9, 1053

Showing want of probable cause, 9, 1053

Time allowed for producing testimony, 9, 1055

To determine guilt or innocence, 9, 1053

To establish grade of offense for bail, 9, 1054

Husband and wife, 9, 1018

Indictments:

Formal defects, 9, 1063

Scope of inquiry before indictment, 9, 1055

Sufficiency of indictment, 9, 1047, 1059

Whether indictment charges any offense, 9, 1060

Infants:

By whom application made, 9, 1017

Petition, 9, 1021

Issuance without or with rule *nisi*, 9, 1024

Issues of law and fact, 9, 1052

Issues to the jury, 11, 634

Judges (see *infra*, Courts):

To whom application made, 9, 1015

Judgment:

Nature of judgment, 9, 1068

Jurisdiction (see *infra*, United States courts), 9, 1003

Commitments after indictment, 9, 1058

Conflicting jurisdiction of state courts, 9, 1010

Doctrine limiting jurisdiction to inquiry before indictment, 9, 1055

General federal jurisdiction, 9, 1003

Imprisonment for violation of ordinance, 9, 1005

HABEAS CORPUS, *cont'd.*Jurisdiction, *cont'd.*

Matters affecting jurisdiction, 9, 1060

Prisoner in state custody, 9, 1006

Production of body before a court without jurisdiction, 9, 1042

State courts, 9, 1013

State custody in violation of United States constitution or laws, 9, 1004

Subject of inquiry, 9, 1060

Territorial courts, 9, 1015

To whom application made, 9, 1815

Where writ may be sent, 9, 1025

Jury trials, 9, 1063

Mandamus, 13, 608

To compel hearing, 13, 608

To enforce writ, 13, 608

To grant writ, 13, 608

To vacate discharge, 13, 608

Mandamus to compel issuance, 9, 1024

Discretion of court, 9, 1023, 1024

Granting of writ, 9, 1024

Matters for court to adjudicate, 9, 1064

Military law:

State and federal courts, 9, 1007

Notice of application or pendency of writ, 9, 1031

Ordinances, 15, 445

Retrial of question of fact, 15, 446

When habeas corpus lies, 15, 446

Parent and child, 9, 1017

Penalty for refusal to issue, 9, 1024

Petition, 9, 1018

Allegation of illegal detention, 9, 1019

Allegation of place of detention, 9, 1020

Annexing copy of warrant, order, or process of imprisonment, 9, 1020

By whom made, see *infra*, By whom application made.

By whom verification made, 9, 1022

For custody of ward, 9, 1020

For reduction of bail, 9, 1021

For transfer of children, 9, 1021

Necessity of verification, 9, 1021

Requisites in general, 9, 1018

Statement of evidence before committing magistrate, 9, 1020

Statement of facts constituting illegal detention, 9, 1019

Statutes, 9, 1018

Sufficiency in general, 9, 1018

HABEAS CORPUS, *cont'd.*Petition, *cont'd.*

Testing by motion to quash writ
or by demurrer, 9, 1021

Verification, 9, 1021

Priorly over other writs and pro-
ceedings, 9, 1030

Probable cause, 9, 1022

Evidence to show want of, 9, 1053

Procedure:

General principles relative to
trial and procedure, 9, 1050

Procedure and determination of
case by state courts, 9, 1049

Proceedings relative to granting
or denying the writ, 9, 1022

Rehearing, 18, 69

Removal of causes, 9, 1013; 18, 172

Return, 9, 1031

Address or direction, 9, 1035

Affidavits to contradict, 9, 1041

Amendment of return, 9, 1039

As to production of body, 9,
1032

Averment of custody, possession,
or control, 9, 1036

By whom made, 9, 1034

Conclusiveness, 9, 1039

Contempt of court by nonreturn
or insufficient return, 9, 1033

Contradicting return, 9, 1039

Disposition of party where re-
turn is insufficient, 9, 1065

Disposition of party where re-
turn shows lawful custody, 9,
1065

Enforcing return by attach-
ment, 9, 1033

Evidence to contradict, 9, 1041

False or evasive, 9, 1036

Form, 9, 1034

Fortifying return by affidavit, 9,
1041

Matters for court to adjudicate,
9, 1064

Necessity in general, 9, 1031

Positive and distinct, 9, 1035

Process issued by state court, 9,
1031

Production of body, 9, 1042

Production of body before a court
without jurisdiction, 9, 1042

Production of body in general
necessary, 9, 1042

Production of body, when not
necessary, 9, 1042

Requisites, 9, 1034

Responsive to the writ, 9, 1035

Return not contradicted taken
for true, 9, 1041

Signature, 9, 1035

Statement of authority for de-
tention, 9, 1037

HABEAS CORPUS, *cont'd.*Return, *cont'd.*

Statement of cause of commit-
ment, 9, 1038

Statement of evidence before
committing magistrate, 9, 1039

Statement of jurisdiction of com-
mitting court, 9, 1038

Substance, 9, 1035

Sufficiency, 9, 1034

Testing sufficiency of return, 9,
1039

Time of making, 9, 1034

Time of return, 9, 1028

Traversing and denying, 9, 1040

Traversing return, 9, 1053

Verification, 9, 1035

When and where made return-
able, 9, 1027

Where made, 9, 1034

Rule *nisi*, 9, 1024

Scope of inquiry, 9, 1055

Commitments after indictment,
9, 1058

Commitments and convictions
for contempt, 9, 1064

Commitments before indictment,
9, 1055

Doctrine extending inquiry to
proceedings and evidence, 9,
1056

Doctrine limiting inquiry to
jurisdiction, 9, 1055

Errors and irregularities, 9, 1061

Grand juries, 9, 1063

Guilt or innocence of prisoner, 9,
1059

Indictment, 9, 1063

Judgments and orders of compe-
tent court, 9, 1060

Jurisdiction, 9, 1060

Jury trials, 9, 1063

Matters affecting grand jury, 9,
1059

Merits of the detention, 9, 1059

Seal, 9, 1028

Second application, 9, 1070

Consideration of prior decision,
9, 1070

Custody of children, 9, 1071

For release from restraint, 9,
1070

New facts or circumstances, 9,
1071

Sentence, 19, 504

Service of process, 9, 1029

Signature, 9, 1028

Supersedeas and stay of proceedings,
9, 1029; 20, 1212

Appeals, 9, 1080

Supreme court, application of, 9, 1016

Territories, 9, 1015

Appeals, 9, 1078

HABEAS CORPUS, *cont'd.*

- The writ, 9, 1025
- Amendment, 9, 1028
- Command for production of body, together with cause of restraint, 9, 1026
- Direction, 9, 1026
- Seal, 9, 1028
- Signature, 9, 1028
- Time of return, 9, 1028
- Where and when made returnable, 9, 1027
- Where crime was committed, 9, 1027
- Where it may be sent, 9, 1025
- Where it may be sent by state courts, 9, 1025
- Where it may be sent by United States courts, 9, 1025
- To whom application made, 9, 1015
- Trial:
 - General principles relative to trial and procedure, 9, 1050
 - Mode of, 9, 1049
- United States courts, 9, 1003
- Appeals, 9, 1074
 - From circuit court of appeals to supreme court, 9, 1079
 - From district and circuit courts to circuit court of appeals, 9, 1078
 - From district and circuit courts to supreme court, 9, 1076
 - From inferior courts to circuit court, 9, 1074
 - From state courts to supreme court, 9, 1078
 - From territorial courts to circuit court of appeals, 9, 1079
 - From territorial courts to supreme court, 9, 1078
- Circuit and district courts, 9, 1012
- Circuit court of appeals, 9, 1012
- Concurrent jurisdiction, 9, 1010
 - Extradition proceedings, 9, 1010
 - Of federal courts, 9, 1011
 - Of state and federal courts, 9, 1010
- Conflicting jurisdiction, 9, 1006, 1044
- Jurisdiction refused by state courts, 9, 1007
- Of state and federal courts, 9, 1044
- Person held under military law, 9, 1007
- Release from federal custody by state courts, 9, 1006

HABEAS CORPUS, *cont'd.*

- United States courts, *cont'd.*
- Conflicting jurisdiction, *cont'd.*
 - Release from state custody by federal courts, 9, 1008
- Constitutionality of law, 9, 1046, 1060
- Discharge for defects in commitment, 9, 1043
- Discharge from sentence of court, 9, 1044
- Error as to law, evidence, or facts, 9, 1047
- Examination into commitments, 9, 1048
- Examination into errors and irregularities, 9, 1046
- Examination into jurisdictional questions, 9, 1045
- Extent of inquiry into commitment, 9, 1049
- General federal jurisdiction, 9, 1003
 - Color of authority of the United States, 9, 1003
 - Imprisonment for violation of ordinance, 9, 1005
 - Laws of the United States, 9, 1004
 - Prisoner in state custody, 9, 1006
 - State custody in violation of United States constitution or laws, 9, 1004
 - Summary of habeas corpus acts, 9, 1003
- General principles relating to procedure and action of court, 9, 1043
- Inquiry and determination of case by federal courts, 9, 1043
- Inquiry in cases of conflicting jurisdiction, 9, 1044
- Inquiry of federal courts into state custody, 9, 1044
- Inquiry of state courts into federal custody, 9, 1044
- Legal evidence, 9, 1048
- Necessity of commitment, 9, 1048
- Particular federal tribunals, 9, 1011
- Removal from state courts, 9, 1013
- Rule *nisi*, 9, 1025
- Sufficiency of indictment, 9, 1047
- Supreme court, 9, 1011
- Void judgments, 9, 1045
- Where writ may be sent, 9, 1025
- Verification:
 - Petition, 9, 1021
 - By whom made, 9, 1022
 - Necessity, 9, 1021
 - Person incompetent as witness, 9, 1022

HABEAS CORPUS AD TESTIFICANDUM, see WITNESSES.

HABERE FACIAS, see EJECTMENT.

HABITUAL DRUNKARDS (see CIVIL DAMAGE ACTS; DRUNKENNESS; INTOXICATING LIQUORS):

Intoxicating liquors:

- Indictment for sale to habitual drunkard, 11, 559
- Averment as to habit, 11, 559
- Averment as to notice, 11, 560
- Occupation of defendant, 11, 560

HANDWRITING:

- Exceptions and objections:
 - Failure to lay foundation for admission of writing, 8, 235

Forgery, see FORGERY.

Jury, 12, 593

HARMLESS ERROR:

- Continuances*, see CONTINUANCES.
- Demurrers*, see DEMURRERS.

Instructions (see INSTRUCTIONS):

- Presumption of fact, 11, 136
- New trial, 14, 834, 843, 863, 933
- Review of order granting or refusing new trial, 14, 990

Personal injuries:

- Admission of evidence as to matters which are not appropriately alleged, 16, 385
- Pleas at law, 16, 584
- Special interrogatories to juries, 20, 340, 380
- Street railways, 20, 881
- Trespass, 21, 861

HAWKERS AND PEDDLERS, 10, 1

- Actions against, for violation of license laws, 10, 1
- Criminal procedure, 10, 2
- Declaration and complaint, 10, 1
- Indictment, 10, 2

HEALTH REGULATIONS:

- Actions, 10, 4
- Adulteration of food, 10, 4
- Criminal procedure, 10, 4
- Declaration and complaint, 10, 4
- Food, 10, 4, 6
- Indictments, 10, 4
- Provisions, 10, 4, 6
- Quarantine, 10, 7
- Selling unwholesome provisions, 10, 6

HEARING, 10, 8

Admiralty, 1, 282

Alimony:

- Necessity of hearing husband, 1, 422
- Bastardy*, see BASTARDY.
- Bill and answer, 10, 12
- Cause to be heard entire, 10, 13
- Certiorari*, see CERTIORARI.
- Consolidation of actions, 10, 14

HEARING, *cont'd.*

Contempt, see CONTEMPT.

Decrees, 5, 957

Decrees *pro confesso*, 5, 999

Opening decrees *pro confesso*, 5, 1029

Defaults:

Application for relief from defaults, 6, 158

Definition, 10, 8

Demurrers, 6, 339

Demurrers in chancery, see DEMURRERS IN CHANCERY.

Disbarment and suspension of attorneys, see DISBARMENT AND SUSPENSION OF ATTORNEYS.

Drainage, 7, 212

Eminent domain, 7, 565

Equity reserved, 10, 12

Evidence, 10, 17

Exceptions and objections, 10, 17

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Formal mode of hearing, 10, 15

Interstate commerce:

Commission, 11, 487

Motions, see MOTIONS.

Necessity for a hearing, 10, 9

New trial, see NEW TRIAL.

Notice, 10, 13

Parties, 10, 9

Petitions, see PETITIONS.

Pleadings and proof, 10, 12

Power to vacate prior interlocutory decrees, 10, 17

Premature hearing, 10, 14

Preparation for hearing, 10, 9

Cause to be heard entire, 10, 13

Consolidation of causes for hearing, 10, 14

In respect of issues, 10, 10

In respect of parties, 10, 9

Premature hearing and waiver of irregularity, 10, 14

Setting causes for hearing, 10, 11

Rehearing, see REHEARING.

Setting causes for hearing, 10, 11

Submission of the cause, 10, 16

Sundays and holidays, 20, 1192

Supplemental pleadings:

Hearing after supplemental pleading has been filed, 21, 82

Trial of equitable issues under the code, 10, 18

Waiver of irregularity, 10, 15

HEARSAY EVIDENCE:

Admissions:

Issue sent to jury, 1, 961

Answers in equity pleading, 1, 947, 961

Depositions:

Reasons for taking depositions, 6, 568

HEARSAY EVIDENCE, *conf'd.*

- Exceptions and objections, 8, 232
- New trial, 14, 904, 911
- Withdrawing and striking out evidence, 22, 1314

HEIRS AND DEVISEES, 10, 20

See LEGATEES AND DISTRIBUTEES; SETTLEMENT OF DECEDENTS' ESTATES.

Actions at common law for debts of ancestor or testator, 10, 31

Costs, 10, 36

Declaration, 10, 33

Execution, 10, 36

Form of action, 10, 31

Joinder of all the heirs, 10, 31

Joinder of parties, 10, 31

Joinder of personal representative of ancestor, 10, 33

Judgment, 10, 35

Parties, 10, 31

Pleas, 10, 34

Replication, 10, 35

Verdict, 10, 35

Actions at law against heirs and devisees on statutory liabilities, 10, 37

Declaration and complaint, 10, 40

Execution, 10, 45

Form of action, 10, 37

Inquiry, 10, 43

Joinder of parties, 10, 38

Judgment, 10, 43

Parties, 10, 38

Personal representatives, 10, 39

Plea, 10, 41

Replication, 10, 42

Verdict, 10, 43

Actions at law by heirs or devisees, 10, 53

Averment of heirship, 10, 53

Capacity to sue, 10, 53

Actions for liabilities personally incurred, 10, 37

Declaration, 10, 37

Devise with direction to pay money, 10, 37

Promise by heir to pay ancestor's debts, 10, 37

Affidavits of merits or defense, 1, 349

Bill in equity, see *infra*, Remedies in equity against heirs and devisees.

Costs, 10, 36

Declaration and complaint:

Actions at law against heirs and devisees on statutory liabilities, 10, 40

Common-law actions against heirs and devisees against debts of ancestor, 10, 33

Decree, 10, 51

Ejectment (see EJECTMENT), 7, 282

HEIRS AND DEVISEES, *conf'd.*

Equity (see *infra*, Remedies in equity against heirs and devisees):

Suits in equity by heirs and devisees, 10, 54

Error, writ of, 7, 857

Execution, 10, 36

Actions at law against heirs and devisees on statutory liabilities, 10, 45

Executors and administrators:

Joinder of parties, 10, 33

Joinder of personal representatives in equity, 10, 50

Scire facias on judgments against ancestor or personal representative, 10, 45

Joinder of parties:

Actions at law against heirs and devisees on statutory liabilities, 10, 38

Common-law actions against heirs and devisees, 10, 31

Judgments:

Actions at law against heirs and devisees on statutory liabilities, 10, 43

Common-law actions against heirs and devisees, 10, 35

Quando acciderint, 10, 36

Scire facias on judgments against ancestor or personal representative, 10, 45

Jurisdiction, see *infra*, Remedies in equity against heirs and devisees.

Legal conclusions, 12, 1042

Liability for ancestor's or testator's debts (see *infra*, Actions at common law for debts of ancestor or testator), 10, 21

Arkansas, 10, 30

By common law of England, 10, 21

Devisees, 10, 24

Effect of alienation by heir, 10, 24

English statutes, 10, 25

Extent of liability, 10, 23

Florida, 10, 31

Illinois, 10, 27

Indiana, 10, 28

Iowa, 10, 31

Judgments against ancestor, 10, 23

Kansas, 10, 31

Kentucky, 10, 27

Legal assets, 10, 23

Maine, 10, 28

Massachusetts, 10, 29

Minnesota, 10, 29

Missouri, 10, 29

New Hampshire, 10, 30

North Carolina, 10, 30

On what contracts heirs liable, 10, 21

HEIRS AND DEVISEES, *cont'd.*

Liability for ancestor's or testator's debts, *cont'd.*

Profits of the land, 10, 23

Statutory liability, 10, 26

Texas, 10, 30

United States, 10, 26

Limitations, 13, 195

Parties:

Common-law actions against heirs and devisees, 10, 31

Partition:

Defendants, 15, 793

Heirs as parties plaintiff, 15, 788

Pleas:

Actions at law against heirs and devisees on statutory liabilities, 10, 41

Common-law actions against heirs and devisees, 10, 34

Remedies in equity against heirs and devisees, 10, 47

Bill, 10, 51

Decree, 10, 51

Equitable jurisdiction generally, 10, 47

Bill for sole benefit of single creditor, 10, 47

Cause of action maturing after administration, 10, 50

Creditors' bills, 10, 47

Devise charged with legacy, 10, 47

Federal jurisdiction, 10, 50

Joinder of parties, 10, 50, 51

Joinder of personal representatives, 10, 50

Parties, 10, 50

Suits in equity by express statute, 10, 51

Replication and reply:

Actions at law against heirs and devisees on statutory liabilities, 10, 42

Scire facias, 10, 45

Examples, 10, 45, 47

In general, 10, 45

On judgment against ancestor or personal representative, 10, 45

Service upon minor heirs, 10, 46

Specific performance, see SPECIFIC PERFORMANCE.

Title, ownership, and possession, see

TITLE, OWNERSHIP, AND POSSESSION.

Vendor's liens, 22, 712

Verdict:

Actions at law against heirs and devisees on statutory liabilities, 10, 43

Common-law actions against heirs and devisees, 10, 35

Waste, 22, 1097

HERDER'S LIEN:

Joinder of counts and causes, 1, 205

HEREDITAMENTS:

Ejectment, 7, 275

HIGHWAYS, see STREETS AND HIGHWAYS; TURNPIKES AND TOLLROADS: WAYS.

HOLIDAYS, see SUNDAYS AND HOLIDAYS.

HOMESTEADS AND EXEMPTIONS, 10, 55

See PUBLIC LANDS.

Actions to enforce right of exemption, 10, 101

Action on statute, 10, 104

Burden of proof, 10, 105

Declaration, plea, and replication, 10, 105

Demand, 10, 104

Form of action, 10, 103

Indictment, 10, 104

Parties defendant, 10, 102

Parties plaintiff, 10, 101

Questions of law and fact, 10, 105

Replevin, 10, 103

Trespass, 10, 103

Actions to protect homestead, 10, 85

Injunctions, see *infra*, Injunctions.

Parties plaintiff, 10, 85

Actions to recover homestead, 10, 83

Bill in equity, 10, 84

Bill or complaint, 10, 86

Parties plaintiff, 10, 83

Requisites of bill or complaint, 10, 85

Admiralty:

Property exempt from seizure, 1, 262

Answer:

Foreclosure of homestead mortgage, 10, 89

Foreclosure of mortgages, 10, 89

Appeals, 2, 45

Application for homestead, 10, 63

Application to court, 10, 63

Claim to officer levying execution, 10, 63

Contents of application, 10, 64

How application to court made, 10, 63

Statement of essential facts, 10, 64

Assignment of homestead, 10, 69

Appointment of commissioners, 10, 69

Assignment by court, 10, 71

Collateral attack, 10, 74

Dower and homestead in same tract, 10, 74

Duty of levying officer, 10, 69

Exceptions to proceedings for assignment, 10, 75

HOMESTEADS AND EXEMPTIONS, *cont'd.*

- Assignment of homestead, *cont'd.*
 - Exceptions to what tribunal, 10, 75
 - Grounds of exceptions, 10, 76
 - Nature, form, and validity of assignment, 10, 73
 - Proceedings to set aside assignment, 10, 77
 - Reassignment, 10, 74
- Bail and recognizance, 3, 162
- Bill in equity, 10, 84
 - Actions to protect homestead, 10, 86
- Burden of proof, 10, 105
- Chattel exemptions, 10, 92
 - Duty of debtor, 10, 94
 - Duty of officer, 10, 93
 - Execution of delivery bond, 10, 98
 - Liability of sheriff, 10, 99
 - Manner of claiming, 10, 95
 - Manner of selecting, 10, 100
 - Nature of right, 10, 92
 - Refusal to select, 10, 99
 - Right and duty to select, 10, 98
 - Rights of parties at time of levy, 10, 93
 - Selection of exempt property, 10, 98
 - Time for selecting, 10, 101
 - Time of claiming, 10, 96
 - Waiver of exemption, 10, 97
 - Who may claim, 10, 95
- Creditors' bills, 5, 441; 10, 91
- Criminal procedure, 10, 104
- Declaration and complaint:
 - Actions to enforce, 10, 105
- Demand, 10, 104
- Distress, 7, 31
- Exceptions and objections, 10, 75
- Executions, 8, 396
- Executors and administrators, 10, 62
- Foreclosure of mortgages, 10, 88
 - Answer, 10, 89
 - Judgment of foreclosure, 10, 90
 - Order of sale where mortgaged premises include a homestead, 9, 422
 - Parties, 10, 88
 - Receivers, 10, 90
 - Wife as party, 9, 31,
- Husband and wife, see infra*, Parties in cases affecting homesteads.
- Indictment, 10, 104
- Injunctions, 10, 86
 - Bill or complaint, 10, 88
 - Equitable jurisdiction, 10, 86
 - Laches or negligence of plaintiff, 18, 87
 - Temporary injunction, 10, 88
- Joinder of parties, 10, 59, 62

HOMESTEADS AND EXEMPTIONS, *cont'd.*

- Judgment:
 - Foreclosure of mortgages, 10, 90
- Jurisdiction:
 - Homesteads, 10, 57
 - Equity, 10, 58
 - Generally, 10, 57
 - Probate courts, 10, 57
- Order setting aside sales, 10, 80
- Parties in cases affecting homesteads, 10, 58
 - Actions to protect homestead, 10, 85
 - Actions to recover homestead, 10, 83
 - Administrators, 10, 62
 - All persons interested as defendants, 10, 61
 - Defendant, 10, 60
 - Foreclosure of homestead mortgage, 10, 88
 - Foreclosure of mortgages, 10, 62
 - Intervention of wife, 10, 61
 - Joinder of husband and wife, 10, 59
 - Joinder of wife as defendant, 10, 62
 - Minor children, 10, 60
 - Parties plaintiff, 10, 58
 - Right of husband to sue, 10, 58
 - Right of wife to sue, 10, 59
 - Wife, 10, 60
- Partition:
 - Partition of homestead property, 10, 90
- Pleading homestead, 10, 81
 - Amendment of answer, 10, 83
 - Generally, 10, 81
 - Plea or answer, 10, 81
- Plea or answer, 10, 81
 - Actions to enforce homestead, 10, 105
- Questions of law and fact, 10, 105
- Receivers, 10, 90
- Replication, 10, 105
- Sale of property and payment of money in lieu of homestead, 10, 78
 - In general, 10, 78
 - Where severance is impracticable, 10, 79
- Sales, order setting aside, 10, 80
- Setting aside assignment, 10, 77
- Setting aside sales, 10, 80
- Trespass, 10, 103
- Waiver of exemption, 10, 97
- Waiver of homestead exemption, 10, 66
 - Examples, 10, 66, 69
 - In general, 10, 66

HOMICIDE, *cont'd.***Instructions, *cont'd.***

- Necessity of written instructions, 10, 177
- Questions necessary to be submitted, 10, 164
- Sufficient and correct forms of instruction, 10, 176
- Unnecessary instructions as to degree of murder, 10, 166
- Verdict, 10, 175

Instrument or means used, 10, 126

- Allegations and proof, 10, 128
- Description, 10, 126
- Indictment, 10, 126
- In general, 10, 126
- Loaded firearm, 10, 127
- Poisoning, 10, 128

- Statutes providing that means need not be described, 10, 129
- Weapon a deadly one, 10, 127

Intent, 10, 116

- Aforethought, 10, 118
- Aider of omission, 10, 117
- Averment of deliberation and premeditation, 10, 122
- Averment of intent to kill, 10, 116
- Averment that killing was felonious and wilful, 10, 120
- Averment that killing was with malice aforethought, 10, 118
- Deliberation, 10, 122
- Equivalent expressions of malice aforethought, 10, 119
- Express or implied malice, 10, 120
- Feloniously, 10, 120
- Intent both to assault and kill, 10, 117
- Intent to kill, 10, 120
- "Malice aforethought" and "deliberate and premeditated," 10, 118, 123, 124
- Malice aforethought not implying deliberation and premeditation, 10, 123
- Omission of deliberate, 10, 123
- Premeditation, 10, 122
- That killing was with malice aforethought, 10, 118
- When averment of intent to kill unnecessary, 10, 117
- Wilfully, 10, 120
- Words of statute, 10, 117

Joinder of counts, 10, 153

- Charging as principal and as accessory, 10, 155
- Charging different modes of death, 10, 153
- Charging different offenses, 10, 154

HOMICIDE, *cont'd.***Joint indictment, 10, 158**

- Trial under joint indictment, 10, 159
- Whether separate trial a matter of right, 10, 159
- Who may be jointly indicted, 10, 158

Juries:

- Polling the jury, 10, 186

Jurisdiction, 10, 108

- As to the court, 10, 112
- As to the person, 10, 112
- As to the place, 10, 106
- Conflict of laws, 10, 109, 111
- County in which death occurred, 10, 109

- Meaning of out of jurisdiction of any particular state, 10, 111

- State courts, 10, 109

- United States courts, 10, 111

Justifiable homicide, 10, 172***Justification or excuse, see infra, Instructions.*****Limitation of actions, 10, 112****Limitation of prosecution, 10, 112**

- Lower degree of murder, 10, 112
- Manslaughter, 10, 112
- Murder in first degree, 10, 112

Malice, see infra, Intent.**Malice aforethought, 10, 118**

- Equivalent expressions, 10, 119
- Expression of implied malice, 10, 120

- Omission of aforethought, 10, 119

- Whether equivalent to deliberate or premeditated, 10, 123, 124

Manner of using weapon, 10, 130

- Held in defendant's hand, 10, 130

- Stroke, 10, 131

- Variance, 10, 132

Manslaughter (*see infra, Indictment*), 10, 168

- Charge not to consider lower offense, 10, 169

- Definition of crime, 10, 171

- Degrees of manslaughter, 10, 171

- Excluding verdict of murder, 10, 171

- Heat of passion, 10, 168

- Instructions, 10, 168

- Instructions not requested, 10, 170

- Involuntary, 10, 171

- Limitation of prosecution, 10, 112

- Malice aforethought, 10, 122

- Murder or justifiable homicide, 10, 169

- Necessity of instructions in cases of doubt, 10, 169

HOMICIDE, *cont'd.***Manslaughter, *cont'd.***

- Omission to charge as to the law applicable to, 10, 168
- Voluntary manslaughter, 10, 168
- When defendant entitled to instruction on manslaughter, 10, 169, 170

Mortal character of the wound, 10, 134

"Murder," 10, 144

Name:

- Omission of defendant's name in verdict, 10, 184

Piracy:

- Indictment for piratical murder, 10, 538

Place, averment of, 10, 140

- County, 10, 141
- Of act causing death, 10, 140
- Of death, 10, 142
- Precise locality, 10, 142
- Repetition, 10, 143
- "Then and there," 10, 143
- United States statutes, 10, 142

Poisoning:

- Allegations of means, 10, 128
- Preliminary examination, 10, 113
- Before whom conducted, 10, 113
- Necessity for, 10, 113
- Waiver, 10, 114

Premeditation, 10, 122, 123

Recommendation to mercy, 10, 186

Self-defense, 10, 172, 173

Sentence, 10, 188

Separate trial:

- Matter of right, 10, 159

Service of process:

- Service of indictment on defendant, 10, 163
- Necessity for, 10, 163
- Waiver, 10, 163

Strike, 10, 131

Stroke, 10, 131

Surplusage:

- Specification of degree, 10, 152

Time, see *infra*, Indictment.

Trial, 10, 163

Two or more homicides by the same act, 10, 155

United States courts:

- Jurisdiction, 10, 111
- Venue, 10, 111

Unlawful, 10, 224

Variance:

- Manner of using weapon, 10, 132

Venue:

- Conflict of laws, 10, 109, 111
- County where death occurred or where stroke was given, 10, 109
- How determined, 10, 108

HOMICIDE, *cont'd.***Verdict, 10, 178**

- Amendment by subsequent insertion of name of defendant, 10, 185

Assessment of punishment, 10, 185

Conviction of lesser crime, 10, 181

Erroneous spelling, 10, 186

Failure to specify the degree, 10, 179

Form generally, 10, 178

Guilty as charged, 10, 180

Instruction as to form of verdict, 10, 175

Omission of defendant's name, 10, 184

Plea of guilty, 10, 184

Polling the jury, 10, 186

Recommendation to mercy, 10, 186

Requiring verdict for particular degree, 10, 182

Specific acquittal of higher degree, 10, 182

Specification of court sustained, 10, 183

Specifying the degree, 10, 179

When and how rendered, 10, 178

Weapons (see *infra*, Instrument or means used):

Manner of using weapon, 10, 130

Wilfully, 10, 120, 121

Wound, see *infra*, Description of the wound.

HORSE RACING, 10, 190

Criminal procedure, 10, 190

Indictments, 10, 190

HOTELS, see INNS and INNKEEPERS.**HOUSE (see DISORDERLY HOUSES):**

Burglary, 3, 747

HOUSEBREAKING (see BURGLARY):

Burglary, 3, 798

HOUSEHOLDERS:

Eminent domain:

Juries, 7, 551

HOUSES OF ILL FAME (see DISORDERLY HOUSES):

Lewdness, 13, 19, 33

HUNTING, see GAME AND GAME LAWS.**HUSBAND AND WIFE, 10, 191**

Abatement in pleading:

Death of husband, 10, 235

Death of wife, 10, 236

Effect of death on actions against husband and wife, 10, 256

Nonjoinder or misjoinder, 10, 227

Plea of coverture, 1, 9

Actions, see *infra*, Suits between husband and wife.

Adoption, 10, 847

Affidavits of merits or defense, 1, 348

HUSBAND AND WIFE, *cont'd.*

Joinder of counts and causes, *cont'd.*
How objection for misjoinder taken, 10, 240

In general, 10, 239

Joinder of parties (see *infra*, Effect of nonjoinder or misjoinder; Parties to suits):

Defendants, 15, 550

Judgment, 10, 273

Actions by husband and wife, 10, 243

Antenuptial contracts of wife, 10, 274

At common law, 10, 273

Effect of judgment against wife, 10, 276

Equitable relief, 10, 277

Judgment *in personam* under married woman's acts, 10, 275

Judgment *in rem* under married woman's acts, 10, 274

Suits against husband and wife, 10, 273

Antenuptial contracts of wife, 10, 274

At common law, 10, 273

Effect of judgment against wife, 10, 276

Equitable relief, 10, 277

Judgment *in personam* under married woman's acts, 10, 275

Judgment *in rem* under married woman's acts, 10, 274

Under married woman's acts, 10, 274

Under married woman's acts, 10, 274

Jurisdiction:

Suits between husband and wife, 10, 195

Jury, see *infra*, Questions of law and fact.

Larceny:

Property of *feme covert*, 12, 969

Libel and slander, 13, 31

Joinder of husband and wife, 10, 208

Words actionable *per se*, 10, 208

Words not actionable *per se*, 10, 209

Limitations:

Allegations of, in bill or petition, 13, 257

Replication, 13, 259

Malicious prosecution, 13, 426, 427

Marriage:

Allegations of marriage in suits by husband and wife, 10, 237

Alleging marriage in actions against husband and wife, 10, 258

HUSBAND AND WIFE, *cont'd.*

Marriage, *cont'd.*

Effect of marriage on suits pending against *feme sole*, 10, 257

Effect of marriage pending suit, 10, 234

Marriage (annulment), see MARRIAGE (ANNULMENT).

Mechanics' liens:

Charging married woman's property, 13, 989

Parties defendant, 13, 965

Community property, 13, 966

Examples, 13, 965, 966

In general, 13, 965

Scire facias, 13, 1017

Misjoinder (see *infra*, Effect of nonjoinder or misjoinder):

How objection for misjoinder taken, 10, 240

Names, 14, 292

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Next friend, see NEXT FRIEND.

Necessity of next friend obviated by statute, 10, 198

Wife to sue in equity by next friend, 10, 197

Nonjoinder, see *infra*, Effect of nonjoinder or misjoinder.

Parties to suits (see *infra*, Effect of nonjoinder or misjoinder), 10, 199

Actions by wife in representative capacity, 10, 222

Actions concerning wife's personal chattels, 10, 214

At common law, 10, 214

Married woman's acts, 10, 215

Property accruing to wife during coverture, 10, 215

Property owned by wife before marriage, 10, 214

Actions concerning wife's real property, 10, 209

At common law, 10, 209

For injury to wife's realty after marriage, 10, 210

For injury to wife's realty before marriage, 10, 210

Injuries to wife's realty, 10, 214

Land vested jointly in husband and wife, 10, 210

Partition, 10, 211

Rents accruing during coverture, 10, 210

Rents accruing from wife's separate realty, 10, 214

To recover possession under married woman's acts, 10, 213

HUSBAND AND WIFE, *cont'd.*

Parties to suits, *cont'd.*

Actions concerning wife's real property, *cont'd.*

Under married woman's acts, 10, 211

Writ of waste, 12, 210

Actions concerning wife's statutory separate estate, 10, 216

Exceptions to general rule, 10, 219

General rule, 10, 16

Husband authorized to sue, 10, 217

Statutes permissive or mandatory, 10, 220

What constitutes statutory separate estate, 10, 218

Actions *ex delicto*, 15, 518

Actions for injuries to wife's person or character, 10, 205

Action by wife alone under married woman's acts, 10, 206

At common law, 10, 205

Consequential damages, 10, 207

Joinder of husband under married woman's acts, 10, 207

Personal injury and suffering of wife, 10, 205

Slander of wife, 10, 208

Statute permissive or mandatory, 10, 207

Under married woman's acts, 10, 206

Where damages become community property, 10, 209

Actions for personal injury and suffering of wife, 10, 205

Actions on express promise to husband and wife jointly, 10, 203

Actions on express promise to wife, 10, 201

Actions on wife's postnuptial choses in action, 10, 201

Actions on wife's postnuptial choses in action under married woman's acts, 10, 203

Actions to recover for wife's personal services, 10, 204

Antenuptial choses in action of wife, 10, 199

Community property, 10, 222

Equitable separate estate, 10, 224

Equity as affected by statute, 10, 225

Equity independently of statute, 10, 223

HUSBAND AND WIFE, *cont'd.*

Parties to suits, *cont'd.*

In equity, 10, 223

Joint right of action in husband and wife, 10, 205

Married woman's acts, 10, 203

On causes of action in husband's right, 10, 199

On wife's antenuptial choses in action at common law, 10, 199

On wife's antenuptial choses in action under married woman's acts, 10, 200

Suits against husband and wife, 10, 244

Actions sounding in tort, 10, 250

Against wife in representative capacity, 10, 254

Antenuptial contracts at common law, 10, 246

Antenuptial contracts of wife, 10, 246

Antenuptial contracts under married woman's acts, 10, 247

Antenuptial torts of wife, 10, 250

Arising out of contract, 10, 246

Concerning community property, 10, 254

Concerning wife's separate property, 10, 252

Criminal proceedings, 10, 254

Husband's appearance equivalent to authorization, 10, 246

Husband usually a necessary defendant, 10, 244

In general, 10, 244

Joint contracts of husband and wife at common law, 10, 249, 250

Joint torts of husband and wife, 10, 252

Postnuptial contracts of wife at common law, 10, 248

Postnuptial contracts of wife under married woman's acts, 10, 248

Postnuptial torts of wife, 10, 250

Postnuptial torts of wife under married woman's acts, 10, 251

When wife may be sued alone, 10, 245

Partition, 10, 211

Parties defendant, 15, 794

HUSBAND AND WIFE, *cont'd.*

- Personal injuries, 16, 573
 - Action by husband, 16, 476
 - Husband necessary party, 16, 476
 - Husband proper but not necessary party, 16, 477
 - Action by husband and wife for injuries to wife, 16, 473
 - In general, 16, 473
 - Prejudicial errors, 16, 473
 - Recovery in joint action by husband and wife, 16, 473
 - Joinder of causes of action, 16, 375
 - Recovery by one of damages belonging to other, 16, 478
- Personal property, see infra.* Parties to suits.
- Petitions, 16, 518
- Plea or answer:
 - Denying marriage in action by husband and wife, 10, 243
 - Suits against husband and wife, 10, 268
 - Benefit of separate estate, 10, 272
 - Coverture as a defense, 10, 270
 - How coverture is set up, 10, 271
 - How wife defends at common law, 10, 268
 - How wife defends in equity, 10, 269
 - How wife defends under the code, 10, 269
 - Mere plea of coverture as *prima facie* defense, 10, 271
 - Mere plea of coverture insufficient, 10, 272
 - Necessary allegations in actions for torts, 10, 273
 - Necessary allegations in suits on contracts, 10, 271
 - When coverture is set up, 10, 270
 - Who may set up coverture, 10, 270
- Suits by husband and wife, 10, 243
- Probate and contest of wills, 16, 1046
- Province of court and jury, see infra.*
- Questions of law and fact.
- Questions of law and fact, 16, 479
 - Examples, 16, 479
 - Province of court, 16, 479
 - Province of jury, 16, 479
- Real property, see infra.* Parties to suits.
- Redemption, 17, 953
- Rents, 10, 210, 214

HUSBAND AND WIFE, *cont'd.*

- Rescission, cancellation, and reformation of contracts:
 - Reformation of deeds of married women, 18, 788
- Separate maintenance, suits for, 10, 198
- Separate property of married women:
 - Declaration and complaint in action relating to separate estate, 10, 241
 - Joinder of husband in actions concerning wife's property, 10, 252
 - Action sounding in tort, 10, 253
 - Parties to actions against wife, 10, 252, 253
 - Property in hands of trustee, 10, 253
- Joinder of husband in chancery suits, 10, 224
- Parties to actions concerning, 10, 216
 - Exceptions to general rule, 10, 219
 - General rule, 10, 216
 - Husband authorized to sue, 10, 217
 - Statute permissive or mandatory, 10, 220
 - What constitutes statutory separate estate, 10, 218
- Suits to charge wife's separate property, 10, 260
 - Allegations in general, 10, 260
 - Alleging benefit to separate property, 10, 266
 - Alleging intent to charge, 10, 265
 - Alleging separate property in wife, 10, 263
 - Declaration, bill, or complaint, 10, 260
 - Describing separate property, 10, 265
 - Nature of wife's estate, 10, 262
 - Time of holding separate property, 10, 264
- Separation:
 - Action by wife alone, 10, 231
 - Effect of desertion or separation on suit, 10, 231
 - Examples, 10, 231, 234
 - Leaving state equivalent to abjuring realm, 10, 231
 - Use of husband's name, 10, 233
- Sequestration, 19, 545
- Service of process, 19, 632
- Specific performance, see SPECIFIC PERFORMANCE.*

HUSBAND AND WIFE, *cont'd.*

Suits against husband and wife (see *infra*, Parties to suits; Plea or answer):

Judgment, see *infra*, Judgment.

Suits between husband and wife, 10, 195

Bill or complaint in suits for separate maintenance, 10, 199

Code procedure, 10, 196

Common law, 10, 195

Coverture as a defense, 10, 198

Equity, 10, 195

How brought, 10, 197

Necessity for next friend obviated by statute, 10, 198

Statutes, 10, 196

Suits for separate maintenance, 10, 198

What courts have jurisdiction, 10, 195

Wife to sue in equity by next friend, 10, 197

Suits by husband and wife (see *infra*, Parties to suits):

Declaration and complaint, see *infra*, Declaration and complaint.

Effect of death, see *infra*, Death.

Effect of desertion or separation, 10, 231

Effect of marriage pending suit, 10, 234

Judgment, 10, 243

Plea, 10, 243

Survival of actions:

Injuries to wife, 21, 341

Telegraphs and telephones, 21, 511

Parties in action for failure to deliver message, 21, 511

Torts (see *infra*, Parties to suits):

Suits for wife's torts, 10, 268

Trespass, 21, 805

Trover and conversion:

Joinder of parties, 21, 1054

Joinder of parties plaintiff, 21, 1050

Parties to actions, 21, 1046

Waste, 22, 1096

Waste, writ of, 10, 210

HYPOTHETICAL QUESTION:

Expert witnesses, see EXPERT WITNESSES.

ICE:

Riparian rights, 18, 1214

IDEM SONANS:

Forgery, 9, 599

Homicide, 10, 148

Intoxicating liquors, 11, 554

Variance, 22, 569

IDENTITY (see NAMES):

Bail and recognizance, 3, 211

Extradition, 8, 824

IDENTITY, *cont'a.*

Instructions:

As to evidence to establish identity, 11, 366

Names, see NAMES.

IGNORANCE:

Answers in equity pleading, 1, 947

ILLEGAL CONTRACTS, 4, 952

Answers in code pleading, 1, 835, 844

Assumpsit, 2, 1019

Loans for illegal purpose, 2, 1016

Debt, 5, 898

Gaming, see GAMING.

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

ILLEGAL ELECTIONS, see ELECTIONS.**ILLEGAL SALES, 19, 40****IMMATERIAL, see SCANDAL AND IMPERTINENCE.****IMMIGRATION, 10, 278**

Contract-labor law, 10, 278

Importation for purposes of prostitution, 10, 278

Prostitution, 10, 278

IMPANELING, see GRAND JURIES.**IMPARLANCE, see CONTINUANCES; TIME TO PLEAD.****IMPEACHMENT (see BILLS TO IMPEACH DECREES AND JUDGMENTS; PUBLIC OFFICERS; JUDGMENTS):**

Judges, 11, 781

IMPEACHMENT OF WITNESSES, 10, 279

Admissions:

Admissions of party called as witness, 10, 323

Attacking reputation of witness, 10, 299

Action for seduction, 10, 311

Association with lewd women, 10, 310

Bastardy cases, 10, 311

Better rule, 10, 300

Chastity of female witness, 10, 310

Chastity of prosecutrix under the age of consent, 10, 313

Conviction of an infamous crime, 10, 314

Cross-examination of impeaching witness, 10, 303

Direct examination of impeaching witness, 10, 301

Drunkenness, 10, 311

Examination of impeaching witness, 10, 301

In general, 10, 299

Inquiry confined to general reputation, 10, 305

Keeping house of ill fame, 10, 311

INCONSISTENCY (see DEFINITENESS AND CERTAINTY IN PLEADINGS; REPUGNANCY):*Amendments*, see AMENDMENTS.*Answers in equity*, see ANSWERS IN EQUITY PLEADINGS.*Appeal*, see APPEALS.*Bills in equity*, see BILLS IN EQUITY.*Counts*, see ACTIONS.*Defenses*, see ANSWERS IN CODE PLEADING.*Legal conclusions*, see LEGAL CONCLUSIONS.*Remedies*, see ELECTION OF REMEDIES.**INCORPOREAL HEREDITAMENTS:***Easements*, see EASEMENTS.*Ejectment*, 7, 275*Title, ownership, and possession*, 21, 723**INCUMBRANCES** (see COVENANT):*Covenant*, 5, 349**INDEBITATUS ASSUMPSIT:***Assumpsit*, see ASSUMPSIT.**INDEBTEDNESS:***Legal conclusions*, 1, 805**INDECENCY:***Obscenity*, see OBSCENITY.**INDECENT ASSAULT**, see ASSAULT AND BATTERY.**INDECENT EXPOSURE**, 10, 339*See LEWDNESS.**Criminal procedure*, 10, 339*Indictment*, 10, 339*Joinder of parties*, 10, 340*Lewdness*, 13, 19**INDEFINITENESS**, see DEFINITENESS AND CERTAINTY IN PLEADINGS.**INDEMNITY** (see BONDS; FORTHCOMING AND DELIVERY BONDS):*Agency:**Actions by agent against principal*, 16, 916*Equitable attachment*, 7, 795*Notice:**Averment of notice in action on indemnity bond*, 14, 1068*Lost instruments and records*, see LOST INSTRUMENTS AND RECORDS.*Sheriffs and constables*, 20, 125*Action upon indemnity bond*, 20, 116*Bringing in and substituting indemnitors*, 20, 137*Cause of action stated*, 20, 140*Discretion of court*, 20, 139*Indemnitor's bond executed after levy and action against sheriff*, 20, 139*Opportunity to defend*, 20, 138*Statutory provisions*, 20, 137*Strict construction*, 20, 138**INDEMNITY**, *cont'd.**Sheriffs and constables*, *cont'd.**Summary proceedings against indemnitors*, 20, 160**INDEPENDENT CONTRACTORS:***Agency:**Parties to actions*, 16, 893*Parties to actions:**Employer and contractor*, 16, 893**INDIANS**, 10, 341*Criminal procedure*, 10, 341*Ejectment*, 7, 278*Indictment*, 10, 342*Jurisdiction over crimes committed by or against*, 10, 341*Removal of causes*, 18, 190**INDICTMENTS**, 10, 344*See INFORMATIONS.**Abbreviations:**Arabic figures*, 10, 419*State*, 10, 423*Abduction*, 1, 50*Allegations*, 1, 50, 51*Form*, 1, 50*Abortion*, 1, 62*Accessories and the like*, see ACCESSORIES AND THE LIKE.*Adultery*, see ADULTERY.*Affray*, see AFFRAY.*Alteration of instrument:**Interlineations*, 10, 419*Amendments*, 1, 688*At common law*, 1, 688*Caption*, 1, 690*Conclusion informal*, 1, 692*Constitutionality of statute*, 1, 692*Date*, 1, 693*Date of offense*, 1, 691*Descriptions*, 1, 693*In substance*, 1, 688*Introduction defective*, 1, 692*Lost indictment*, 1, 688*Matters of form*, 1, 689*Misnomer of accused*, 1, 693*Names*, 1, 691, 693*Recommitting for amendment*, 1, 689*Record of return*, 10, 413*Signature of district attorney*, 1, 692*Statute changing the crime*, 1, 692*Statutes*, 1, 692*Statutes of the various states*, 1, 693, 696*Substance*, 1, 690*Value of goods*, 1, 691*Variance in particulars*, 1, 693*Venue*, 1, 691*What constitutes form*, 1, 692*What constitutes substance*, 1, 690

INDICTMENTS, *cont'd.*

Appeals:

Complaint, 10, 469

Arrest of judgment:

Defective counts in indictment, 2, 801

Defects in indictment, 2, 796

Limitations, 13, 280

Statute repealed under which indictment drawn, 2, 796

Uncertainty of indictment, 2, 799

*Arson, see ARSON.**Assault and battery, see ASSAULT AND BATTERY.*Attempts (*see* ATTEMPTS):

Charging the offense, 10, 477

Bad grammar, 10, 478

Banks and banking, 3, 256

Barratry in criminal law, 3, 264

Bastardy, 3, 320

Bigamy, see BIGAMY.

Boundaries and fences, 3, 677

Boycotts, see STRIKES AND BOYCOTTS.

Breach of the peace, 3, 678

Bribery, see BRIBERY.

Bridges, 3, 707

Form, 3, 708

Parties committing statutory offenses, 3, 708

Parties failing to repair, 3, 707

Obstructing navigation, 3, 708

Requisites, 3, 708

Who may be indicted, 3, 707

Burglary, see BURGLARY.

Caption and commencement, 10, 419

Abbreviation of state, 10, 423

Affirmation for oath, 10, 422

Caption in general, 10, 419

Commencement in general, 10, 422

Contents of caption and commencement, 10, 424

Description of court, 10, 427

Description of grand jury, 10, 428

Formal beginning of the indictment, 10, 422

General nature, 10, 419

Impaneling grand jury, 10, 427

"Jurors" "for grand jurors," 10, 422

Marginal statement, 10, 424

Name and by authority of state, 10, 422

Names of grand jury, 10, 429

Number of grand jury, 10, 429

"Oaths" for "oath," 10, 422

Object, 10, 421

Omission of county, 10, 425

Omission of state, 10, 425

Preamble, 10, 419

Presentment on oath, 10, 422

INDICTMENTS, *cont'd.*Caption and commencement, *cont'd.*

Qualifications of grand jury, 10, 429

Selection of grand jury, 10, 427

Showing jurisdictional facts, 10, 421

Term, 10, 425

That the grand jurors were sworn, 10, 430

"Then and there," 10, 430

Time, 10, 425

Whether part of the indictment, 10, 420

Whether part of the record, 10, 420

Carrying weapons, 3, 874

Examples, 3, 875, 876

Negating exceptions, 3, 876

Requisites, 3, 874

Sufficiency, 3, 874

Cemeteries, see CEMETERIES.

Certificate of clerk:

Date, 10, 426

Charging the offense, 10, 472

Abbreviations, 10, 478

Alternative charge, 10, 490

Attempt to commit, 10, 477

Bad grammar, 10, 478

Characterizing the offense, 10, 480

Clerical errors, 10, 478

Common-law offense under statute, 10, 488

Conclusion of law, 10, 474

Degree of certainty, 10, 473

Effect of conclusion against statute, 10, 488

Effect of form prescribed by statute, 10, 482

Exceptions and provisos, 10, 495

Adoption of exception by words of reference, 10, 498

Descriptive of the offense, 10, 497

Enacting clause, 10, 496

Negating, 10, 495

Scope of negation, 10, 498

Words forming exception, 10, 496

Former offense or conviction, 10, 489

Grade of offense, 10, 480

Inartificial language, 10, 477

Increased punishment by former offense or conviction, 10, 489

Indictments and informations tested by the same rule, 10, 472

Intendment, 10, 474

Intent or knowledge, 10, 491

Charging misdemeanor, 10, 494

Feloniously, 10, 492

INCONSISTENCY (see DEFINITENESS AND CERTAINTY IN PLEADINGS; REPUGNANCY):*Amendments*, see AMENDMENTS.*Answers in equity*, see ANSWERS IN EQUITY PLEADINGS.*Appeal*, see APPEALS.*Bills in equity*, see BILLS IN EQUITY.*Counts*, see ACTIONS.*Defenses*, see ANSWERS IN CODE PLEADING.*Legal conclusions*, see LEGAL CONCLUSIONS.*Remedies*, see ELECTION OF REMEDIES.**INCORPOREAL HEREDITA-
MENTS:***Easements*, see EASEMENTS.

Ejectment, 7, 275

Title, ownership, and possession, 21, 723

INCUMBRANCES (see COVENANT):

Covenant, 5, 349

INDEBITATUS ASSUMPSIT:*Assumpsit*, see ASSUMPSIT.**INDEBTEDNESS:**

Legal conclusions, 1, 805

INDECENCY:*Obscenity*, see OBSCENITY.**INDECENT ASSAULT**, see ASSAULT AND BATTERY.**INDECENT EXPOSURE**, 10, 339

See LEWDNESS.

Criminal procedure, 10, 339

Indictment, 10, 339

Joinder of parties, 10, 340

Lewdness, 13, 19

INDEFINITENESS, see DEFINITENESS AND CERTAINTY IN PLEADINGS.**INDEMNITY** (see BONDS; FORTHCOMING AND DELIVERY BONDS):

Agency:

Actions by agent against principal, 16, 916

Equitable attachment, 7, 795

Notice:

Averment of notice in action on indemnity bond, 14, 1068

Lost instruments and records, see LOST INSTRUMENTS AND RECORDS.

Sheriffs and constables, 20, 125

Action upon indemnity bond, 20, 116

Bringing in and substituting indemnitors, 20, 137

Cause of action stated, 20, 140

Discretion of court, 20, 139

Indemnitor's bond executed after levy and action against sheriff, 20, 139

Opportunity to defend, 20, 138

Statutory provisions, 20, 137

Strict construction, 20, 138

INDEMNITY, *cont'd.*Sheriffs and constables, *cont'd.*

Summary proceedings against indemnitors, 20, 160

INDEPENDENT CONTRACTORS:

Agency:

Parties to actions, 16, 893

Parties to actions:

Employer and contractor, 16, 893

INDIANS, 10, 341

Criminal procedure, 10, 341

Ejectment, 7, 278

Indictment, 10, 342

Jurisdiction over crimes committed by or against, 10, 341

Removal of causes, 18, 190

INDICTMENTS, 10, 344

See INFORMATIONS.

Abbreviations:

Arabic figures, 10, 419

State, 10, 423

Abduction, 1, 50

Allegations, 1, 50, 51

Form, 1, 50

Abortion, 1, 62

Accessories and the like, see ACCESSORIES AND THE LIKE.*Adultery*, see ADULTERY.*Affray*, see AFFRAY.

Alteration of instrument:

Interlineations, 10, 419

Amendments, 1, 688

At common law, 1, 688

Caption, 1, 690

Conclusion informal, 1, 692

Constitutionality of statute, 1, 692

Date, 1, 693

Date of offense, 1, 691

Descriptions, 1, 693

In substance, 1, 688

Introduction defective, 1, 692

Lost indictment, 1, 688

Matters of form, 1, 689

Misnomer of accused, 1, 693

Names, 1, 691, 693

Recommitting for amendment, 1, 689

Record of return, 10, 413

Signature of district attorney, 1, 692

Statute changing the crime, 1, 692

Statutes, 1, 692

Statutes of the various states, 1, 693, 696

Substance, 1, 690

Value of goods, 1, 691

Variance in particulars, 1, 693

Venue, 1, 691

What constitutes form, 1, 692

What constitutes substance, 1, 690

INDICTMENTS, *cont'd.***Appeals:**

Complaint, 10, 469

Arrest of judgment:

Defective counts in indictment, 2, 801

Defects in indictment, 2, 796

Limitations, 13, 280

Statute repealed under which indictment drawn, 2, 796

Uncertainty of indictment, 2, 799

Arson, see ARSON.*Assault and battery*, see ASSAULT AND BATTERY.**Attempts (see ATTEMPTS):**

Charging the offense, 10, 477

Bad grammar, 10, 478

Banks and banking, 3, 256

Barratry in criminal law, 3, 264

Bastardy, 3, 320

Bigamy, see BIGAMY.

Boundaries and fences, 3, 677

Boycotts, see STRIKES AND BOYCOTTS.

Breach of the peace, 3, 678

Bribery, see BRIBERY.**Bridges, 3, 707**

Form, 3, 708

Parties committing statutory offenses, 3, 708

Parties failing to repair, 3, 707

Obstructing navigation, 3, 708

Requisites, 3, 708

Who may be indicted, 3, 707

Burglary, see BURGLARY.**Caption and commencement, 10, 419**

Abbreviation of state, 10, 423

Affirmation for oath, 10, 422

Caption in general, 10, 419

Commencement in general, 10, 422

Contents of caption and commencement, 10, 424

Description of court, 10, 427

Description of grand jury, 10, 428

Formal beginning of the indictment, 10, 422

General nature, 10, 419

Impanelling grand jury, 10, 427

"Jurors" "for grand jurors," 10, 422

Marginal statement, 10, 424

Name and by authority of state, 10, 422

Names of grand jury, 10, 429

Number of grand jury, 10, 429

"Oaths" for "oath," 10, 422

Object, 10, 421

Omission of county, 10, 425

Omission of state, 10, 425

Preamble, 10, 419

Presentment on oath, 10, 422

INDICTMENTS, *cont'd.***Caption and commencement, *cont'd.***

Qualifications of grand jury, 10, 429

Selection of grand jury, 10, 427

Showing jurisdictional facts, 10, 421

Term, 10, 425

That the grand jurors were sworn, 10, 430

"Then and there," 10, 430

Time, 10, 425

Whether part of the indictment, 10, 420

Whether part of the record, 10, 420

Carrying weapons, 3, 874

Examples, 3, 875, 876

Negating exceptions, 3, 876

Requisites, 3, 874

Sufficiency, 3, 874

Cemeteries, see CEMETERIES.**Certificate of clerk:**

Date, 10, 426

Charging the offense, 10, 472

Abbreviations, 10, 478

Alternative charge, 10, 490

Attempt to commit, 10, 477

Bad grammar, 10, 478

Characterizing the offense, 10, 480

Clerical errors, 10, 478

Common-law offense under statute, 10, 488

Conclusion of law, 10, 474

Degree of certainty, 10, 473

Effect of conclusion against statute, 10, 488

Effect of form prescribed by statute, 10, 482

Exceptions and provisos, 10, 495

Adoption of exception by words of reference, 10, 498

Descriptive of the offense, 10, 497

Enacting clause, 10, 496

Negating, 10, 495

Scope of negation, 10, 498

Words forming exception, 10, 496

Former offense or conviction, 10, 489

Grade of offense, 10, 480

Inartificial language, 10, 477

Increased punishment by former offense or conviction, 10, 489

Indictments and informations tested by the same rule, 10, 472

Intendment, 10, 474

Intent or knowledge, 10, 491

Charging misdemeanor, 10, 494

Feloniously, 10, 492

INDICTMENTS, *cont'd.*Charging the offense, *cont'd.*Intent or knowledge, *cont'd.*

Intent generally, 10, 491

Knowledge, 10, 495

Maliciously, 10, 492

Offense described by statute,
10, 493

Unlawfully, 10, 495

Wilfully, 10, 492

Interpretation of language, 10,
479

Language of statute, 10, 483

Addition of averments not
required by statute, 10, 486Charge in language of stat-
ute, 10, 487Effect of conclusion against
statute, 10, 488

Exact language, 10, 483, 486

General rules, 10, 483

Generic followed by specific
terms, 10, 486

Sufficiency, 10, 483

Whether exact language
must be used, 10, 484Words of equivalent import,
10, 485

Matters of inducement, 10, 476

Matters of judicial notice, 10, 476

Misspelling, 10, 478

Necessity of charging facts, 10,
473Pleading and describing written
instruments, 10, 480

Pleading statute, 10, 490

Positiveness of charge, 10, 476

Statutory offenses, 10, 481

Sufficiency of complaints, 10, 501

Sufficiency of inartificial lan-
guage, 10, 477

Technical words, 10, 479

Use of disjunctive, 10, 490

Variance between information or
indictment and affidavit or
complaint, 10, 499*Videlicet*, 10, 480*Vi et armis*, 10, 478

Chattel mortgages, 4, 534

Clerical errors, 10, 478

Commencement, see *infra*, Caption and
commencement.

Complaint, 10, 462

Address, 10, 467

Affirmation, 10, 463

Appeal, 10, 469

By whom made, 10, 466

By whom oath administered, 10,
464Complaint for recovery of pen-
alty, 10, 467

Conclusion, 10, 468

Description of person, 10, 507

INDICTMENTS, *cont'd.*Complaint, *cont'd.*

Designation of office, 10, 465

Indorsement of witnesses, 10, 469

Jurat, 10, 464

Jurisdiction and procedure stat-
utory, 10, 462

Matters of form, 10, 467

Name and signature of com-
plainant, 10, 468

Necessity of complaint, 10, 463

Oath, 10, 463

Objection to, 10, 577

Oral complaint, 10, 464

Sufficiency, 10, 501

Exceptions and provisos, 10,
504

Following the statute, 10, 503

In general, 10, 501

Knowledge or intent, 10, 502

Prior conviction, 10, 502

Strictness required in in-
dictments or informations,
10, 503

Sufficiency of oath, 10, 466

Supplying lost complaint by
copy, 10, 469

Title, 10, 467

Variance, 10, 501

Variance between complaint and
information or indictment, 10,
510Variance between information
and complaint:

Laying time, 10, 520

Venue, 10, 529

Writing, 10, 463

Concealment of birth or death, 4, 624

Conclusion:

Complaint, 10, 468

Conclusion against statute, 10, 488

Conclusion of indictment, 10, 441

Contra formam, 10, 444Conclusion to several counts,
10, 444In addition to *contra pacem*,
10, 443Necessity of conclusion, 10,
444Plural and singular conclu-
sion, 10, 446Sufficiency of conclusion, 10,
445*Contra pacem*, 10, 441Adding name of state, 10,
442Against the peace and dig-
nity of the "same," 10,
442.*Contra formam*, 10, 443Necessity of such conclu-
sion, 10, 441

People of the state, 10, 443

INDICTMENTS, *cont'd.*

- Conclusion of indictment, *cont'd.*
 - Contra pacem, cont'd.*
 - Statutory offense, 10, 442
 - Sufficiency of conclusion, 10, 442
 - Surplusage, 10, 443
- Conflict of laws:
 - Border counties, 10, 527
 - Jurisdiction in two counties, 10, 526
- Conjunctive averments, 10, 536
- Constitutional law:
 - Necessity, 10, 351, 352
- Construction, 10, 479
- Contra pacem, see infra*, Conclusion of indictment.
- Convicts, 5, 15
- Copy of indictment, 2, 764
- Corporations:
 - Description of corporation, 10, 509
 - Common though incorrect name, 10, 510
 - De facto* corporation, 10, 509
 - Examples, 10, 509, 510
 - In general, 10, 509
 - Sufficiency of description, 10, 510
- Counterfeiting, see* COUNTERFEITING.
- Counties, see infra*, Laying venue.
- Counts, see infra*, Joinder of counts and offenses.
- Court:
 - Description of court, 10, 427
- Cruelty to animals and children, 5, 695
- Date (*see infra*, Laying time), 10, 419
 - Arabic figures, 10, 419
 - Term or time, 10, 425
- Death by wrongful act:
 - Remedy by indictment, 5, 891
 - Administration, 5, 891
 - Duplicity, 5, 893
 - Essential elements, 5, 891
 - Existence of beneficiaries, 5, 891
 - Gross negligence, 5, 892
 - In general, 5, 891
 - Particularity, 5, 892
- Definiteness and certainty in pleadings:
 - Charging the offense, 10, 473
- Definition, 10, 350
- Degrees of crime, see infra*, Grade of offense.
- Demurrer, 10, 563, 572
 - Action upon, 10, 573
 - Effect of overruling, 10, 573
 - Effect of sustaining, 10, 575
 - Limitations, 13, 282
 - Nature, 10, 572
 - Scope, 10, 573

INDICTMENTS, *cont'd.*

- Demurrer, *cont'd.*
 - Trial without action, 10, 573
 - Withdrawal of demurrer, 10, 573
- Description of person, 10, 504
 - Burden of proof, 10, 509
 - Christian name unknown, 10, 507
 - Complaints, 10, 507
 - Defendant, 10, 504
 - Common name, 10, 505
 - Descriptio personæ*, 10, 505
 - In general, 10, 504
 - Repetition of name, 10, 504
 - Description of corporation, 10, 509
 - Name in fact known, 10, 508
 - Name of defendant unknown, 10, 507
 - Names of third persons unknown, 10, 508
 - Persons other than defendant, 10, 505
 - Variance, 10, 506
 - Variance between complaint and information or indictment, 10, 510
- Disjunctive averments, 10, 538
- Disorderly conduct, 7, 3
- Disorderly houses, see* DISORDERLY HOUSES.
- Distinguished from information, 1, 691
- Disturbing meetings, see* DISTURBING MEETINGS.
- Druggists, 7, 226
- Drunkenness, 7, 230
 - Amendment, 7, 231
 - Former conviction, 7, 230
 - Generally, 7, 230
 - Publicity, 7, 230
- Duelling, see* DUELLING.
- Duplicity, 10, 532
 - Acts not appearing to be one and the same, 10, 534
 - Conjunctive averments, 10, 536
 - Disjunctive averments, 10, 538
 - Distinct offenses as stages of one crime, 10, 535
 - General rule forbidding duplicity, 10, 532
 - Greater including lesser offense, 10, 535
 - Matters of aggravation, 10, 534
 - Multifariousness, 10, 535
 - Nolle prosequi*, 10, 563
 - Objections for duplicity, how made and waived, 10, 539
 - Surplusage, 10, 535
 - Where one of two offenses is inadequately charged, 10, 535
- Elections, see* ELECTIONS; and *see infra*, Joinder of counts and offenses.
- Embezzlement, see* EMBEZZLEMENT.

INDICTMENTS, *cont'd.*

Escape, see **ESCAPE**.

Evidence:

Indictment as evidence, 8, 31

Exceptions and objections (see *infra*,

Demurrer; Motion to quash),

8, 201; 10, 563

Demurrer, 10, 563

Grand juries, 10, 402

Challenge, 10, 404

In general, 10, 402

Manner of objecting, 10, 404

Motion to quash indictment,

10, 405

Motion to quash venire, 10,

406

Plea in abatement or mo-

tion, 10, 404

Proceedings before grand

jury, 10, 409

Qualifications of grand

jurors, 10, 407

Right to challenge and when

to exercise it, 10, 408

Who may challenge, 10, 409

How made, 10, 563

Motion to quash, 10, 563

Objection to complaints, 10, 577

Pointing out defects, 10, 566

Statute of jeofails, 10, 565

Time of making, 10, 564

Waiver, 10, 564

Withdrawal of a plea, 10, 566

Exceptions and provisos, 10, 495

Adoption of exception by words

of reference, 10, 498

Complaint, 10, 504

Descriptive of the offense, 10, 497

Enacting clause, 10, 496

Negating, 10, 495

Scope of negation, 10, 498

Words forming exception, 10, 496

Extortion, see **EXTORTION**.

False imprisonment, 8, 853

False personation, see **FALSE PERSONA-**

TION.

False pretenses, see **FALSE PRETENSES**.

Falsifying records, 8, 917

Feloniously, 10, 492

Figures, expression of date in, 10,

519

Filing, 10, 414

Effect of the statute, 10, 415

Indorsement of filing, 10, 416

In general, 10, 414

Name of the offense, 10, 414

Filing of information, see **INFORMA-**

TIONS

Finding the indictment, see **GRAND**

JURIES.

Fish and fisheries, 9, 10

Following the statute:

Complaint, 10, 503

INDICTMENTS, *cont'd.*

Forcible entry and detainer, see **FORCI-**

BLE ENTRY AND DETAINER.

Forgery, see **FORGERY**.

Former offense or conviction:

Charging, 10, 489

Form, general matters of, 10, 418

Fornication, see **FORNICATION**.

Friend of the court:

Vicious indictment, 9, 724

Game and game laws, see **GAME AND**

GAME LAWS.

Gaming, see **GAMING**.

General matters of form, 10, 418

Grade of offense:

Charging the offense, 10, 480

Grammar, 10, 478

Grand juries (see **GRAND JURIES**):

Necessity of grand jury, 10, 353

Habeas corpus (see **HABEAS CORPUS**):

Sufficiency of indictment, 9, 1047

Hawkers and peddlers, 10, 2

Health regulations, 10, 4

Homesteads and exemptions, 10, 104

Homicide, see **HOMICIDE**.

Horse racing, 10, 190

Incest, see **INCEST**.

Indecent exposure, 10, 339

Indians, 10, 342

Indorsement of witnesses:

Complaint, 10, 469

Indorsements (see *infra*, Return of

indictment by grand jury), 10,

431

Effect of omission of names of

witnesses upon evidence

offered on the trial, 10, 436

How indictment affected by

omission of indorsement of

witnesses, 10, 435

Indictment and presentment, 10,

431

Indorsement of finding and sig-

nature of foreman, 10, 437

Indorsement of prosecutor, 10,

431

Indorsement of witnesses, 10,

434

Materiality of witnesses, 10, 434

Necessity of indorsement of find-

INDICTMENTS, *cont'd.***Infants:**

Indictment for unlawful sale to minor, 11, 557

Informations, see **INFORMATIONS**.

Intent (see *infra*, Charging the offense):

Charging the offense, 10, 477

Complaint, 10, 502

Interlineations, 10, 419

Internal revenue, 11, 441

Interpretation, 10, 479

Intoxicating liquors, see **INTOXICATING LIQUORS**.

Joinder of counts and offenses (see *infra*, Duplicity), 10, 540

Common-law count under statute, 10, 544

Consolidation, 10, 553

Counts connected by words of reference, 10, 540

Degrees of same offense, 10, 549

Different misdemeanors, 10, 553

Discretion of court, 10, 551

Distinct felonies, 10, 552

Each count a separate indictment, 10, 540

Effect of election, 10, 553

Election, 10, 546

Felonies, 10, 548

Felonies and misdemeanors, 10, 542

Greater including lesser offense, 10, 542

In general, 10, 540

Joinder of counts charging one offense, 10, 543

Joinder of counts for distinct offenses, 10, 546

Joinder of felony and misdemeanor, 10, 550

Joinder of misdemeanors, 10, 549

Judgment on one count, 10, 553

Motion to elect, 10, 551

Nature of counts, 10, 540

Nolle prosequi, 10, 563

Offenses of different character, 10, 549

Offenses of same kind, 10, 547

Same acts constituting different offenses, 10, 545

Separate indictments as counts of one, 10, 553

Joinder of parties, 10, 554

Offenses that may be jointly committed, 10, 554

Where the act is not capable of joint commission, 10, 555

Judges, 11, 781

Judicial notice, 10, 476

Jurat:

Complaint, 10, 464

INDICTMENTS, *cont'd.*

Jurisdiction (see *infra*, Laying venue):

Border counties, 10, 527

Complaint before magistrate, 10, 462

Two counties, 10, 526

"Jurors" for "grand jurors," 10, 422

Justices of the peace, 12, 820

Kidnapping, see **KIDNAPPING**.

Knowledge, see *infra*, Charging the offense.

Language of statute, see *infra*, Charging the offense.

Larceny, see **LARCENY**.

Laying time, 10, 511

After verdict, 10, 513

Bad spelling in date, 10, 520

Christian era, 10, 517

Complaints, 10, 529

Continuando, 10, 514, 517

Counties annexed for judicial purposes, 10, 528

Day of month, 10, 515

Different dates in separate counts, 10, 513

Effect of *continuando*, 10, 514

Expression of date in figures, 10, 519

Figures, 10, 519

Future or impossible date, 10, 515

Materiality with reference to laws in effect, 10, 514

Necessity, 10, 511

Negating statute of limitations, 10, 516

Night-time, 10, 517

Omission of month and day, 10, 512

Omission of year, 10, 512

On or about, 10, 516

Precision, 10, 511

Same day as that of charge, 10, 515

Then and there, 10, 519

Time collected from whole statement, 10, 513

Time laid as between two dates, 10, 513

Time matter of record, 10, 516

Variance between information and complaint, 10, 520

When time is an ingredient of the offense, 10, 514

Words of reference, 10, 519

Laying venue, 10, 520

Allegation of jurisdiction in terms, 10, 521

At the county or place aforesaid, 10, 524

Border counties, 10, 527

General sufficiency, 10, 520

INDICTMENTS, *cont'd.*

Escape, see ESCAPE.

Evidence:

Indictment as evidence, 8, 31

Exceptions and objections (see *infra*,

Demurrer; Motion to quash),

8, 201; 10, 563

Demurrer, 10, 563

Grand juries, 10, 402

Challenge, 10, 404

In general, 10, 402

Manner of objecting, 10, 404

Motion to quash indictment,

10, 405

Motion to quash venire, 10,

406

Plea in abatement or mo-

tion, 10, 404

Proceedings before grand

jury, 10, 409

Qualifications of grand

jurors, 10, 407

Right to challenge and when

to exercise it, 10, 408

Who may challenge, 10, 409

How made, 10, 563

Motion to quash, 10, 563

Objection to complaints, 10, 577

Pointing out defects, 10, 566

Statute of jeofails, 10, 565

Time of making, 10, 564

Waiver, 10, 564

Withdrawal of a plea, 10, 566

Exceptions and provisos, 10, 495

Adoption of exception by words

of reference, 10, 498

Complaint, 10, 504

Descriptive of the offense, 10, 497

Enacting clause, 10, 496

Negating, 10, 495

Scope of negation, 10, 498

Words forming exception, 10, 496

Extortion, see EXTORTION.

False imprisonment, 8, 853

False personation, see FALSE PERSONA-

TION.

False pretenses, see FALSE PRETENSES.

Falsifying records, 8, 917

Feloniously, 10, 492

Figures, expression of date in, 10,

519

Filing, 10, 414

Effect of the statute, 10, 415

Indorsement of filing, 10, 416

In general, 10, 414

Name of the offense, 10, 414

Filing of information, see INFORMA-

TIONS

Finding the indictment, see GRAND

JURIES.

Fish and fisheries, 9, 10

Following the statute:

Complaint, 10, 503

INDICTMENTS, *cont'd.*

Forcible entry and detainer, see FORCI-

BLE ENTRY AND DETAINER.

Forgery, see FORGERY.

Former offense or conviction:

Charging, 10, 489

Form, general matters of, 10, 418

Fornication, see FORNICATION.

Friend of the court:

Vicious indictment, 9, 724

Game and game laws, see GAME AND

GAME LAWS.

Gaming, see GAMING.

General matters of form, 10, 418

Grade of offense:

Charging the offense, 10, 480

Grammar, 10, 478

Grand juries (see GRAND JURIES):

Necessity of grand jury, 10, 353

Habeas corpus (see HABEAS CORPUS):

Sufficiency of indictment, 9, 1047

Hawkers and peddlers, 10, 2

Health regulations, 10, 4

Homesteads and exemptions, 10, 104

Homicide, see HOMICIDE.

Horse racing, 10, 190

Incest, see INCEST.

Indecent exposure, 10, 339

Indians, 10, 342

Indorsement of witnesses:

Complaint, 10, 469

Indorsements (see *infra*, Return of

indictment by grand jury), 10,

431

Effect of omission of names of

witnesses upon evidence

offered on the trial, 10, 436

How indictment affected by

omission of indorsement of

witnesses, 10, 435

Indictment and presentment, 10,

431

Indorsement of finding and sig-

nature of foreman, 10, 437

Indorsement of prosecutor, 10,

431

Indorsement of witnesses, 10,

434

Materiality of witnesses, 10, 434

Necessity of indorsement of find-

ing and signature of foreman,

10, 437

Objection for defect, 10, 433

Prosecution by district attorney

ex officio, 10, 431

Signature of foreman, 10, 439

Statutory requirement, 10, 431

Statutory requirement as to in-

dorsement of witnesses, 10, 434

Sufficiency of indorsement, 10,

432

Sufficiency of indorsement of

foreman, 10, 440

INDICTMENTS, *cont'd.*

Infants:

Indictment for unlawful sale to minor, 11, 557

Informations, see **INFORMATIONS**.

Intent (see *infra*, Charging the offense):

Charging the offense, 10, 477

Complaint, 10, 502

Interlineations, 10, 419

Internal revenue, 11, 441

Interpretation, 10, 479

Intoxicating liquors, see **INTOXICATING LIQUORS**.

Joinder of counts and offenses (see *infra*, Duplicity), 10, 540

Common-law count under statute, 10, 544

Consolidation, 10, 553

Counts connected by words of reference, 10, 540

Degrees of same offense, 10, 549

Different misdemeanors, 10, 553

Discretion of court, 10, 551

Distinct felonies, 10, 552

Each count a separate indictment, 10, 540

Effect of election, 10, 553

Election, 10, 546

Felonies, 10, 548

Felonies and misdemeanors, 10, 542

Greater including lesser offense, 10, 542

In general, 10, 540

Joinder of counts charging one offense, 10, 543

Joinder of counts for distinct offenses, 10, 546

Joinder of felony and misdemeanor, 10, 550

Joinder of misdemeanors, 10, 549

Judgment on one count, 10, 553

Motion to elect, 10, 551

Nature of counts, 10, 540

Nolle prosequi, 10, 563

Offenses of different character, 10, 549

Offenses of same kind, 10, 547

Same acts constituting different offenses, 10, 545

Separate indictments as counts of one, 10, 553

Joinder of parties, 10, 554

Offenses that may be jointly committed, 10, 554

Where the act is not capable of joint commission, 10, 555

Judges, 11, 781

Judicial notice, 10, 476

Jurat:

Complaint, 10, 464

INDICTMENTS, *cont'd.*

Jurisdiction (see *infra*, Laying venue):

Border counties, 10, 527

Complaint before magistrate, 10, 462

Two counties, 10, 526

"Jurors" for "grand jurors," 10, 422

Justices of the peace, 12, 820

Kidnapping, see **KIDNAPPING**.

Knowledge, see *infra*, Charging the offense.

Language of statute, see *infra*, Charging the offense.

Larceny, see **LARCENY**.

Laying time, 10, 511

After verdict, 10, 513

Bad spelling in date, 10, 520

Christian era, 10, 517

Complaints, 10, 529

Continuando, 10, 514, 517

Counties annexed for judicial purposes, 10, 528

Day of month, 10, 515

Different dates in separate counts, 10, 513

Effect of *continuando*, 10, 514

Expression of date in figures, 10, 519

Figures, 10, 519

Future or impossible date, 10, 515

Materiality with reference to laws in effect, 10, 514

Necessity, 10, 511

Negating statute of limitations, 10, 516

Night-time, 10, 517

Omission of month and day, 10, 512

Omission of year, 10, 512

On or about, 10, 516

Precision, 10, 511

Same day as that of charge, 10, 515

Then and there, 10, 519

Time collected from whole statement, 10, 513

Time laid as between two dates, 10, 513

Time matter of record, 10, 516

Variance between information and complaint, 10, 520

When time is an ingredient of the offense, 10, 514

Words of reference, 10, 519

Laying venue, 10, 520

Allegation of jurisdiction in terms, 10, 521

At the county or place aforesaid, 10, 524

Border counties, 10, 527

General sufficiency, 10, 520

INDICTMENTS, *cont'd.*

Laying venue, *cont'd.*

- Jurisdiction in two counties, 10, 526
- Newly organized counties, 10, 528
- Place not a material part of the description of the offense, 10, 522
- State, 10, 523
- Then and there, 10, 524
- Town, 10, 523
- Two places previously mentioned, 10, 525
- Variance between information and complaint, 10, 521
- Venue laid by words of reference, 10, 524
- Where the sense is plain, 10, 526

Legal conclusions, 10, 474, 475

Lewdness, see LEWDNESS.

Libel and slander, see LIBEL AND SLANDER.

Licenses, see LICENSES.

Liens:

- Interference with property, 13, 175

Limitations, 13, 279

- Allegations of indictment, 13, 279
- Arrest of judgment, 13, 280
- Demurrer to indictment, 13, 282
- How time should be laid, 13, 279
- Necessity of special plea, 13, 281
- Necessity to aver matters of avoidance or exceptions, 13, 280

Negating statute of limitations, 10, 516

Quashing indictment, 13, 280

Special plea, 13, 281

Logs and lumber, 13, 347

Indictment for cutting and carrying away, 13, 348

Indictment for destroying log brands, 13, 347

Indictment for unlawful branding, 13, 348

Lost indictment, 10, 417

General rule, 10, 417

Indictment lost after plea or trial, 10, 418

Minority rule, 10, 418

Supplying lost indictment by copy, 10, 417

Lost instruments and records:

Complaint, 10, 469

Lotteries, see LOTTERIES.

Magistrate, see *infra*, Complaint.

Mails, see POST OFFICES.

Maliciously, 10, 492

Malicious mischief, see MALICIOUS MISCHIEF.

INDICTMENTS, *cont'd.*

Malicious prosecution, see MALICIOUS PROSECUTION.

Malpractice, see MALPRACTICE.

Manslaughter, see HOMICIDE.

Marginal statement, 10, 424

Master and servant:

- Enticing away, harboring, and intimidating servants, 13, 919
- Working employees overtime, 13, 924

Mayhem, see MAYHEM.

Miscegenation, 14, 31

Misjoinder, see *infra*, Joinder of counts and offenses.

Misspelling, 10, 478

Monopolies, see MONOPOLIES.

Motion to quash, 10, 563, 567

After plea, 10, 571

Appeal or writ of error, 10, 568

Discretion, 10, 567

Effect of quashal, 10, 572

Exception must be saved, 10, 568

General rules, 10, 567

Order of motion, 10, 570

Presence of accused at hearing, 10, 571

Scope of motion, 10, 570

To what defects directed, 10, 569

Withdrawal of plea, 10, 571

Motion to set aside, 10, 576

Multifariousness, 10, 535

Murder, see HOMICIDE.

Name, 10, 504

Common name, 10, 505

Defendant, 10, 504

Name and by authority of state, 10, 422

Name in fact known, 10, 508

Name unknown, 10, 507

Persons other than defendant, 10, 505

Unknown third persons, 10, 508

Witnesses, 10, 434

Night-time, 10, 517

Nolle prosequi, see NOLLE PROSEQUI.

Nuisances, see NUISANCES.

Oath:

Caption, 10, 430

Complaint, 10, 466

Complaint before magistrate, 10, 463

Necessity of averment that presentment was on oath, 10, 422

"Oaths" for "oath," 10, 422

Showing that grand jury were sworn, 10, 430

Sufficiency of oath, 10, 466

Then and there, 10, 430

Objections, see *infra*, Exception and objections.

Obscenity, see OBSCENITY.

INDICTMENTS, *cont'd.*

Obstructing justice, see OBSTRUCTING JUSTICE.

On or about, 10, 516

Ordinances, see ORDINANCES.

Parties:

Joinder of parties, 10, 554

Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.

Perjury, see PERJURY.

Physicians and surgeons (see PHYSICIANS AND SURGEONS):

Malpractice, see MALPRACTICE.

Piracy, 16, 537

Place (see *infra*, Laying venue):

Description of place as a material ingredient, 10, 529

Pointing firearms, 16, 653

Polygamy, 16, 655

Poor and poor laws:

Procedure against poor officers, 16, 665

Post offices, see POST OFFICES.

Preliminary examination, see PRELIMINARY EXAMINATION.

Presence of jury in court, 10, 410

Presentment (see *infra*, Complaint; Return of indictment by grand jury), 10, 350

Effect of presentment, 10, 350

Prize fighting, 16, 996

Proceedings by and before grand jury, see GRAND JURIES.

Profane swearing, 16, 1080

Prosecuting attorney (see PROSECUTING ATTORNEY):

Signing and countersigning by prosecuting attorney, see PROSECUTING ATTORNEY.

"Prosecutor," 10, 432

Provisos, 10, 495

Public lands, 17, 136

Public officers (see PUBLIC OFFICERS):

Refusal to accept office, 17, 144

Quashal, see *infra*, Motion to quash.

Quo warranto, 17, 392

Railroads, see RAILROADS.

Rape, see RAPE.

Reading indictment, 2, 769

Receiving stolen goods, see RECEIVING STOLEN GOODS.

Records (see *infra*, Return of indictment by grand jury):

Caption, 10, 420

Facts appearing in any part of record, 10, 421

Falsifying records, 8, 917

Return, 10, 410

Amending the record, 10, 413

Indorsement of filing, 10, 416

In general, 10, 410

INDICTMENTS, *cont'd.*

Records, *cont'd.*

Return, *cont'd.*

Necessity that record show that indictment was returned, 10, 410

Recording and filing, 10, 414

Repugnancy, 10, 533; 18, 742

Return of indictment by grand jury, 10, 409

Amending the record, 10, 413

By whom presented, 10, 410

Identity of indictment, 10, 412

Indorsement of filing, 10, 416

Nature of the offense in record, 10, 412

Necessity, 10, 409

Presence of jury in court, 10, 410

Presentment by foreman, 10, 411

Recording and filing, 10, 414

Record of return, 10, 410

Separate record entry for each particular item, 10, 412

Sufficiency of indorsement, 10, 411

Riot, see RIOT.

Robbery, see ROBBERY.

Scilicet or *videlicet*, 19, 255

Second or new indictment, 10, 385

After bill ignored, 10, 385

Necessity of disposition of first indictment, 10, 386

Pending another indictment, 10, 385

Recalling witnesses, 10, 395

Seduction, see SEDUCTION.

Sentence, see SENTENCE.

Separate trials, see SEPARATE TRIALS.

Service of copy of indictment, 10, 470

Right generally, 10, 470

Waiver of right, 10, 471

Service of process:

Copy of indictment, 2, 764

Set aside, motion to, 10, 576

Sheriffs and constables, 20, 157

Signature:

Foreman, 10, 437

Sodomy, see SODOMY.

Spelling, 10, 478

State (see *infra*, Conclusion of indictment):

Abbreviation of state, 10, 423

Name and by authority of state, 10, 422

Statutes (see *infra*, Charging the offense):

Conclusion against statute, 10, 488

Pleading statute, 10, 490

Streets and highways, see STREETS AND HIGHWAYS.

INDICTMENTS, *cont'd.*

Strikes and boycotts, see STRIKES AND BOYCOTTS.

Subjects of treatment, 10, 350

Sundays and holidays, see SUNDAYS AND HOLIDAYS.

Surplusage, 10, 530

Addition of averments not required by statute, 10, 486

Contra pacem and contra formam, 10, 443

Duplicity, 10, 535

Taxation, 21, 497

Technical words, 10, 479

Telegraphs and telephones, 21 506

Term:

Caption, 10, 425

Time when indictment was found, 10, 425

Theatres and shows, 21, 646

Then and there, 10, 430, 519, 524

Threats and threatening letters, see THREATS AND THREATENING LETTERS.

Time (see *infra*, Laying time):

Arrest of judgment or quashing indictment, 13, 280

Caption, 10, 425

Certificate of clerk, 10, 426

Time when indictment was found, 10, 425

Trade-marks and trade names, 21, 774

Treason, see TREASON.

Trespass, see TRESPASS.

Trespassing, vicious, and diseased animals, 21, 899

Turnpikes and tollroads, see TURNPIKES AND TOLLROADS.

Unlawful assembly, 22, 403

Unlawfully, 10, 495

Usury, see USURY.

Variance (see VARIANCE):

Complaint, information, or indictment, 10, 510

Description of place as a material ingredient, 10, 530

Laying time, 10, 520

Name, see *infra*, Name.

Venue, 10, 521

Venue (see *infra*, Laying venue):

Description of place as a material ingredient, 10, 529

Verdict, see VERDICT.

Videlicet, 10, 480; 19, 255

Vi et armis, 10, 478

Warrants, see WARRANTS.

Waters and watercourses:

Obstruction of navigation, 22, 1176

Ways, 22, 1187

Weights and measures, 22, 1188

Wilfully, 10, 492

INDICTMENTS, *cont'd.*

Witnesses:

Indorsement of witnesses, 10, 434

Effect of omission upon evidence on the trial, 10, 436

How indictment affected by omission, 10, 435

Methods exclusive, 10, 435

Names of witnesses, 10, 434

Purpose of requirement, 10, 434

Statutory requirements, 10, 434

Written instruments:

Pleading and describing, 10, 481

Year, see *infra*, Laying time.

INDORSEMENT (see NEGOTIABLE INSTRUMENTS), 10, 578

Filing pleadings and papers, see FILING PLEADINGS AND PAPERS.

Summons and process, see SUMMONS AND PROCESS.

INDUCEMENT, 10, 581

Confession and avoidance, 16, 548

Obscenity, 14, 1160

Traverse, 16, 548

INFANTS, 1, 9

See DIVORCE.

Abatement in pleading, 1, 9

Actions against infants (see *infra*, Service of process), 10, 599

Actions involving necessities, see *infra*, Necessaries.

Answer or plea, see *infra*, Answer or plea.

Appearance, 10, 616

Arbitration, 10, 697

Compromise, 10, 597

Costs, 10, 700

Demurrer of the parol, 10, 698

Guardian ad litem, see GUARDIAN AD LITEM.

Actions and suits generally, 10, 588

Admissions of infants, 10, 591

Amicus curia, 10, 590

Appointment of attorney in probate proceedings, 10, 597

Attainment of majority pending suit, 10, 591

Chancery jurisdiction over infants, see *infra*, Equitable jurisdiction.

Conduct of suits, 10, 594

Consent of infants, 10, 591

Disability of infants, 10, 594

Election for infant, 10, 590

Employment of attorney to conduct case, 10, 598

Infants as wards of court, 10, 589

Laches not imputable to infants, 10, 590

INFANTS, *cont'd.*

- Actions and suits generally, *cont'd.*
 - Making infants defendants instead of plaintiffs because more advantageous, 10, 593
 - Representation by attorney, 10, 595
 - Submission of agreed controversy under statute, 10, 591

Actions by infants, see NEXT FRIEND.

Adjournment:

- Sale of real estate, 10, 806

Admissions, 10, 591

Adoption, see ADOPTION.

Affidavits:

- Notice of publication of advertisement of sale of real estate, 10, 804

Affidavits of merits or defense, 1, 349

Agreed case:

- Submission of agreed controversy under statute, 10, 591

Amicus curiæ, 10, 590

Answer or plea, 1, 886; 10, 687

- Answer not binding on infant, 10, 691

- Answer of infants as evidence, 1, 955

Appeal by guardian *ad litem*, 10, 687

Duty of guardian, 10, 688

Formal answer, 10, 689

Form and sufficiency, 10, 688

In general, 10, 687

Necessity of appointment of guardian, 10, 687

Plea of infancy, see *infra*, *Plea of infancy*.

Reply of ratification, 10, 694

Time of answer, 10, 687

Verification, 10, 690

Appeals, 2, 31; 10, 729

Appeal bond, 10, 730

Before or after majority, 10, 730

Certiorari, 10, 731

Error in regard to appointment of guardian *ad litem*, 10, 731

Guardian *ad litem*, 10, 729

Infant prosecuting in his own name, 10, 729

Joinder, 2, 184

Next friend, 10, 730

Parties, 10, 731

Presumptions, 10, 733

Questions as to appointment of guardian *ad litem*, 10, 731

Sale of infant's real estate, 10, 819, 839

Service of process, 10, 733

Taking the appeal, 10, 729

What the record must show, 10, 732

INFANTS, *cont'd.*

Appearances (see NEXT FRIEND), 2, 671; 10, 594

Appearance by attorney, 10, 595

Appearance by general guardian, 10, 594

Appearance by guardian or *prochein ami*, 10, 594

Appointment of guardian *ad litem*, 10, 637

Effect of appearance by attorney, 10, 596

General guardian, 2, 672

Guardian *ad litem*, 2, 671

Next friend, 2, 671

Who makes appearance, 2, 671

Appraisement, see *infra*, Sale of infant's real estate.

Apprenticeship, see APPRENTICESHIP.

Arbitration, 10, 697

Attorneys, 10, 595

Appearance by attorney, 10, 595

Appointment of attorney in probate proceedings in California, 10, 597

Compensation of attorney, 10, 599

Effect of appearance by attorney, 10, 596

Employment of attorney to conduct case, 10, 598

Imposing terms, 10, 597

Power of attorney to bind infant, 10, 599

Waiver of service of process by attorney, 10, 613

Bankruptcy, 22, 353

Bastardy, 3, 271

Bidding, see *infra*, Sale of infant's real estate.

Bills of review, 3, 571

Bill to impeach decrees and judgments, 3, 612; 10, 706

Attack on original bill, 10, 706

Filing after decision on appeal, 10, 708

Filing after time for bringing error, 10, 707

Filing before majority, 10, 707

Leave of court to file bill, 10, 706

Parties, 10, 708

Time of filing, 10, 707

When the bill lies, 10, 706

Bona fide purchasers (see *infra*, Sale of infant's real estate), 10, 705

Bonds, see *infra*, Sale of infant's real estate.

Breach of promise of marriage, 3, 684

Burden of proof:

Infancy, 10, 694

Necessaries, 10, 695

Certiorari, 10, 731

INFANTS, *cont'd.*

- Chambers and vacation, 4, 351
- Habeas corpus, 4, 362
- Chancery*, see *infra*, Equitable jurisdiction.
- Collateral attack, 10, 615, 703
 - Day in court, 10, 715
 - Guardian's sale, 10, 752
 - Notice of sale, 10, 762
 - Sale of infant's real estate, 10, 782, 835
 - Evidence, 10, 838
 - Evidence is totally insufficient, 10, 784
 - Failure to allege grounds for sale, 10, 783
 - Failure to file inventories, accounts, etc., 10, 783
 - Falshood of allegations, 10, 784
 - In general, 10, 835
 - Insufficiency of petition in general, 10, 782
 - Loss or destruction of the records, 10, 838
 - Nunc pro tunc*, 10, 838
 - Propriety of sale, 10, 835
 - Want of jurisdiction affirmatively shown, 10, 838
 - Want of or defect in description of land, 10, 783
 - Want of verification, 10, 783
 - What the record should show, 10, 835
 - Where the record is silent, 10, 837
- Special sale bond, 10, 797
- Commitments, 4, 582
 - Age of delinquent, 4, 583
 - Approval of, 4, 582
 - Form and requisites, 4, 583
 - Notice of proceedings, 4, 584
 - Object of, 4, 582
 - Recital of facts, 4, 583
 - Term of commitment, 4, 584
- Compromise, 10, 697
- Conduct of suits, 10, 594
- Confession of judgment, 10, 727
- Confirmation of sale*, see *infra*, Report and confirmation of sale.
- Consent of infants, 10, 591
- Constitutional law:
 - Sale of real estate under private or special acts, 10, 738
- Contingent interests, 10, 743
- Costs, 5, 155; 10, 700
- Courts (see *infra*, Sale of infant's real estate):
 - Infants as wards of court, 10, 589
- Damages:
 - Actions for injuries to infants, 5, 759

INFANTS, *cont'd.*

- Day in court*, see *infra*, Infant's day in court.
- Declaration or complaint, 4, 599
- Decrees (see *infra*, Judgments and decrees against infants):
 - Consent of infant as to consent decrees, 5, 960
- Decrees *pro confesso*, 10, 724
- Defaults, 10, 724
 - Effect of default on further proceedings, 6, 112
 - Infant as plaintiff, 6, 12
 - Judgment against infant, 6, 13
- Defense and answer:
 - Reading answer against infant, 10, 723
- Demurrer of the parol, 10, 698
 - Generally abolished, 10, 699
 - Infant's day in court, 10, 712
 - In general, 10, 698
- Deeds:
 - Sale of real estate, 10, 825
- Disability of infants, 10, 594
- Appearance by attorney, 10, 595
- Appearance by general guardian, 10, 594
- Appearance by guardian or *prochein ami*, 10, 594
- Appointment of attorney in probate proceedings in California, 10, 597
- Employment of attorney to conduct case, 10, 598
- In general, 10, 594
- Representation by attorney, 10, 595
- Discretion of court:
 - Sale of infant's real estate, 10, 775
- Dismissal, discontinuance, and nonsuit, 6, 856
 - Costs, 6, 974
 - Failure to prosecute, 6, 907
- Divorce, 7, 61
- Dower:
 - Demand, 7, 150, 155
- Education:
 - Sale of real estate, 10, 766
- Ejectment, 7, 290, 306
 - Examples, 7, 290, 291
 - Guardians, 7, 286
 - In general, 7, 290
 - Intention to disaffirm, 7, 290
 - Whether infants may maintain the action, 7, 290
 - Who may be let in to defend, 7, 311
- Election of remedies:
 - Election of infants, 10, 590
- Eminent domain:
 - Notice, 7, 489
 - Parties, 7, 512
 - Waiver of notice, 7, 498

INFANTS, *cont'd.*

- Equitable jurisdiction, 10, 733
 - Conversion of realty into personality, 10, 735, 737
- Equitable estates, 10, 737
- In absence of statutory regulation, 10, 734
- Inherent chancery jurisdiction, 10, 733
- Mortgage cases, 10, 734
- Property of orphans' courts, 10, 739
- Sale of infant's real estate, 10, 733
- Selling timber and minerals, 10, 434
- Error, writ of, 7, 858
- Estoppel:
 - Fraudulent representations as to age, 10, 692
- Exceptions and objections, 8, 232
- Exchange of lands, 10, 741
- Executory contract to sell, 10, 748
- Exhibits:
 - Petition for sale of real property 10, 776
- Expectant interests, 10, 743
- False representations:
 - Age, 10, 692
 - Sale of real estate, 10, 808
- Filing bond, 10, 796
- Final judgments and decrees, 2, 55
- Foreclosure of mortgages (see FORECLOSURE OF MORTGAGES), 10, 842
- Infant's day in court, 10, 711
- Forma pauperis*, 16, 679
- Affidavit or oath, 16, 686
- Gaming:
 - Permitting minors to play billiards, 9, 799
- Guardian ad litem*, see GUARDIAN AD LITEM.
- Guardians (see GUARDIANS; and see *infra*, Sale of Infant's real estate; Service of process):
 - Disqualification of guardian to purchase at sale, 10, 808
 - Guardian's sale*, see *infra*, Sale of infant's real estate.
 - Infants as wards of court, 10, 589
- Habeas corpus:
 - By whom application made, 9, 1017
 - Petition, 9, 1021
- Infancy*, see *infra*, Plea of infancy.
- Infant's day in court, 10, 700, 709
 - Abolition of plea of demurrer of the parol, 10, 713
 - Collateral attack, 10, 715
 - Decree need not give day to show cause, 10, 716

INFANTS, *cont'd.*

- Infant's day in court, *cont'd.*
 - Decrees for strict foreclosure, 10, 712
 - Demurrer of the parol, 10, 712
 - Distinguished from demurrer of the parol, 10, 712
 - How resisted, 10, 719
 - Notice to parties in interest, 10, 717
 - Omission of reservation of day in decree, 10, 714
 - Reservation of day in decree, 10, 713
 - Right denied, 10, 709
 - Rule in mortgage foreclosures, 10, 711
 - Rule when conveyance is ordered, 10, 710
 - Sale under mortgage, 10, 712
 - Showing cause under reservation, 10, 716
 - Statement of rule, 10, 709
 - What may be gone into, 10, 718
 - When not entitled to show cause, 10, 709
 - When not necessary to reserve in decree, 10, 715
 - When reservation of day in decree necessary, 10, 713
- Irregularities*, see *infra*, Sale of infant's real estate.
- Joinder of parties:
 - Defendants, 15, 550
- Judgments*, see GUARDIAN AD LITEM.
- Judgments and decrees against infants (see *infra*, Bill to impeach decrees and judgments), 10, 700
- Binding effect, 10, 702
- Bona fide* purchasers, 10, 705
- Collateral attack, 10, 703
- Collateral attack where appeal or error does not lie, 10, 703
- Day in court after coming to age to show cause against decree, 10, 700
- Effect of, 10, 700
- Entry of judgments, 10, 704
- Infant as plaintiff, 10, 702
- Infant's day in court*, see *infra*, Infant's day in court.
- In general, 10, 700
- Necessity of basing on full proof, 10, 719
- Beneficial decrees, 10, 729
- Bill of review, 10, 728
- Confession of judgment, 10, 727
- Consent by the guardian, 10, 728
- Consent judgments, 10, 727
- Decrees *pro confesso*, 10, 724

INFANTS, *cont'd.*

Judgments and decrees against infants, *cont'd.*

Necessity of basing on full proof, *cont'd.*

Guardian's admissions or waivers, 10, 720

Judgment not void, 10, 729

Judgments by default, 10, 724

Judgments upon the pleadings, 10, 724

Opening default against infant, 10, 725

Preserving evidence in record, 10, 722

Reading answer against infant, 10, 728

Statement of rule, 10, 719

Whether judgment by default void or voidable, 10, 726

Opening, 10, 704

Pleading infancy, 10, 702

Relief against erroneous or irregular adjudication, 10, 705

Rendition of judgments, 10, 704

Vacating, 10, 704

Validity, 10, 702

Whether infant bound by, 10, 700

Jurisdiction (see *infra*, Equitable jurisdiction):

Chancery jurisdiction over infants, 10, 588

Enforcement of sale of real estate, 10, 823

Infants as wards of court, 10, 589

Laches:

Laches not imputable to infants, 10, 590

Larceny:

Ownership in infants, 12, 965

Leases, 10, 843

In general, 10, 843

Statutory regulations, 10, 844

Limitations:

Allegations of, in bill or petition, 13, 257

Replication, 13, 259

Lost records, 10, 838

Majority:

Attainment of majority pending suit, 10, 591

Marriage (annulment), 13, 873

Minerals, sale of, 10, 734

Mortgages, 10, 839

Amount, 10, 841

Condition postponing foreclosure, 10, 843

Defenses, 10, 842

Foreclosure, 10, 842

Form of mortgage, 10, 842

Implied restriction, 10, 841

INFANTS, *cont'd.*

Mortgages, *cont'd.*

In general, 10, 839

Interest, 10, 841

Ordering sale of property, 10, 734

Power of sale, 10, 842

Proceedings to obtain an order of mortgage, 10, 840

Redemption, 10, 842

Time, 10, 841

Necessaries, 10, 695

Actions involving, 10, 695

Burden of proof, 10, 695

In general, 10, 695

Instructions, 10, 697

Province of court and jury, 10, 695

Next friend (see NEXT FRIEND):

Appearance by guardian or *prochein ami*, 10, 594

Notice (see *infra*, Sale of infant's real estate):

Infant's day in court, 10, 717

Nunc pro tunc:

Approval of sale, 10, 815

Records, 10, 838

Oath:

Sale of infant's real estate, 10, 800

Opening, amending, and vacating judgments, 10, 704; 15, 238

Order of sale, see *infra*, Sale of infant's real estate.

Parent and child, see PARENT AND CHILD; and see *infra*, Service of process.

Parties:

Making infants defendants instead of plaintiffs because more advantageous, 10, 593

Partner:

Joinder, 15, 859

Sale of infant's real estate, 10, 763

Appointment of guardian *ad litem*, 10, 765

In general, 10, 763

Persons remotely interested, 10, 765

Presumptive heirs and distributees of infant, 10, 765

Sale by administrator to pay debts, 10, 763

Sale of land owned jointly, 10, 764

Time of appointment of guardian *ad litem*, 10, 766

Ward represented by guardian, 10, 763

Partition, 10, 775; 15, 783

Parties defendant, 15, 795

Sale of real estate, 10, 769

Service of process, 15, 798

INFANTS, *cont'd.*Partnership (see **PARTNERSHIP**):

Plea of infancy, 10, 693

Payment of purchase price, see infra,

Sale of infant's real estate.

Penalties and penal actions, 16, 263

Pending suit:

Attainment of majority pending
suit, 10, 591*Personal injuries, see PERSONAL IN-*
JURIES.

Personal property:

Sale of infant's personal prop-
erty, 10, 845Petitions (see *infra*, Sale of infant's
real estate), 16, 518

Bill in equity or petition, 16, 511

Plea, see infra, Answer or plea.

Plea of infancy, 10, 691

Action on the judgment, 10, 702
Effect of appointing guardian *ad*
litem, 10, 694Estoppel for setting up infancy
by fraudulent representations
of age, 10, 692Infant and his representatives,
10, 692

Joint defendants, 10, 693

Nature of plea, 10, 691

Necessity of pleading specially,
10, 692

Partners, 10, 693

Right to open and close, 10, 694

Trial of issue, 10, 694

Who may allege infancy, 10, 692

Pro confesso:

Infants, 10, 724

Production of documents, 6, 798

Property (see *infra*, Leases; Mort-
gages; Sale of infant's real
estate):Sale of infant's personal prop-
erty, 10, 845Publication (see **PUBLICATION**), 10,
609*Purchasers, see infra*, Sale of infant's
real estate.

Questions of law and fact:

Necessaries, 10, 695

Railroads:

Conveyance of land to railroad,
10, 742

Ratification, reply of, 10, 694

Real property, see infra, Leases;
Mortgages; Sale of infant's real
estate.

Records:

Collateral attack upon sale of
real estate, 10, 835

Evidence, 10, 838

In general, 10, 835

Loss or destruction of the
records, 10, 838**INFANTS, *cont'd.***Records, *cont'd.*Collateral attack upon sale of
real estate, *cont'd.**Nunc pro tunc*, 10, 838

Propriety of sale, 10, 835

Want of jurisdiction affirm-
atively shown, 10, 838What the record should
show, 10, 835Where the record is silent,
10, 837Confirmation of sale of infant's
real estate, 10, 819Loss or destruction of the
records, 10, 838*Nunc pro tunc entries, see infra*,
*Nunc pro tunc.*Sale of infant's real estate, 10,
835

References:

Sale of infant's real estate, 10,
774Rendition and entry of judgments,
10, 704

Reply of ratification, 10, 694

Report and confirmation of sale, 10,
812

Appeal and error, 10, 819

Bids, 10, 816

Confirming sale for benefit of in-
fant when irregularities may
be cured, 10, 818Cure of irregularities and errors,
10, 820

Defects in proceedings, 10, 816

Discretion of court as to con-
firmation, 10, 819

Effect of confirmation, 10, 820

Effect to pass title, 10, 822

General rule as to judicial sale,
10, 812

Hearing of report, 10, 816

Inadequacy of price, 10, 817

Jurisdictional defects, 10, 821

Necessity, 10, 812

Nunc pro tunc, 10, 815Opening bidding for advance,
10, 823Order dispensing with confirma-
tion, 10, 813Sale without confirmation, 10,
813

Signature, 10, 816

Sufficiency of record, 10, 819

Sufficiency of report, 10, 815

Time of report, 10, 814

What amounts to confirmation,
10, 819Rescission, cancellation, and reforma-
tion of contracts:Contracts made by infants, 18,
765

INFANTS, *cont'd.*

- Return of service, 10, 611
- Sale of infant's personal property, 10, 845
- Sale of infant's real estate (see *infra*, Report and confirmation of sale), 10, 733
- Adjournment of sale, 10, 806
- After-acquired title, 10, 811
- Appeal, 10, 839
- Appeal and error, 10, 819
- Appointment of guardian *ad litem*, 10, 765
- Appraisement, 10, 788
 - Effect of failure to make appraisement, 10, 788
 - Failure of the appraisers to sign, 10, 789
 - Fixing upset price, 10, 788
 - In general, 10, 788
 - Necessity, 10, 788
 - The appraisers, 10, 789
 - Time of appraisement, 10, 789
- Assignment of bid, 10, 810
- Authority of guardian or trustee, 10, 733
- Bona fide* purchasers, 10, 829, 831, 835
- Bond, special sale, 10, 789
 - Action on special sale bond, 10, 798
 - Complainant's case, 10, 799
 - Conditions precedent, 10, 798
 - Exclusiveness of remedy, 10, 798
 - Leave to sue, 10, 799
 - Parties, 10, 799
 - Prior decree against guardian, 10, 799
 - Approval of bond, 10, 797
 - Bond to the state, 10, 796
 - Collateral attack, 10, 797
 - Discretion of court to require bond, 10, 795
 - Effect of failure to give bond, 10, 790
 - Filing bond, 10, 796
 - Form of bond, 10, 795
 - Generally required, 10, 789
 - Infant's interests secured without bond, 10, 792
 - Joint bond, 10, 796
 - Necessity of bond, 10, 789
 - Reasons for requiring special bond, 10, 793
 - Special trust, 10, 794
 - Statutory requisites, 10, 795
 - Sufficient filing, 10, 797
 - Surety companies, 10, 798
 - Time of filing bond, 10, 796
 - To whom bond runs, 10, 796

INFANTS, *cont'd.*

- Sale of infant's real estate, *cont'd.*
 - By whom made, 10, 807
 - Collateral attack upon the record, 10, 835
 - Evidence, 10, 838
 - In general, 10, 835
 - Loss and destruction of the records, 10, 838
 - Nunc pro tunc*, 10, 838
 - Propriety of sale, 10, 835
 - Want of jurisdiction affirmatively shown, 10, 838
 - What the record should show, 10, 835
 - Where the record is silent, 10, 837
- Conduct of sale, 10, 804
 - Adjournment of sale, 10, 806
 - Assignment of bid, 10, 810
 - By whom made, 10, 807
 - Conformity to order, 10, 804
 - Disqualification in general, 10, 810
 - Failure to comply with the order, 10, 805
 - False representations, 10, 808
 - Guardian *ad litem* purchasing, 10, 809
 - Guardian disqualified from purchasing, 10, 808
 - Guardian purchasing in good faith, 10, 809
 - Guardian's wife purchasing, 10, 910
 - Joint sales of infants' and adults' interests, 10, 808
 - Parcels, 10, 807
 - Place of sale, 10, 806
 - Public, 10, 805
 - Renewing decree, 10, 806
 - Substitution of purchasers, 10, 810
 - Time of sale, 10, 805
 - Who may purchase, 10, 808
- Confirmation of sale*, see *infra*, Report and confirmation of sale.
- Cure of errors and irregularities, 10, 818, 820
- Defects in proceedings, 10, 816
- Discretion of court as to confirmation, 10, 819
- Disqualification of guardian to purchase, 10, 808
- Disqualification of other persons, 10, 810
- Education, 10, 767
- Exchange, 10, 741
- Expectant and contingent interests, 10, 743
- False representations, 10, 808

INFANTS, *cont'd.*

- Sale of infant's real estate, *cont'd.*
 - Filing bond, 10, 796
 - Guardian *ad litem*, 10, 765
 - Appointment of, 10, 765
 - Consideration governing appointment, 10, 766
 - Duties, 10, 766
 - In general, 10, 765
 - Statute providing for notice to ward, 10, 766
 - Time of appointment, 10, 766
 - Whether necessary, 10, 765
- Guardian *ad litem* purchasing, 10, 809
- Guardian's disqualification, 10, 808
- Guardian's executory contract to sell, 10, 748
- Guardian's wife purchasing, 10, 810
- Inadequacy of price, 10, 817, 826
- Incumbrances and charges, 10, 811
- Inherent chancery jurisdiction, 10, 733
- Irregularities in proceedings, 10, 829
 - Curative statutes, 10, 832
 - Cure of errors and irregularities, 10, 818, 820
 - Grounds for setting aside sale, 10, 825
 - Misapplication of proceeds, 10, 830
 - Primary requisite in these curative acts, 10, 834
 - Protection of purchasers, 10, 829
 - Purchasers in good faith, 10, 835
 - Question of law, 10, 831
 - Restitution on reversal, 10, 832
 - Statutory conditions precedent, 10, 834
 - Title acquired by a *bona fide* purchaser, 10, 831
 - Validity of curative statutes, 10, 833
 - Who may take advantage of, 10, 829
- Joint sales of infants' and adults' interests, 10, 808
- Leave to sell should be obtained in advance, 10, 748
- Manner of sale, 10, 786
- Mortgages, 10, 734
- Necessity for order of sale, 10, 747
- Notice of application, 10, 753
 - Collateral attack, 10, 762
- Index Pl. & Pr. — 31

INFANTS, *cont'd.*

- Sale of infant's real estate, *cont'd.*
 - Notice of application, *cont'd.*
 - Contents of notice, 10, 759
 - County of publication, 10, 762
 - Description of land, 10, 759
 - Distinction between defective notice and no notice, 10, 761
 - Manner of giving notice, 10, 758
 - Names of interested parties, 10, 760
 - Necessity of notice, 10, 753
 - Notice by publication, 10, 758
 - Notice to relatives, 10, 757
 - Objections to sufficiency of notice, 10, 762
 - Personal service, 10, 758
 - Premature notice, 10, 760
 - Presumption on appeal, 10, 762
 - Proof and presumption, 10, 763
 - Proof of notice, 10, 761
 - Publication, 10, 758
 - Reason of sale, 10, 759
 - Signature, 10, 760
 - Sufficiency of notice as to time, 10, 760
 - Term of court, 10, 759
- Notice of sale, 10, 801
 - Advertisement in newspaper, 10, 802
 - Clerical errors, 10, 804
 - Necessity in general, 10, 801
 - Newspaper, 10, 803
 - Private sale, 10, 802
 - Proof of notice, 10, 803
 - Statutory provisions, 10, 802
 - Sufficiency, 10, 802
- Oath, 10, 800
 - Form of oath, 10, 801
 - In general, 10, 800
 - Time of oath, 10, 800
- Opening biddings for advance, 10, 823
- Order of sale, 10, 785
 - Conformity to order, 10, 804
 - Description of land, 10, 787
 - Finding facts authorizing sale, 10, 786
 - Fixing time and place of sale, 10, 785
 - In general, 10, 785
 - Joint order, 10, 785
 - Judge at chambers, 10, 785
 - Statutory requirements, 10, 785
 - Terms and manner of sale, 10, 786
 - Vacating order, 10, 787
- Parties, 10, 763

INFANTS, *cont'd.*

- Sale of infant's real estate, *cont'd.*
 - Paying debts of ancestor, 10, 734
 - Payment of purchase price, 10, 823
 - Enforcement, 10, 823
 - Jurisdiction, 10, 823
 - Procedure, 10, 824
 - Resale at purchaser's risk, 10, 824
 - To whom made, 10, 823
- Persons remotely interested as parties, 10, 765
- Petition or application for order of sale, 10, 776
 - Collateral attack for failure to allege grounds for sale, 10, 783
 - Collateral attack for failure to file inventories, accounts, etc., 10, 783
 - Collateral attack for falsehood of allegations, 10, 784
 - Collateral attack for insufficiency of petition, 10, 782
 - Collateral attack for want of or defect in description of land, 10, 783
 - Collateral attack for want of verification, 10, 783
 - Collateral attack where the evidence is totally insufficient, 10, 784
 - Condition of estate, 10, 779
 - Description of premises, 10, 780
 - Description of ward's interest, 10, 781
 - Designation of parties in interest, 10, 777
 - Exhibits, 10, 776
 - Illustrative petitions showing necessity and propriety of sale, 10, 778
 - In general, 10, 776
 - Manner of making allegations, 10, 778
 - Necessity of allegations, 10, 777
 - Opinion of petitioner as to propriety of sale, 10, 780
 - Showing reason and necessity for sale, 10, 777
 - Signature, 10, 781
 - Stating several grounds for sale, 10, 779
 - Verification, 10, 781
- Place of sale, 10, 785, 806
- Power of court to authorize, 10, 733
- Presumptive heirs and distributees of infant as parties, 10, 765

INFANTS, *cont'd.*

- Sale of infant's real estate, *cont'd.*
 - Private or special acts, 10, 738
 - Private sale, 10, 805
 - Proceedings to procure order of sale, 10, 747
 - Process, 10, 763
 - Prohibition of sale in conveyance or devise, 10, 743
 - Proof of grounds, 10, 772
 - Consent of parties, 10, 773
 - Necessity of showing the existence of a recognized ground for authorizing a sale, 10, 772
 - Opinion of guardian, 10, 773
 - Opinion of witnesses, 10, 774
- Propriety of sale:
 - Illustrative petitions showing necessity and propriety of sale, 10, 778
 - Manner of making allegations in petition, 10, 778
 - Order finding facts authorizing sale, 10, 786
 - Petition for sale, 10, 777
 - Proof of propriety, 10, 772
 - Stating several grounds for sale, 10, 779
- Public sale, 10, 805
- Purchase money, 10, 823, 827
- Purchase price, 10, 823
- Purchasers, protection of, 10, 829
- Railroad, conveyance to, 10, 742
- Ratification of sale by court, 10, 748
- Record, 10, 835
- Reinvestment, 10, 768
- Report*, see *infra*, Report and confirmation of sale.
- Resale at purchaser's risk, 10, 824
- Return of purchase money, 10, 827
- Sale by administrator to pay debts, 10, 763
- Sale in parcels, 10, 807
- Selling timber and minerals, 10, 734
- Setting aside sale, 10, 825
 - Grounds, 10, 825
 - Imposing terms, 10, 827
 - Impropriety of selling, 10, 826
 - Inadequacy of price, 10, 826
 - Method, 10, 826
 - Return of purchase money, 10, 827
 - Stifling competition, 10, 826
- Statutory regulation, 10, 737
 - Conveyance to railroad, 10, 742

INFANTS, *cont'd.*

- Sale of infant's real estate, *cont'd.*
 - Statutory regulation, *cont'd.*
 - Courts exercising jurisdiction, 10, 739
 - Exchange of lands, 10, 741
 - In general, 10, 737
 - Prohibition of sale in conveyance or devise, 10, 743
 - Sale of expectant and contingent interests, 10, 743
 - Strict conformity to statute, 10, 739
 - Unborn infants, 10, 745
 - Under private or special acts, 10, 738
- Substitution of purchasers, 10, 810
- Support, 10, 766
- Surety companies, 10, 798
- Terms in order, 10, 786
- The sale, 10, 801
- Time of appraisement, 10, 789
- Time of filing bond, 10, 796
- Title of sale, 10, 785, 805
- Title, 10, 822
 - Effect of confirmation to pass title, 10, 822
 - What title passes, 10, 811
- Title acquired by *bona fide* purchaser, 10, 831
- Unborn infants, 10, 745
- Upset price, 10, 788
- Venue, 10, 745
- In general, 10, 745
 - In the case of resident minors, 10, 746
 - Where the minor is a non-resident, 10, 746
- Ward represented by guardian, 10, 763
- What title passes, 10, 811
- When court will order sale, 10, 766
 - Consent of parties, 10, 773
 - Conveyance by infant trustees, 10, 770
 - Discretion of court, 10, 775
 - Education, 10, 767
 - Improvements, 10, 770
 - Maintenance, 10, 766
 - Opinion of guardian, 10, 773
 - Proof of grounds, 10, 772
 - Propriety of sale not shown, 10, 773
 - Reference, 10, 774
 - Reinvestment, 10, 768
 - Repairs, 10, 770
 - Report of referee, 10, 774
 - Sale for general advantage of infant, 10, 771
 - Sale for partition, 10, 769
 - Sale for reinvestment, 10, 768

INFANTS, *cont'd.*

- Sale of infant's real estate, *cont'd.*
 - When court will order sale, *con.*
 - Sale for unauthorized purpose, 10, 771
 - Sale to pay debts and charges, 10, 767
 - Sale to pay debts of ancestor, 10, 771
 - Specific performance of ancestor's contract, 10, 770
 - Who may apply for order, 10, 748
 - Application of any one but guardian, 10, 749
 - Collateral attack, 10, 752
 - False description as guardian, 10, 750
 - Father as natural guardian, 10, 749
 - Foreign guardian, 10, 751
 - Former guardian, 10, 751
 - Legal guardian, 10, 748
 - Where the appointment of the guardian is void, 10, 750
 - Who may purchase, 10, 808
- Service of process (see PUBLICATION), 10, 599
- Actual service, 10, 608
- Age of infant as affecting manner of service, 10, 607
- Appointment of guardian *aa litem* by commissioners, 10, 610
- Chancery rule in absence of statute, 10, 501
- Collateral attack, 10, 615
- Constructive service, 10, 608
- Effect of failure to personally serve infant, 10, 601
- Effect on judgment of failure to serve infant, 10, 602
- Infants served in same manner as adults, 10, 603
- Jurisdiction without service, 10, 609
- Nonresident infants, 10, 609
- Parent and child both parties, 10, 607
- Parent or guardian codefendant, 10, 605
- Personal service, 10, 609
- Personal service where infant is very young, 10, 601
- Person served also a party, 10, 607
- Presumptions, 10, 733
- Publication, 10, 609
- Return of service, 10, 611
- Revivor of actions against infants, 10, 614
- Service by minor, 19, 578

INFANTS, *cont'd.*

- Service of process, *cont'd.*
 - Service on both infant and parent, guardian, or other person in charge, 10, 603
 - Service on cross-complaint, 10, 614
 - Service on guardian without service on minor, 10, 602
 - Service on infant alone, 10, 607
 - Service on infant personally, 10, 600
 - Service on minor in presence of guardian, 10, 602
 - Service on parent or guardian alone, 10, 605
 - Strict compliance with statute, 10, 599, 604
 - Waiver of process against infants, 10, 612
 - Waiver of process against infants by infant himself, 10, 612
 - Waiver of process by attorney, 10, 613
 - Waiver of process by general guardian, 10, 612
 - Waiver of process by guardian *ad litem*, 10, 613
- Setting aside sale*, see *infra*, Sale of infant's real estate.
- Settlement, 10, 697
- Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.
- Signature:
 - Petition for sale of real property, 10, 781
- Special bond*, see *infra*, Sale of infant's real estate.
- Specific performance:
 - Ancestor's contract, 10, 770
- Statutes*, see *infra*, Sale of infant's real estate.
- Substitution of parties:
 - Where infant becomes of age pending suit, 20, 1037
- Support:
 - Sale of real estate, 10, 766
- Surrogate*, see GUARDIAN AD LITEM.
- Timber, sale of, 10, 734
- Time of report and confirmation of sale, 10, 814
- Title:
 - Effect of confirmation of sale to pass title, 10, 822
 - Title acquired by *bona fide* purchaser, 10, 831
 - What title passes at sale, 10, 811
- Trusts and trustees*, see TRUSTS AND TRUSTEES.
- Unborn infants:
 - Sale of land, 10, 745
- Vacating judgment or decree, 10, 704

INFANTS, *cont'd.*

- Venue:
 - Sale of infant's real estate, 10, 745
 - In general, 10, 745
 - In the case of resident minors, 10, 746
 - Where the minor is a non-resident, 10, 746
- Verification:
 - Petition for sale of real property, 10, 781
- INFORMATION AND BELIEF**, 10, 854
- See ANSWERS IN CODE PLEADING.
- Answers in equity pleading, 1, 944
- Bills in equity, 3, 363
- Change of venue, 4, 434
- Demurrer, 10, 855
- Examination of parties before trial, 8, 51
- Fraud, 10, 855
- Information, 10, 453
- In general, 10, 854
- Injunctions, 10, 929, 1068, 1074
- Verification of the bill, 10, 969
- Mandamus:
 - Return or answer, 13, 723
- Mechanics' liens, 13, 994
- Motions:
 - Affidavits, 14, 160
 - Counter-affidavits, 14, 163
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- Official bonds, 15, 124
- Payment, 16, 192
- Poor debtor acts, 16, 734
- Publication*, see PUBLICATION.
- Receivers:
 - Application for receiver, 17, 723, 724
- Replevin, 18, 514
- Security for costs, 19, 369
- Sham and frivolous pleadings*, see SHAM AND FRIVOLOUS PLEADINGS.
- Stock and stockholders, 20, 777
- Supplementary proceedings, 21, 124
- INFORMATIONS** (see ANSWERS IN CODE PLEADING; INDICTMENTS; PRELIMINARY EXAMINATION.
- Affidavits (see *infra*, Verification, affidavit, or complaint):
 - Variance, 10, 499
- Allegation of jurisdictional matters, 10, 460
- Amendments, 1, 696
- Amendments discretionary, 1, 697
- Filing new information, 1, 698
- Indictment distinguished from, 1, 696
- Statutes, 1, 698
- Answers in equity pleading, 1, 944

INFORMATIONS, *cont'd.*

- Bills in equity, 3, 337
- Breach of the peace, 3, 678
- Charging the offense, 10, 472
 - Abbreviations, 10, 478
 - Alternative charge, 10, 490
 - Attempt to commit, 10, 477
 - Bad grammar, 10, 478
 - Characterizing the offense, 10, 480
 - Clerical errors, 10, 478
 - Common-law offense under statute, 10, 488
 - Conclusion of law, 10, 474
 - Degree of certainty, 10, 473
 - Effect of conclusion against statute, 10, 488
 - Effect of form prescribed by statute, 10, 482
 - Exceptions and provisos, 10, 495
 - Adoption of exception by words of reference, 10, 498
 - Descriptive of the offense, 10, 497
 - Enacting clause, 10, 496
 - Negating, 10, 495
 - Scope of negation, 10, 498
 - Words forming exception, 10, 496
 - Former offense or conviction, 10, 489
 - Grade of offense, 10, 480
 - Inartificial language, 10, 477
 - Increased punishment by former offense or conviction, 10, 489
 - Indictments and informations tested by the same rule, 10, 472
 - Intendment, 10, 474
 - Intent*, see *infra*, Knowledge or intent.
 - Interpretation of language, 10, 472, 479, 491
 - Knowledge or intent:
 - Charging misdemeanor, 10, 494
 - Feloniously, 10, 492
 - Intent generally, 10, 491
 - Knowledge, 10, 495
 - Maliciously, 10, 492
 - Offense described by statute, 10, 493
 - Unlawfully, 10, 495
 - Wilfully, 10, 492
 - Language of statute, 10, 483
 - Addition of averments not required by statute, 10, 483
 - Charge in language of statute, 10, 487
 - Effect of conclusion against statute, 10, 488
 - Exact language, 10, 483, 486
 - General rules, 10, 483

INFORMATIONS, *cont'd.*

- Charging the offense, *cont'd.*
 - Language of statute, *cont'd.*
 - Generic followed by specific terms, 10, 486
 - Sufficiency, 10, 483
 - Whether exact language must be used, 10, 484
 - Words of equivalent import, 10, 485
 - Matters of inducement, 10, 476
 - Matters of judicial notice, 10, 476
 - Misspelling, 10, 478
 - Necessity of charging facts, 10, 473
 - Pleading and describing written instruments, 10, 481
 - Pleading statute, 10, 490
 - Positiveness of charge, 10, 476
 - Statutory offenses, 10, 481
 - Sufficiency of complaints, 10, 501
 - Sufficiency of inartificial language, 10, 477
 - Technical words, 10, 479
 - Use of disjunctive, 10, 490
 - Variance between information or indictment and affidavit or complaint, 10, 499
 - Videlicet*, 10, 48c
 - Vi et armis*, 10, 478
- Complaint (see *infra*, Verification, affidavit, or complaint), 10, 353.
 - Variance, 10, 499
- Conclusion, 10, 461
- Constitutional law:
 - Felony, 10, 351, 352
- Constitution of the United States, 10, 352
- Contempt (see CONTEMPT), 4, 781
- Continuando*, 10, 514, 517
- Contra formam*, 10, 461
- Contra pacem*, 10, 461
- Demurrer, 10, 572
 - Action upon, 10, 573
 - Effect of overruling, 10, 573
 - Effect of sustaining, 10, 575
 - Nature, 10, 572
 - Scope, 10, 573
 - Trial without action, 10, 573
 - Withdrawal of demurrer, 10, 573
- Description of person, 10, 504
 - Burden of proof, 10, 509
 - Christian name unknown, 10, 507
 - Complaints, 10, 507
 - Defendant, 10, 504
 - Common name, 10, 505
 - Descriptio personæ*, 10, 505
 - In general, 10, 504
 - Repetition of name, 10, 504
 - Description of corporation, 10, 509
 - Name in fact known, 10, 508

INFORMATIONS, *cont'd.*

Description of person, *cont'd.*

Name of defendant unknown, 10, 507

Names of third persons unknown, 10, 508

Persons other than defendant, 10, 505

Variance, 10, 506

Variance between complaint and information or indictment, 10, 510

Description of place as a material ingredient, 10, 529

Disorderly conduct, 7, 3

Duplicity, 10, 532

Acts not appearing to be one and the same, 10, 534

Conjunctive averments, 10, 536

Disjunctive averments, 10, 538

Distinct offenses as stages of one crime, 10, 535

General rule forbidding duplicity, 10, 532

Greater including lesser offense, 10, 535

Matters of aggravation, 10, 534

Multifariousness, 10, 535

Objections for duplicity, how made and waived, 10, 539

Surplusage, 10, 535

Where one of two offenses is inadequately charged, 10, 535

Embezzlement, see EMBEZZLEMENT.

Escape, see ESCAPE.

Escheat (see ESCHATE), 8, 3

Exceptions and objections (see *infra*, Demurrer; Motion to quash), 8, 401; 10, 563

Demurrer, 10, 563

How made, 10, 563

Motion to quash, 10, 563

Pointing out defects, 10, 566

Statute of jeofails, 10, 565

Time of making, 10, 564

Waiver, 10, 564

Withdrawal of a plea, 10, 566

Felony, 10, 351, 352

Filing of information, 10, 449

Absence of regular officer, 10, 449

Assistant district attorney, 10, 449

By whom filed, 10, 449

Judicial discretion, 10, 450

Necessity of official information, 10, 450

Preliminary examination, 10, 450

Second or new information, 10, 457

Supplying lost information by copy, 10, 458

INFORMATIONS, *cont'd.*

Filing of information, *cont'd.*

Verification, affidavit, or complaint, see *infra*, Verification, affidavit, or complaint.

When filed, see *infra*, When filed.

Gaming:

Information or indictment, 9, 767

General matters of form, 10, 458

General nature, 10, 351

Grand juries:

Relation of filing the information to sitting or action of grand jury, 10, 456

Indictment distinguished from, 1, 691

Indorsement of witnesses, 10, 460

Information and belief, 10, 453

Internal revenue, 11, 440

Intoxicating liquors, see INTOXICATING LIQUORS.

Joinder of counts and offenses, 10, 540

Common-law count under statute, 10, 544

Consolidation, 10, 553

Counts connected by words of reference, 10, 540

Degrees of same offense, 10, 540

Different misdemeanors, 10, 553

Discretion of court, 10, 551

Distinct felonies, 10, 552

Each count a separate indictment, 10, 540

Effect of election, 10, 553

Election, 10, 546

Felonies and misdemeanors, 10, 542

Felony, 10, 548

Greater including lesser offense, 10, 542

In general, 10, 540

Joinder of counts charging one offense, 10, 543

Joinder of counts for distinct offenses, 10, 546

Joinder of felony and misdemeanor, 10, 550

Joinder of misdemeanors, 10, 549

Judgment on one count, 10, 553

Motion to elect, 10, 551

Nature of counts, 10, 540

Offenses of different character, 10, 549

Offenses of same kind, 10, 547

Same acts constituting different offenses, 10, 545

Separate indictments as counts of one, 10, 553

Joinder of parties, 10, 554

Jurat, 10, 454

Jurisdictional matters, 10, 460

Knowledge or intent, 10, 491

Larceny, see LARCENY.

INFORMATIONS, *cont'd.*

- Laying time, 10, 511
- After verdict, 10, 513
- Bad spelling in date, 10, 520
- Christian era, 10, 517
- Continuando*, 10, 514, 517
- Day of month, 10, 515
- Different dates in separate counts, 10, 513
- Effect of *continuando*, 10, 514
- Expression of date in figures, 10, 519
- Figures, 10, 519
- Future or impossible date, 10, 515
- Materiality with reference to laws in effect, 10, 514
- Necessity, 10, 511
- Negating statute of limitations, 10, 516
- Night-time, 10, 517
- Omission of month and day, 10, 512
- Omission of year, 10, 512
- On or about, 10, 516
- Precision, 10, 511
- Same day as that of charge, 10, 515
- Then and there, 10, 519
- Time collected from whole statement, 10, 513
- Time laid as between two dates, 10, 513
- Time matter of record, 10, 516
- Variance between information and complaint, 10, 520
- When time is an ingredient of the offense, 10, 514
- Words of reference, 10, 519
- Laying venue, 10, 520
- Allegation of jurisdiction in terms, 10, 521
- At the county or place aforesaid, 10, 524
- Border counties, 10, 527
- Complaints, 10, 529
- Counties annexed for judicial purposes, 10, 528
- General sufficiency, 10, 520
- Jurisdiction in two counties, 10, 526
- Newly organized counties, 10, 528
- Place not a material part of the description of the offense, 10, 522
- State, 10, 523
- Then and there, 10, 524
- Town, 10, 523
- Two places previously mentioned, 10, 525
- Variance between information and complaint, 10, 521
- Venue laid by words of reference, 10, 524
- Where the sense is plain, 10, 526

INFORMATIONS, *cont'd.*

- Lost information, 10, 458
- Lotteries*, see LOTTERIES.
- Malicious mischief*, see MALICIOUS MISCHIEF.
- Misdemeanor, 10, 351
- Motion to quash, 10, 567
 - After plea, 10, 571
 - Appeal or writ of error, 10, 568
 - Discretion, 10, 567
 - Effect of quashal, 10, 572
 - Exception must be saved, 10, 568
 - General rules, 10, 567
 - Order of motion, 10, 570
 - Presence of accused at hearing, 10, 571
 - Scope of motion, 10, 570
 - To what defects directed, 10, 569
 - Withdrawal of plea, 10, 571
- Motion to set aside, 10, 576
- Name and by authority of state, 10, 459
- New information, 10, 457
- Nolle prosequi*, see NOLLE PROSEQUI.
- Objections*, see *infra*, Exceptions and objections.
- Penalties and penal actions (see PENALTIES AND PENAL ACTIONS), 16, 239.
- Preliminary examination, 10, 450
 - Affidavit filed with attorney or clerk of court, 16, 828
 - Information filed by leave of court, 16, 827
 - In general, 10, 450
 - Necessity, 10, 450
- Prosecuting attorney:
 - By whom filed, 10, 449
 - Signature of prosecuting officer, 10, 461
- Qui tam actions*, see PENALTIES AND PENAL ACTIONS.
- Rearrest, 10, 458
- Repugnancy, 10, 532
- Second information, 10, 457
- Service of copy of information, 10, 470
 - Right generally, 10, 470
 - Waiver of right, 10, 471
- Signature of prosecuting officer, 10, 461
- Sufficient indication of official information, 10, 459
- Surplusage, 10, 530
- Title of cause and name of court, 10, 459
- To what offenses applicable, 10, 351
- United States, 10, 351
- Verification, affidavit, or complaint, 10, 451
 - Before whom made, 10, 454
 - By whom made, 10, 453
 - Information and belief, 10, 453
 - Jurat, 10, 454

INFORMATIONS, *cont'd.*

Verification, affidavit, or complaint, *cont'd.*

Substantially charging an offense, 10, 452

Sufficiency in general, 10, 452

Waiver of objection, 10, 454

When necessary, 10, 451

When filed, 10, 455

After quashal or *nol. pros.* of indictment, 10, 457

Generally, 10, 455

Open court, 10, 456

Relation to sitting or action of grand jury, 10, 456

Witnesses, 10, 453

Indorsement of witnesses, 10, 460

INFORMATIONS IN EQUITY, 10, 856

Amended informations, 10, 865

Amendments, 10, 865

Attorney-general, 10, 860

Conduct of cause, 10, 866

Bill and information, 10, 857

Bills in equity, 10, 857

Resemblance to bills in equity, 10, 858

By what authority filed, 10, 860

Charities, 10, 859

Conduct of cause, 10, 866

County attorney, 10, 861

Cross-informations, 10, 866

Definition, 10, 856

Franchises, 10, 859

Information:

Definition, 10, 856

Signature, 10, 865

Information and bill, 10, 857

Definition, 10, 857

Resemblance to bills in equity, 10, 859

Signature, 10, 865

Insane persons, 10, 859, 864

Interest of relator, 10, 858

Name in which filed, 10, 862

Objection for informality, 10, 862

Public lands, 10, 860

Relator, 10, 863

Conduct of cause, 10, 867

Idiots, 10, 864

Lunatics, 10, 864

Necessity of relators, 10, 863, 864

Object of having a relator, 10, 864

Who may be relators, 10, 863

With or without a relator, 10, 863

Requisites of informations, 10, 860

By what authority and in what name filed, 10, 860

With or without a relator, 10, 863

Signature, 10, 865

Information, 10, 865

Information and bill, 10, 865

INFORMATIONS IN EQUITY, *con.*

Supplemental informations, 10, 866

Use of informations, 10, 859

INFORMERS:

Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.

Qui tam actions, see PENALTIES AND PENAL ACTIONS.

INFRINGEMENT, see COPYRIGHT; PATENTS; TRADE-MARKS AND TRADE NAMES.

IN HÆC VERBA:

Variance, 22, 623

INITIALS:

Abbreviations, 1, 43

Common law, 14, 273

Court accepting initials as full name, 14, 274

Description of written instrument, 14, 274

Designation of woman by husband's name, 14, 278

Middle name or initial, 14, 275

No part of name, 14, 273

United States, 14, 274

INJUNCTIONS, 10, 869

Actions, see *infra*, Remedies upon dissolution of injunction.

Ad damnum clause, 10, 950

Additional allowances of costs, 1, 221

Admissions, 10, 1066

Admissions by the demurrer, 10, 982

Admissions in the answer, 10, 1066

Admissions of one codefendant, 10, 1067

Failure to deny immaterial allegations, 10, 1067

In general, 10, 1066

Advice of counsel:

Disobedience of injunction, 10, 1107

Affidavits (see *infra*, Verification; Verification of the bill):

Dissolution of preliminary injunctions, 10, 1084, 1086

Dissolution of preliminary injunctions for want of affidavit, 10, 1047

Preliminary injunctions, 10, 1004

Agency:

Defendant, 10, 915

Disobedience of injunction, 10, 1102

Agreed case, 1, 388, 396

Aiders and abettors, 10, 917

Alimony (see ALIMONY), 1, 411, 445

Amendments, 10, 974

Additional answer by the defendant, 10, 976

Amendment after motion to dissolve, 10, 977

INJUNCTIONS, *cont'd.***Amendments, *cont'd.***

- Amendment of bill after answer, 10, 1054
- Application for leave to amend, 10, 978
- At what time amendments may be made, 10, 978
- Bonds, 10, 1020
- Diligence after amendment, 10, 976
- Effect of amendment on injunction, 1, 492, 624
- Facts inconsistent with original bill, 10, 976
- In what particulars amendments permissible, 10, 976
- Necessity for clause saving injunction, 10, 977
- Newly discovered matters, 10, 976
- Opposing affidavit by the defendant, 10, 975
- Parties, 10, 895
- Prayer, 10, 963
- Prejudice to injunction, 10, 976
- Retroactive effect of amendment, 10, 977
- Right of plaintiff to amend, 10, 974
- Striking out portion of the bill, 10, 975
- Without prejudice to injunction, 1, 493

Amount in controversy, 10, 883, 943

Ancillary injunction:

Venue, 10, 885

Answer:

- Dissolution of preliminary injunctions upon denials contained in the answer, 10, 1048
- Admissions in the answer, 10, 1066
- Affidavit in lieu of answer, 10, 1061
- Affidavit made in foreign state, 10, 1075
- Allegations not responsive to the bill, 10, 1071
- Amendment of bill after answer, 10, 1054
- Answer as to fraud where there are several defendants, 10, 1079
- Answer on information and belief, 10, 1068
- Application of the rule, 10, 1048
- Bills for discovery, 10, 1054
- By whom affidavit should be made, 10, 1074
- Conclusions of law, 10, 1063

INJUNCTIONS, *cont'd.***Answer, *cont'd.***

- Dissolution of preliminary injunctions upon denials contained in the answer, *cont'd.*
- Consideration of infirmities of bill, 10, 1054
- Construction of written instrument, 10, 1056
- Continuance of injunction to prevent irreparable injury, 10, 1047
- Corporation, 10, 1075
- Defendant's apparent want of knowledge, 10, 1070
- Denial in phraseology of bill, 10, 1063
- Denial of fraud, 10, 1065
- Denial of plaintiff's legal conclusions, 10, 1064
- Discovery, 10, 1061
- Discretion of court, 10, 1059
- Dissolution *ipso facto*, 10, 1055
- Evasive answers, 10, 1064
- Evidence, 1, 957
- Exceptions to the answer, 1, 907; 10, 1076
- Exceptions to the general rule, 10, 1079
- Exceptions to the rule, 10, 1055
- Fraud, 10, 1056
- Fulness, 10, 1065
- Harmlessness of injunction, 10, 1059
- Improbability of answer, 10, 1067
- Inability of defendant to answer positively, 10, 1069
- Information and belief, 10, 1074
- Injunctions granted on order to show cause, 10, 1052
- Insolvency of the defendant, 10, 1058
- Matters charged in the bill on information and belief, 10, 1069
- Method of pleading contract, 10, 1061
- Nonresident defendants, 10, 1080
- Particularity and clearness, 10, 1062
- Positiveness, 10, 1064
- Requisites and sufficiency of the answer, 10, 1060
- Statement of the rule, 10, 1048
- Statutory provisions, 10, 1054

INJUNCTIONS, *cont'd.***Answer, *cont'd.***

Dissolution of preliminary injunctions upon denials contained in the answer, *cont'd.*

Sufficiency of answer as pleading, 10, 1070

Verification of answer, 10, 1072

Waiver of answer under oath, 10, 1054, 1073

Waiver of answer under oath where there are several defendants, 10, 1079

Where there are several defendants, 10, 1078

Preliminary injunctions, 10, 1000

Analogy to motion to dissolve, 10, 1001

Averments in the bill which are not denied, 10, 1002

Effect of the answer, 10, 1000

Exceptions to the rule, 10, 1001

Failure of some of the defendants to answer, 10, 1002

General rule, 10, 1000

Information and belief, 10, 1002

Issuance of an injunction to prevent irreparable injury, 10, 1002

Requisites and sufficiency of answer, 10, 1002

Verification of answer, 10, 1003

Appeals, 2, 46

Decisions affecting injunctions, 2, 123

Discretion, 2, 123

Final decree, 2, 125

In general, 2, 123

Injunction bond, 2, 126

Orders for accounting, 2, 127

Statutory construction, 2, 125

When bill seeks no further relief, 2, 124

Discretion of court, 2, 415

Dissolution of injunction, 2, 326

Effect of appeal, 2, 326

Application, see *infra*, Bill.

Apprehension of injury in the future, 10, 947

Ad damnum clause, 10, 950

Allegations of impending danger of injury, 10, 947

Overt acts, 10, 949

Threats, 10, 949

Argumentativeness, 10, 925

Assignment for benefit of creditors, 2, 875

INJUNCTIONS, *cont'd.***Attachment:**

Disobedience of injunction, 10, 1110

Attorney-general, 10, 902

In suits to enjoin public mischief, 10, 902

Matters concerning private interests only, 10, 903

Parties plaintiff, 10, 902

Attorneys:

Defendant, 10, 915

Disobedience of injunction, 10, 1102

Bankruptcy (see *infra*, Insolvency and bankruptcy):

Enjoining pending and other suits, 22, 366

Bill, 10, 918

Allegation of facts, 10, 925

Allegation of fraud, 10, 959

How alleged, 10, 959

Necessity to charge fraud, 10, 959

Allegation of insolvency, 10, 956, 960

Allegation of usury, 10, 959

Allegations on information and belief, 10, 929

Amendments, see *infra*, Amendments.

Anticipation of defenses, 10, 922

Apprehension of injury in the future, 10, 947

Ad damnum clause, 10, 950

Allegations as to impending danger of injury, 10, 947

Overt acts, 10, 949

Threats, 10, 949

Argumentativeness, 10, 925

Averments where several land-owners join, 10, 947

Bill praying ancillary injunction, 10, 939

Certainty, 10, 923

Character of injury apprehended, 10, 950

Inadequacy of remedy at law, 10, 953

Irreparable defined, 10, 952

Irreparable injury, 10, 951

Irreparable injury generally necessary, 10, 951

Materiality of allegation of insolvency, 10, 956

Necessity to charge facts as to the character of the injury, 10, 954

Necessity to charge in terms that irreparable injury will ensue, 10, 955

Substantial injury, 10, 950

Charging facts, 10, 925

INJUNCTIONS, *cont'd.*Bill, *cont'd.*

- Charging matters of evidence, 10, 929
- Code pleading, 10, 921
- Coming into equity with clean hands, 10, 932
- Conformity of writ of injunction to the bill, 10, 1022
- Construction of the bill, 10, 973
- Demurrer*, see *infra*, Demurrer.
- Description of contract, 10, 923
- Description of land, 10, 924
- Discovery, 10, 937
- Dissolution on the bill, 10, 1044
 - Bill showing equity, 10, 1047
 - Motion equivalent to motion for injunction on notice, 10, 1046
 - Only substantial defects regarded, 10, 1047
 - Retention of bill for other relief, 10, 1047
 - Truth of bill admitted, 10, 1046
 - Want of equity, 10, 1044
 - Want or defect of affidavit, 10, 1047
- Exhibits, 10, 938
- General rules of pleading, 10, 921
- Illegality, 10, 938
- Illegal taxes, 10, 942
- Impertinence, 10, 922
- Injunction bill defined, 10, 918
- Jurisdictional amount, 10, 943
- Laches, 10, 943
- Matters of equitable cognizance, 10, 940
- Multifariousness, 10, 970
 - In general, 10, 970
 - Pendency of action at law for damages, 10, 973
 - Suit for injunction and damages, 10, 972
 - What constitutes multifariousness, 10, 971
- Necessity for bill, 10, 918
- Necessity for full and candid statement, 10, 931
- Necessity to charge facts, 10, 925
- Necessity to make out case for injunctive relief, 10, 940
- Petition in cause pending, 10, 919
- Plaintiff's interest in and title to subject-matter, 10, 944
- Plaintiff's willingness to do equity, 10, 932
 - Dismissal for failure to make tender, 10, 936
 - General rule as to averment of tender, 10, 933

INJUNCTIONS, *cont'd.*Bill, *cont'd.*

- Plaintiff's willingness to do equity, *cont'd.*
 - Illustrations of the rule as to tender, 10, 933
 - In general, 10, 932
 - Requisites and sufficiency of allegations as to tender, 10, 936
 - Rescission, 10, 933
 - Restoration, 10, 933
 - Tender, 10, 933
 - Tender in case of usury, 10, 935
 - Tender where taxes and assessments are enjoined, 10, 934
- Prayer*, see *infra*, Prayer.
- Reasonable doubt, 10, 943
- Right to restraining order or preliminary injunction, 10, 922
- Signature, 10, 922
- Statutory right of action, 10, 943
- Suit in behalf of state, 10, 943
- Supplemental bill*, see *infra*, Supplemental bill.
- Verification of the bill, 10, 963
 - Amended bill, 10, 964
 - At what time bill should be verified, 10, 966
 - By whom affidavit should be made, 10, 966
 - Exceptions to the rule requiring verification, 10, 965
 - Form of affidavit, 10, 967
 - Form of affidavit by third person, 10, 970
 - Form of affidavit in general, 10, 967
 - Information and belief, 10, 969
 - Injunction on final hearing only, 10, 966
 - Necessity to annex affidavits of third persons, 10, 970
 - Necessity to verify bill, 10, 963
 - Verification before plaintiff's attorney, 10, 969
- Waiver of defects in bill, 10, 943
- Waiver of objection to averments of conclusions, 10, 929
- When bill should be filed, 10, 920
- Written instruments, 10, 938
- Bills of peace*, see BILLS OF PEACE.
- Bills to impeach decrees and judgments, 3, 619
- Bonds (see *infra*, Remedies upon dissolution of injunction):
 - Dissolution for insufficiency of bond, 10, 1042

INJUNCTIONS, *cont'd.***Bonds, *cont'd.***

Dissolution for want of bond, 10, 1042

Dissolution of injunction, 10, 1031

Preliminary injunctions, 10, 1012

Acceptance of bond, 10, 1019

After issuance of injunction, 10, 1014

Amendments, 10, 1020

Approval of bond, 10, 1019

At what time bond should be given, 10, 1017

Before issue of restraining orders, 10, 1016

Bond necessarily onerous, 10, 1019

By whom executed, 10, 1018

Conditions and the penalty of the bond, 10, 1018

Discretion of the court, 10, 1016

Executors and administrators, 10, 1015

Fiduciary, 10, 1015

Form and contents of bond, 10, 1017

Informalities, 10, 1019

Injunction after final hearing, 10, 1016

Injunction against proceedings at law, 10, 1012

Justification of sureties, 10, 1020

Modern practice, 10, 1012

Necessity to give bond, 10, 1012

New bonds, 10, 1020

Sovereign, 10, 1015

State, 10, 1015

Statutory provisions, 10, 1013

Validity of injunction issued without bond, 10, 1015

Boycotts, see **STRIKES AND BOYCOTTS**.

Burden of proof:

Dissolution of preliminary injunctions, 10, 1082

Carriers:

Illegal charges, 3, 869

Certainly, see *infra*, **Definiteness and certainty in pleadings**.

Certiorari:

Refusal of writ where taxpayer has remedy for injunction, 4, 170

Chambers and vacation, 4, 354

Discretion of judge, 4, 356

Dissolution, 4, 357

Express statutory authorization, 4, 354, 355

Granting injunctions, 4, 354

INJUNCTIONS, *cont'd.***Chambers and vacation, *cont'd.***

Injunction to operate throughout the state, 4, 357

Notice, 4, 358

Perpetual injunctions, 4, 356

Territorial limitation of power, 4, 356

What record must show, 4, 357

Character of injury apprehended, 10, 950

Inadequacy of remedy at law, 10, 953

Irreparable defined, 10, 952

Irreparable injury, 10, 951

Irreparable injury generally necessary, 10, 951

Materiality of allegation of insolvency, 10, 956

Necessity to charge facts as to the character of the injury, 10, 954

Necessity to charge in terms that irreparable injury will ensue, 10, 955

Substantial injury, 10, 950

Codes, 10, 877

Application, 10, 921

Establishment of plaintiff's right at law, 10, 891

Common injunctions, 10, 877

Conspiracy:

Strikes and boycotts, 4, 728

Construction of bill, 10, 973

Construction of injunctions, 10, 1024

Construction of written instrument, 10, 1056

Contempt:

Defendant moving for dissolution, 10, 1081

Disobedience of injunction, 10, 1098

Advice of counsel, 10, 1107

Affidavit or information, 10, 1112

Agents, 10, 1102

Answers to interrogatories, 10, 1113

Attachment, 10, 1110

Attorneys, 10, 1102

Compensation to the plaintiff, 10, 1114

Construction of injunction, 10, 1108

Corporations, 10, 1103

Criminal proceedings, 10, 1110

Discretion of court, 10, 1099

Evasions, 10, 1109

Exceptions to general rule, 10, 1100

Impairment of plaintiff's rights, 10, 1105

INJUNCTIONS, *cont'd.***Contempt, *cont'd.*****Disobedience of injunction, *con.***

Interrogatories propounded to the defendant, 10, 1113

Jurisdiction of supreme court, 10, 1100

Jurisdiction to punish disobedience, 10, 1098

Knowledge of injunction, 10, 1101

Landlord and tenant, 10, 1102

Liability of defendant where injunction is violated by strangers, 10, 1101

Liability of strangers, 10, 1102

Mitigating circumstances, 10, 1115

Notice, 10, 1112

Notice of injunction, 10, 1101

Order to show cause, 10, 1111

Penalty for disobedience, 10, 1114

Pendency of appeal, 10, 1100

Proceedings against contemnors, 10, 1110

Punishment of servants and agents, 10, 1103

Receivers, 10, 1102

Servants, 10, 1102

Stipulation between the parties, 10, 1108

Strangers, 10, 1101

Subterfuges, 10, 1109

Violation by plaintiff, 10, 1104

Violation of injunction by strangers, 10, 1101

Void writ, 10, 1106

What constitutes violation, 10, 1107

What court has power to punish, 10, 1099

Whether mere irregularities may be questioned, 10, 1105

Copyright, 5, 24

At what stage of suit, 5, 24

Motion to dissolve, 5, 24

Permanent injunction, 5, 24

Temporary injunction, 5, 24

Corporations:

Answer, 10, 1075

Violation of injunction, 10, 1103

Courts (see *infra*, Discretion of court; Preliminary injunctions):

Control of court over process, 10, 1027

Creditors' bills, 5, 588

Examples, 5, 588

In general, 5, 588

INJUNCTIONS, *cont'd.***Creditors' bills, *cont'd.***

Judgment at law as prerequisite to obtaining injunction, 5, 473

Notice, 5, 591

Order of court, 5, 592

Violation of injunction, 5, 592

Criminal proceedings:

Disobedience of injunction, 10, 1110

Damages, see *infra*, Remedies upon dissolution of injunction.**Decrees, see *infra*, Final decree.*****De facto* officers, 17, 418****Defaults, 6, 214*****Defendant*, see *infra*, Parties to actions.****Definiteness and certainty in pleadings, 10, 923**

Answer, 10, 1062

Averments of title, 10, 946

Definitions, 10, 876

Common injunctions, 10, 877

In general, 10, 876

Injunction bill defined, 10, 918

Irreparable injury, 10, 952

Mandatory injunctions, 10, 879

Preliminary injunctions, 10, 878

Restraining orders, 10, 878

Special injunctions, 10, 877

Demand:

Demand before bringing suit, 10, 886

Demurrer, 10, 980

Admissions by the demurrer, 10, 982

Defect of parties, 10, 981

Demurrer to the whole bill, 10, 981

Dismissal, 10, 983

Effect of sustaining demurrer, 10, 983

In general, 10, 980

Order in which motion for injunction and demurrer should be heard, 10, 983

Remedy at law, 10, 980

Special demurrer, 10, 982

Discovery, 10, 915, 1061**Discretion of court (see *infra*, Dissolution of preliminary injunctions; Preliminary injunctions):**

Bonds, 10, 1016

Terms upon which preliminary injunction should be given, 10, 1016

Dismissal, discontinuance, and non-suit:

Effect of termination of the suit on injunction bond, 6, 981

Retention for partial relief, 6, 967

INJUNCTIONS, *cont'd.*

Disobedience of injunction, see infra,
Contempt.

Dissolution of preliminary injunctions (see *infra*, Evidence; Modification or dissolution in part; Motion, moving, and moving papers; Remedies upon dissolution of injunction), 10, 1027

Arbitrary discretion, 10, 1032

At what stage, 10, 1033

Before service of process, 10, 1033

Control of court over process, 10, 1027

Denials contained in the answer, 10, 1048

Admissions in the answer, 10, 1068

Affidavit in lieu of answer, 10, 1061

Affidavit made in foreign state, 10, 1075

Allegations not responsive to the bill, 10, 1071

Amendment of bill after answer, 10, 1054

Answer as to fraud where there are several defendants, 10, 1079

Answer on information and belief, 10, 1068

Application of the rule, 10, 1048

Bills for discovery, 10, 1054

By whom affidavit should be made, 10, 1074

Conclusions of law, 10, 1063

Consideration of infirmities in bill, 10, 1054

Construction of written instrument, 10, 1056

Continuance of injunction to prevent irreparable injury, 10, 1057

Corporation, 10, 1075

Defendant's apparent want of knowledge, 10, 1070

Denial in phraseology of bill, 10, 1063

Denial of fraud, 10, 1065

Denial of plaintiff's legal conclusions, 10, 1064

Discovery, 10, 1061

Discretion of court, 10, 1059

Dissolution *ipso facto*, 10, 1055

Evasive answers, 10, 1064

Exceptions to the answer, 10, 1076

Exceptions to the general rule, 10, 1079

INJUNCTIONS, *cont'd.*

Dissolution of preliminary injunctions, *cont'd.*

Denials contained in the answer, *cont'd.*

Exceptions to the rule, 10, 1055

Fraud, 10, 1056

Fulness, 10, 1065

Harmlessness of the injunction, 10, 1059

Improbability of answer, 10, 1067

Inability of defendant to answer positively, 10, 1069

Information and belief, 10, 1074

Injunction granted on order to show cause, 10, 1052

Insolvency of the defendant, 10, 1058

Matters charged in the bill on information and belief, 10, 1069

Method of pleading contract, 10, 1061

Nonresident defendants, 10, 1080

Particularity and clearness, 10, 1062

Positiveness, 10, 1064

Requisites and sufficiency of the answer, 10, 1060

Statement of the rule, 10, 1048

Statutory provisions, 10, 1054

Sufficiency of answer as pleading, 10, 1070

Verification of answer, 10, 1072

Waiver of answer under oath, 10, 1054, 1073

Waiver of answer under oath where there are several defendants, 10, 1079

Where there are several defendants, 10, 1078

Discretion of court, 10, 1029

Discretion of court as to notice of motion to dissolve, 10, 1037

Dissolution *ex mero motu*, 10, 1028

Dissolution not a matter of course, 10, 1029

Dissolution of considerations influencing the exercise of discretion, 10, 1031

Dissolution on the bill, 10, 1044

Bill showing equity, 10, 1047

Motion equivalent to motion for injunction on notice, 10, 1046

INJUNCTIONS, *cont'd.*Dissolution of preliminary injunctions, *cont'd.*Dissolution on the bill, *cont'd.*

Only substantial defects regarded, 10, 1047

Truth of bill admitted, 10, 1046

Want of equity, 10, 1044

Want or defect of affidavit, 10, 1047

Distinction between dissolution and discharge, 10, 1028

Effect of final decree, 10, 29

Grounds for dissolution, 10, 1037

Abuse of process, 10, 1039

Defect of parties, 10, 1041

Excusable delay in prosecution, 10, 1043

Fraud, 10, 1039

Improvident issuance of writ, 10, 1037

In general, 10, 1037

Injunction useless, 10, 1038

Insufficiency or want of bond, 10, 1042

Noncompliance with terms, 10, 1042

Statute authorizing the defendant's acts, 10, 1040

Successive applications for injunctions, 10, 1039

Vagueness and uncertainty, 10, 1040

Want of jurisdiction, 10, 1041

Want of notice, 10, 1040

Want of prosecution, 10, 1043

Ipso facto dissolution, 10, 1028

Limitation as to time, 10, 1035

Mandamus, 10, 1032

Necessity for notice of motion to dissolve, 10, 1036

Notice of motion to dissolve, 10, 1036

Order of dissolution, see *infra*, Order of dissolution.

Pendency of demurrer to the bill, 10, 1035

Plaintiff's bond, 10, 1031

Prohibition, 10, 1032

Removal of cause into United States court, 10, 1033

Rights of the public, 10, 1031

Solvency of the defendant, 10, 1031

Successive motions to dissolve, 10, 1030

Temporary restraining orders, 10, 1029

To what court the motion should be addressed, 10, 1032

Void injunction, 10, 1028

INJUNCTIONS, *cont'd.*Dissolution of preliminary injunctions, *cont'd.*

Waiver of notice, 10, 1037

When application to dissolve may be made, 10, 1033

Dower, 7, 176

Eminent domain, 7, 706

Acquiescence of owner, 7, 710

Adequate remedy at law, 7, 709

Appropriation without condemnation, 7, 707

Bill, 7, 713

Complaint, 7, 713

Damages, 7, 714

Decree, 7, 714

Dissolving, 7, 714

Fraud, 7, 708

Future damages, 7, 715

In general, 7, 706

Irregularity, 7, 708

Issue of *quantum damnicatus*, 7, 715

Jurisdiction, 7, 712

Laches of owner, 7, 711

Landowner's rights, 7, 706

Matters of defense, 7, 714

Nonpayment of damages, 7, 708

No sufficient injury or damage shown, 7, 710

Owner's consent, 7, 710

Petition, 7, 713

Pleading, 7, 712

Sufficiency of bill, 7, 713

United States courts, 7, 712

Unlawful acts during condemnation proceedings, 7, 708

Vacation, 7, 714

When not proper remedy, 7, 709

When proper remedy, 7, 706

Writ unavailing, 7, 709

Equity, see *infra*, Establishment of plaintiff's right at law.*Equity jurisdiction*, see *infra*, Jurisdiction.

Establishment of plaintiff's right at law, 10, 887

Code, 10, 891

England, 10, 887

General rule, 10, 887

Modern doctrine, 10, 888

Preliminary injunction, 10, 890

Sending the defendant to law, 10, 891

Title undisputed, 10, 890

Evidence:

Charging matters of evidence, 10, 929

Dissolution of preliminary injunctions, 10, 1082

Admissibility of evidence, 10, 1083

INJUNCTIONS, *cont'd.***Evidence, *cont'd.***

Dissolution of preliminary injunctions, *cont'd.*

Affidavits annexed to bill and answer, 10, 1084

Burden of proof, 10, 1082

Exceptions to the rule as to admissibility, 10, 1084

Failure to serve defendant with subpoena, 10, 1084

General rule of equity, 10, 1083

Modern practice, 10, 1085

Preliminary injunctions, 10, 1003

Exceptions and objections, 8, 301

Answer, 10, 1076

Parties, 10, 894

Executions, 8, 475; 22, 644

Alias and *pluries* executions, 8, 439

Appropriateness of remedy, 8, 475

Attack upon the judgment, 8, 479

Execution prematurely issued, 8, 477

Jurisdiction of state and United States courts, 8, 483

Leave of court after dissolution of injunction, 8, 377

Levy of the writ, 8, 494

Multifariousness, 8, 483

Parties, 8, 483

Payment as ground for injunction, 8, 477

Pleading, 8, 483

Preservation of inheritance, 8, 482

Prevention of loss of business or credit, 8, 482

Property taken for public use, 8, 483

Relief as to strangers, 8, 480

Revival of judgment, 8, 357

Void writ, 8, 478

Execution sales, see **SHERIFFS' SALES**.

Executors and administrators:

Defendant, 10, 914

Final decree, 10, 1095

Affirmative relief to the defendant, 10, 1096

Conformity to the prayer and pleadings, 10, 1098

Decree for complete relief, 10, 1097

Perpetuation of injunction, 10, 1095

Requirement that plaintiff shall do equity, 10, 1097

Final hearing, 10, 1093

Allegations and proof, 10, 1095

In general, 10, 1093

INJUNCTIONS, *cont'd.***Final hearing, *cont'd.***

Variance, 10, 1095

What evidence admissible, 10, 1095

Fixtures, 9, 16

Forcible entry and detainer, 9, 82

Form of injunction, see *infra*, **Frame of the injunction**.

Frame of the injunction, 10, 1021

Against whom directed, 10, 1024

Certainty, 10, 1023

Conformity to the bill, 10, 1022

Conformity to the order of the court, 10, 1022

Construction of injunctions, 10, 1024

In general, 10, 1021

No particular form, 10, 1021

Reference to the bill, 10, 1023

Statutory provisions, 10, 1022

Unnecessary restraint, 10, 1023

Fraud:

Allegation of fraud, 10, 959

How alleged, 10, 959

Necessity of charging fraud, 10, 959

Answer as to fraud, 10, 1079

Dissolution of preliminary injunctions, 10, 1056

Fulness in denying fraud, 10, 1065

Participation in fraud, defendant, 10, 917

Government:

Bonds, 10, 1016

Governor, 10, 911

Hearing, see *infra*, **Final hearing**.

Homesteads and exemptions, 10, 86

Bill or complaint, 10, 88

Equitable jurisdiction, 10, 86

Laches or negligence of plaintiff, 10, 87

Temporary injunction, 10, 88

Illegality, 10, 928

Illustrations:

Plaintiff's willingness to do equity, 10, 933

Impertinence, see *infra*, **Scandal and impertinence**.

Inadequacy of remedy at law, see *infra*, **Remedy at law**.

Information and belief, 10, 929, 1063, 1074

Verification of the bill, 10, 969

Injunction bill, see *infra*, **Bill**.

Injunction bonds, see *infra*, **Bonds**.

Insane persons:

Restraint by equity of actions at law, 10, 1226

Insolvency and bankruptcy:

Allegation of insolvency, 10, 960

How alleged, 10, 960

INJUNCTIONS, *cont'd.*

- Insolvency and bankruptcy, *cont'd.*
 - Allegation of insolvency, *cont'd.*
 - Necessity to charge insolvency, 10, 960
 - Vague and indefinite allegations, 10, 960
 - Bill, 10, 956
 - Discretion, 10, 989
 - Dissolution of preliminary injunctions, 10, 1058
 - Irreparable injury, 10, 956
 - Materiality of allegation of insolvency, 10, 956
 - Trespass, 10, 958
 - When insolvency need not be alleged, 10, 958
 - Whether insolvency alone is sufficient to show irreparable injury, 10, 958
- Interlocutory orders.* see *infra*, Preliminary injunctions.
- Intervention, 10, 918
- Irreparable injury, 10, 951
 - Definition, 10, 952
 - Inadequacy of remedy at law, 10, 953
 - In general, 10, 951
 - Materiality of allegation of insolvency, 10, 956
 - Necessity to charge facts as to the character of the injury, 10, 954
- Irrigation, 11, 597
- Issues to the jury, 11, 641
 - Setting aside or disregarding verdict, 11, 707
- Joinder of counts and causes:
 - Real action and injunction, 202
 - Torts and injunction under the codes, 1, 204
- Joinder of parties, 10, 999
 - Plaintiff, 10, 905
- Joint tenants and tenants in common, 11, 770
- Judgments and decrees (see JUDGMENTS):
 - Who must be joined, 10, 910
- Judicial process, 10, 876
- Jurisdiction (see *infra*, Establishment of plaintiff's right at law), 10, 880
 - Chancery jurisdiction, 10, 881
 - Diverse citizenship, 10, 884
 - Jurisdictional amount, 10, 883
 - Prohibition where court exceeds jurisdiction, 10, 884
 - Removal into United States court, 10, 884
 - Scope of inquiry, 10, 880
 - Statute conferring authority upon judge, 10, 882
 - Statutory provisions, 10, 881
- Index Pl. & Pr. — 32

INJUNCTIONS, *cont'd.*

- Jurisdiction, *cont'd.*
 - Supreme courts, 10, 882
 - United States courts, 10, 883
- Landlord and tenant:
 - Summary proceedings, 12, 900
- Law*, see *infra*, Establishment of plaintiff's right at law.
- Legal conclusions:
 - Denial of plaintiff's legal conclusions, 10, 1064
 - Particularity and clearness, 10, 1062
- Limitations:
 - Enjoining plea, 13, 199
- Local assessments*, see *infra*, Taxation.
- Local improvements, 13, 318
 - Bill, 13, 320
 - Void assessments, 13, 298
 - When it does not lie, 13, 319
 - When it lies, 13, 318
- Malicious prosecution*, see MALICIOUS PROSECUTION.
- Mandamus, 13, 500, 609
 - Dissolution of injunction, 10, 1032
 - Enforcement of peremptory writ, 13, 806
 - Interfering by mandamus, 13, 503
 - Mandamus compared with, 13, 500
 - Pendency of injunction, 13, 729
 - Preliminary injunctions, 10, 994
 - To clerks, 13, 610
 - To compel granting, 13, 609
 - To dissolve injunction, 13, 610
 - To enforce injunction, 13, 611
 - To reinstate injunction, 13, 611
- Mandatory injunctions, 10, 879
 - Definition, 10, 879
 - Prayer for mandatory injunction, 10, 962
- Master and servant:
 - Defendant, 10, 915
 - Disobedience of injunction, 10, 1102
- Mines and mining, 14, 25
- Modification or dissolution in part, 10, 1091
 - Discretion of court, 10, 1092
 - Enlargement of injunction, 10, 1092
 - Power of court to modify injunction, 10, 1091
 - Suspension of injunction, 10, 1093
 - When entire dissolution improper, 10, 1092
- Monopolies*, see MONOPOLIES.

INJUNCTIONS, *cont'd.*

- Motion, movant, and moving papers:
 - Dissolution of preliminary injunctions, 10, 1081
 - Defendant as movant, 10, 1081
 - Defendant in contempt, 10, 1081
 - Movant, 10, 1081
 - Moving papers, 10, 1082
 - Necessity for motion, 10, 1081

Motions:

- Successive motions to dissolve, 10, 1090

Multifariousness, 10, 970

- Defendant, 10, 910
- In general, 10, 970
- Pendency of action at law for damage, 10, 973
- Suit for injunction and damages, 10, 972
- What constitutes multifariousness, 10, 971

Municipal corporations:

- Defendant, 10, 914
- Nonresidents*, see *infra*, Residents.

Notice:

- Assessment of damages upon dissolution of injunction, 10, 1118
- Attachment for disobedience of injunction, 10, 1112
- Disobedience of injunction, 10, 1101
- Dissolution for want of notice, 10, 1040
- Motion to dissolve, 10, 1036
- Preliminary injunctions, 10, 994
 - Amended and supplemental bills, 10, 998
 - Cases of emergency, 10, 997
 - In the absence of statute, 10, 994
 - Mandatory injunction, 10, 996
 - Order to show cause, 10, 999
 - Requisites and sufficiency of notice, 10, 999
 - Statutory provisions, 10, 996
 - Waiver of notice, 10, 999
 - Whether injunction will be granted *ex parte*, 10, 994

Nuisances, see NUISANCES.**Order of dissolution, 10, 1086**

- Dissolution of the injunction, 10, 1089
- Finality of the decision, 10, 1088
- General propositions, 10, 1086
- Imposition of terms, 10, 1087
- Imposition of terms upon the plaintiff, 10, 1088
- Preliminary injunctions, 10, 1086
- Res judicata*, 10, 1089

INJUNCTIONS, *cont'd.***Order of dissolution, *cont'd.***

- Whether the bill should be dismissed, 10, 1089

Orders (see *infra*, Preliminary injunctions; Restraining orders):

- Conformity of injunction to order of court, 10, 1022

Ordinances, 15, 441

- Injunction against acts forbidden by ordinance, 15, 442

- Proceedings to enforce ordinance, 15, 441

- Remedies by injunction and at law inconsistent, 15, 442

Parties to actions, 10, 892

- Amendments, 10, 895

- Bill without equity, 10, 896

- Defendant, 10, 909

- Agents, 10, 915

- Aiders and abettors, 10, 917

- Attorneys, 10, 915

- Bill to enjoin collection of taxes, 10, 913

- Discovery, 10, 915

- Executors and administrators, 10, 914

- Governor, 10, 911

- Incumbrances, 10, 913

- In general, 10, 909

- Injunction against judgments and decrees, 10, 910

- Injunction against payment of money, 10, 912

- Multifariousness, 10, 910

- Municipal corporations, 10, 914

- Officer armed with process, 10, 916

- Parties to contract, 10, 914

- Persons interested in subject-matter, 10, 911

- Persons whose acts have been consummated, 10, 917

- Purchasers, 10, 913

- Purchasers *pendente lite*, 10, 914

- Servant, 10, 915

- State, 10, 911

- Where there are exceptions, 10, 909

- Who must be joined, 10, 909

Demurrer, 10, 981

- Dissolution for defect of parties, 10, 1041

***Ex mero motu*, 10, 895**

- Indispensable parties, 10, 894

- In general, 10, 892

- Interest, 10, 892, 897

- Joinder of parties, 10, 906, 907

- Private individuals as plaintiffs in suits to enjoin public mischief, 10, 901

INJUNCTIONS, *cont'd.*

- Parties to actions, *cont'd.*
 - Intervention, 10, 918
 - Necessary parties, 15, 622, 623
 - New cause of action, 10, 896
 - Nonresidents, 10, 893
 - Object of general rule, 10, 892
 - Persons in interest, 10, 892
 - Plaintiff, 10, 896
 - Conflict of interests, 10, 906
 - In general, 10, 896
 - Interested party, 10, 897
 - Joint or common interest, 10, 907
 - Motives of the plaintiff, 10, 897
 - Plaintiff is not a relator, 10, 896
 - Representation of numerous parties by one or more plaintiffs, 10, 907
 - Who may join as plaintiffs, 10, 905
 - Plaintiff in suits to enjoin public mischief, 10, 897
 - Attorney-general, 10, 902
 - Attorney-general where matters concern private interests only, 10, 903
 - Extent of relief granted to private individuals, 10, 901
 - General rule as to private individuals as plaintiffs, 10, 897
 - Nature of plaintiff's peculiar interest, 10, 901
 - Private individuals as plaintiffs, 10, 897
 - Statutory provisions, 10, 904
 - When private individual may be plaintiff, 10, 900
 - Surety on injunction bond, 10, 893
 - Waiver of objection, 10, 894
 - When and how objections should be taken, 10, 894
- Partition, 15, 810
- Partnership:
 - Injunctions by partnership creditors, 15, 998
- Patents*, see **PATENTS**.
- Peace*, see **BILLS OF PEACE**.
- Plaintiff*, see *infra*, Parties to actions.
- Plaintiff's interest in and title to the subject-matter*, see *infra*, Title.
- Plaintiff's willingness to do equity*, see *infra*, Bill.
- Prayer, 10, 961
 - Amendment as respects the prayer, 10, 963
 - In general, 10, 961
 - Mandatory injunction, 10, 962

INJUNCTIONS, *cont'd.*

- Prayer, *cont'd.*
 - Necessity for specific prayer, 10, 961
 - Perpetual injunction incidental to main belief, 10, 962
 - Prayer for injunction, 10, 961
 - Prayer for injunction in the prayer for process, 10, 963
 - Prayer for preliminary injunction, 10, 962
 - Prayer for process, 10, 961
- Prayers for relief, 16, 808
- Preliminary injunctions (see *infra*, Evidence; Motion, movant, and moving papers), 10, 878, 983
- Bill, 10, 922
- Bonds, 10, 1012
 - Acceptance of bond, 10, 1019
 - After issuance of injunction, 10, 1014
 - Amendments, 10, 1020
 - Approval of bond, 10, 1019
 - At what time bond should be given, 10, 1017
 - Before issue of restraining orders, 10, 1016
 - Bond unnecessarily onerous, 10, 1019
 - By whom executed, 10, 1018
 - Conditions and the penalty of the bond, 10, 1018
 - Discretion of the court, 10, 1016
 - Executors and administrators, 10, 1015
 - Fiduciary, 10, 1015
 - Form and contents of the bond, 10, 1017
 - Informalities, 10, 1019
 - Injunction after final hearing, 10, 1016
 - Injunction against proceedings at law, 10, 1012
 - Justification of sureties, 10, 1020
 - Modern practice, 10, 1012
 - Necessity to give bond, 10, 1012
 - New bonds, 10, 1020
 - Sovereign, 10, 1015
 - State, 10, 1015
 - Statutory provisions, 10, 1013
 - Validity of injunction issued without bond, 10, 1015
- Consideration of the answer, 10, 1000
 - Analogy to motion to dissolve, 10, 1001
 - Averments in the bill which are not denied, 10, 1002
 - Effect of the answer, 10, 1000

INJUNCTIONS, *cont'd.*Preliminary injunctions, *cont'd.*Consideration of the answer, *con.*

Exceptions to the rule, 10, 1001

Failure of some of the defendants to answer, 10, 1002

General rule, 10, 1000

Information and belief, 10, 1002

Issuance of injunction to prevent irreparable injury, 10, 1002

Requisites and sufficiency of answer, 10, 1002

Verification of answer, 10, 1003

Definition, 10, 878

Discretion of court, 10, 983

Amended or supplemental bill, 10, 987

Anticipation of final decree, 10, 989

Arbitrary discretion, 10, 993

Balance of respective inconveniences, 10, 989

Codes, 10, 985

Difficult cases, 10, 992

Doubtful cases, 10, 992

Errors of law, 10, 993

Exercise of caution, 10, 990

Facts and circumstances of each particular case, 10, 988

In general, 10, 983

Insolvency, 10, 989

Laches, 10, 989

Mandamus, 10, 994

Miscellaneous considerations, 10, 988

Preliminary and final injunctions distinguished, 10, 993

Restraining orders, 10, 987

Rights of the public, 10, 991

Rules governing the chancellor's exercise of discretion, 10, 988

Dissolution of preliminary injunctions, see infra, Dissolution of preliminary injunctions.

Establishment of plaintiff's right at law, 10, 890

Evidence, 10, 1003

After coming in of answer, 10, 1003

Form and contents of affidavits, 10, 1004

Where no answer has been filed, 10, 1003

Final decree, see infra, Final decree.

INJUNCTIONS, *cont'd.*Preliminary injunctions, *cont'd.*

Finality of the decision, 10, 1010

Imposition of terms, 10, 1007

Denial of injunction upon terms imposed on the defendant, 10, 1008

Discretion of court, 10, 1007

Modification and mitigation of terms, 10, 1010

Necessity to comply with terms, 10, 1010

Payment of money, 10, 1008

Power of court, 10, 1007

Interlocutory order or fiat, 10, 1005

Denial of injunction upon terms imposed on the defendant, 10, 1008

Discretion of court to impose terms, 10, 1007

Dismissal of bill upon denial of injunction, 10, 1012

Finality of the decision, 10, 1010

Imposition of terms, 10, 1007

Modification and mitigation of terms, 10, 1010

Nature and frame of order, 10, 1005

Necessity to comply with terms, 10, 1010

Payment of money, 10, 1008

Perpetual injunction and final decree, 10, 1007

Power of court to impose terms, 10, 1007

Res judicata, 10, 1011

Temporary restraining order, 10, 1006

Where right to injunction is clear, 10, 1010

Notice, 10, 994

Amended and supplemental bills, 10, 998

Cases of emergency, 10, 997

In the absence of statute, 10, 994

Mandatory injunction, 10, 996

Order to show cause, 10, 999

Requisites and sufficiency of notice, 10, 999

Statutory provisions, 10, 996

Waiver of notice, 10, 999

Whether injunction will be granted *ex parte*, 10, 994

Order of dissolution, see infra, Order of dissolution.

Prayer for preliminary injunction, 10, 962

Preliminary and final injunctions distinguished, 10, 993

INJUNCTIONS, *cont'd.*Preliminary injunctions, *cont'd.*

Reinstatement, 10, 1093

Successive motions to dissolve,
10, 1090

Prerogative writ, 10, 877

Process:

Officer armed with process, 10,
916

Prohibition:

Dissolution of injunction, 10,
1032Where court exceeds jurisdic-
tion, 10, 884

Public officers, 17, 186

Bill or complaint, 17, 188

Contemplated illegal action, 17,
189

In general, 17, 187

Miscellaneous matters of prac-
tice, 17, 190Officers armed with process, 10,
916

Parties, 17, 187

Special interest or injury, 17,
189Steps to consummate purpose,
17, 189

Suits to restrain, 17, 186

Title to office, 17, 158

Quieting title, 17, 357

Quo warranto, 17, 416

Injunctions in aid of, 17, 418

To protect possession of *de facto*
officer, 17, 418

Railroads:

Eminent domain proceedings,
17, 513Intersection of one railroad by
another, 17, 512

Grade crossings, 17, 513

In general, 17, 512

Restraining issuance of bonds,
17, 633

Reasonable doubt, 10, 943

Receivers:

Analogy, 17, 683

Appeal from order granting in-
junction and appointing re-
ceiver, 17, 860Appointment on bill for injunc-
tion, 17, 693Injunction to protect possession,
17, 774Interference with receiver, 17,
749

Leave of court, 17, 781

Reinstatement of preliminary in-
junction, 10, 1093

Relator:

Whether plaintiff is a relator, 10,
896

Religious societies, 18, 106

INJUNCTIONS, *cont'd.*Remedies upon dissolution of injunc-
tion, 10, 1115Accrual of right to prosecute
bond, 10, 1119Assessment of damages be-
fore bringing action on
bond, 10, 1124Construction of the bond, 10,
1119Dismissal or discontinuance,
10, 1123Dissolution of injunction by
interlocutory order, 10,
1121Final decree in suit for in-
junction, 10, 1021Issuance of preliminary in-
junction, 10, 1120Partial dissolution of injunc-
tion, 10, 1122Want of jurisdiction to grant
injunction, 10, 1020Assessment of damages by court,
10, 1115In the absence of statutory
provisions, 10, 1115Statutory provisions, 10,
1116

Complaint, 10, 1128

Conclusiveness of decree in
chancery, 10, 1126

Declaration, 10, 1128

Description of bond, 10, 1128

Parties to action on bond, 10,
1127Remedies other than those
afforded by the bond, 10, 1118

Remedy at law:

Bill disclosing inadequacy of
remedy at law, 10, 953

Demurrer, 10, 980

Removal of causes, 18, 172

Injunction to restrain further
proceedings after removal,
18, 388

Exercise of discretion, 18, 388

Injunction improvidently
granted, 18, 390Power of federal court, 18,
388

United States courts, 10, 884

Rescission:

Plaintiff's willingness to do
equity, 10, 933

Residents:

Nonresidents as parties, 10, 893

Res judicata:

Preliminary injunctions, 10, 1011

Successive motions to dissolve,
10, 1089

Restraining orders:

Definition, 10, 878

INJUNCTIONS, *cont'd.*

Restraint of trade, see **MONOPOLIES**.
Scandal and impertinence, 10, 922;
 19, 203

Schools:

Suits to restrain diversion of
 funds, 19, 238

Service of process, 10, 1024

Final injunction, 10, 1026

Knowledge of injunction, 10,
 1027

Method of making service, 10,
 1027

Necessity to serve subpoena, 10,
 1024

Service of copy of affidavit, 10,
 1026

Service of copy of writ, 10, 1026

Service of writ of injunction, 10,
 1025

Waiver of irregularities, 10, 1025

Waiver of service, 10, 1026

Whether the writ of injunction
 should be served, 10, 1025

Settlement of decedents' estates, see
SETTLEMENT OF DECEDENTS' ES-
TATES.

Sheriffs' sales, see **SHERIFFS' SALES.**

Special assessments, see *infra*, **Local**
improvements.

Special injunctions, 10, 877

Specific performance, 20, 397, 475,
 496, 518

Injunction and specific perform-
 ance compared, 20, 397

Mandatory injunction, 20, 397

Negative covenants, 20, 397

State, 10, 911, 943

Bonds, 10, 1015

Stipulations, 20, 635

Street railways, see **STREET RAIL-**
WAYS.

Streets and highways, see **STREETS AND**
HIGHWAYS.

Strikes and boycotts, see **STRIKES AND**
BOYCOTTS.

Subject-matter, see *infra*, **Title.**

Subpoena, see *infra*, **Service of pro-**
cess.

Supersedeas and stay of proceedings,
 20, 1211

Appeal from order or decree
 granting, refusing, or dissolv-
 ing injunction, 20, 1231

Supplemental bill, 10, 979

Effect of supplemental bill upon
 injunction, 10, 980

Leave of court, 10, 979

Matters that may be introduced,
 10, 980

Original bill without equity, 10,
 979

Right to file, 10, 979

INJUNCTIONS, *cont'd.*

Supplementary proceedings, see **SUP-**
PLEMENTARY PROCEEDINGS.

Suretyship, see *infra*, **Bonds.**

Survival of actions, 21, 318

Suspension of injunction, 10, 1093

Taxation (see **TAXATION**):

Necessity to make out a case for
 injunctive relief, 10, 942

Tender, 10, 934

Tender, 10, 933

Dismissal for failure to make
 tender, 10, 936

Enjoining taxes and assess-
ments, 10, 934

General rule as to averment of
tender, 10, 933

Illustrations of the rule as to
averment of tender, 10, 933

Requisites and sufficiency of
allegations as to tender, 10,
 936

Usury, 10, 935

Theatres and shows, 21, 647

Title:

Plaintiff's interest in and title to
 subject-matter, 10, 944

Allegations as to title not
jurisdictional, 10, 946

Averments where several
landowners join, 10, 947

Conditions precedent, 10,
 946

General rules as to aver-
ment of title, 10, 944

Particularity and certainty,
 10, 946

Plaintiff must rely on
strength of his own title,
 10, 946

Title free from doubt, 10,
 945

Tolls:

Suits to enjoin collection of toll,
 21, 749

Costs, 21, 750

In general, 21, 749

Pleadings, 21, 750

Trade combinations, see **MONOPOLIES.**

Trade-marks and trade names, see
TRADE-MARKS AND TRADE NAMES.

Trusts and trustees (see **TRUSTS AND**
TRUSTEES), 22, 52

Turnpikes and tollroads, see **TURN-**
PIKES AND TOLLROADS.

United States courts, 10, 883

Whether United States courts
 follow state practice, 10, 885

Usury:

Allegation of usury, 10, 959

Tender, 10, 935

Variance on final hearing, 10, 1095

Venditioni exponas, 22, 644

INJUNCTIONS, *cont'd.*

Vendor and purchaser, see VENDOR AND PURCHASER.

Venue, 10, 885

Ancillary injunction, 10, 885

Power to grant injunction throughout the state, 10, 885

Where statute fixes the county, 10, 885

Verification:

Answer, 10, 1072

Verification of the bill, 10, 963

Amended bill, 10, 964

At what time bill should be verified, 10, 966

Exceptions to the rule requiring verification, 10, 965

Form of affidavit, 10, 967

Form of affidavit by third person, 10, 970

Information and belief, 10, 969

Injunction on final hearing only, 10, 966

Necessity to annex affidavits of third persons, 10, 970

Necessity to verify bill, 10, 963

To whom affidavit should be made, 10, 966

Verification before plaintiff's attorney, 10, 969

Warehousemen, 22, 1070

Waste, see WASTE.

Water companies and waterworks, 22, 1137

Action to restrain enforcement of ordinance fixing rates, 22, 1138

Injunctions at suit of company, 22, 1137

Restraining cutting off water supply, 22, 1140

Necessity for tender of amount due to company, 22, 1141

Who may obtain injunction, 22, 1140

When proper, 22, 1137

Waters and watercourses:

Detention or diversion of water, 22, 1165

Obstruction of navigation, 22, 1175

Pollution, 22, 1171

Ways, 22, 1186

Winding up corporations:

Injunction against interference with assets, 22, 1279

Injunction in aid of quo warranto, 22, 1229

Relief against dissolution and winding up of corporations, 22, 1294

INJUNCTIONS, *cont'd.*

Winding up corporations, cont'd.

Removal of officers and injunctions against discharge of their duties, 22, 1232

Writ of injunction, see infra, Frame of the injunction; Service of process.

INJURIES, see PERSONAL INJURIES.

INJURIES TO ANIMALS, see RAILROADS.

INJURIES TO THE PERSON, see DAMAGES; PERSONAL INJURIES.

INNS AND INNKEEPERS, 10, 1130

Actions against innkeepers for loss of goods or personal injury, 10, 1131

Allegations of declaration or complaint, 10, 1133

By whom brought, 10, 1132

Form of action, 10, 1131

In general, 10, 1131

Of fault or negligence, 10, 1133

Of innkeeper and guest, 10, 1133

Actions by innkeepers, 10, 1130

Enforcement of lien, 10, 1130

Generally, 10, 1130

Burglary, 3, 766

Larceny, 12, 963

INNUENDO, see LIBEL AND SLANDER.

INQUEST OF OFFICE, see ESCHEAT.

INQUESTS AND INQUIRIES, 10, 1134

See AFFIDAVITS OF MERITS OR DEFENSE; CORONER'S INQUESTS.

Affidavits of merits or defense, see AFFIDAVITS OF MERITS OR DEFENSE; CORONER'S INQUESTS.

Assessment, see infra, Notice of assessment; Objection to execution of writ and settling aside inquest.

Assessment by court, 10, 1142

Action by covenant, 10, 1145

Bills of exchange, 10, 1148

In general, 10, 1142

Interest, 10, 1145

Promissory notes, 10, 1145

Reference to officer of court, 10, 1143

Without a jury, 10, 1142

Assessment by jury, see infra, Jury, assessment by.

Assessment by statutory methods, 10, 1148

Bills and notes:

Assessment of damages by court, 10, 1145

Bills of exchange, 10, 1148

Illustrations, 10, 1147

Intervention of jury not necessary, 10, 1146

INQUESTS AND INQUIRIES, *con.*Bills and notes, *cont'd.*Assessment of damages by court,
*cont'd.*Note payable in currency of
another state, 10, 1146

Promissory notes, 10, 1145

When jury necessary, 10,
1146

Burden of proof, 10, 1156

By what court granted, 10, 1136

By whom executed, 10, 1137

Connecticut practice, 10, 1165

Assessment by court, 10, 1165

Evidence on the hearing, 10,
1166Courts (see *infra*, Assessment by
court):

By what court granted, 10, 1136

By whom executed, 10, 1137

Cross-examination, 10, 1159

Defaults:

Effect of default on adjudication
of damages, 6, 127Admits power of court, 6,
127Allegations of amount not
admitted, 6, 128

Burden of proof, 6, 129

Cross-examination of wit-
nesses on inquiry, 6, 137Damages capable of compu-
tation, 6, 131

Default of garnishee, 6, 136

Default taken by agree-
ment, 6, 138Defendant cannot have
judgment, 6, 128Defendant's right on the in-
quiry, 6, 136Disproving cause of action
on the inquiry, 6, 137

Exceptions to the rule, 6, 129

Failure to enter interlocu-
tory judgment, 6, 135

Final judgment, 6, 132

Final judgment without writ
of inquiry, 6, 136

Fixes liability, 6, 127

In general, 6, 127

Inquiry in damages, 6, 137

Instructions, 6, 138

Interlocutory judgment by
default, 6, 134

Judgment for costs, 6, 136

Liquidated damages, 6, 130

New trial, 6, 139

Nominal damages, 6, 128

Unliquidated damages, 6, 132

When application to the
court not required, 6, 132Writ of inquiry of right, 6,
136**INQUESTS AND INQUIRIES, *con.***

Definition, 10, 1135

Demurrer to evidence:

After demurrer to evidence over-
ruled, 10, 1164

Error, writ of, 10, 1163

Excessive damages:

Objection to assessment, 10,
1159Forthcoming and delivery bonds, 10,
1150*Insane persons*, see **INSANE PERSONS**.

Instructions, 10, 1159

Issue at inquest, 10, 1153

Jury, assessment by, 10, 1149

Delivery bonds, 10, 1150

Generally, 10, 1149

Oath of jury, 10, 1152

Office judgment, 10, 1150

Penal bonds, 10, 1150

Right of defendant to demand
assessment by jury, 10, 1151Right of plaintiff to demand as-
sessment by jury, 10, 1150Right to demand assessment by
jury, 10, 1150

Kentucky practice, 10, 1168

Mistake:

Objection to assessment, 10, 1160

Nature of writ, 10, 1135

Notice of assessment, 10, 1140

In general, 10, 1140

Provisional notice, 10, 1141

Time of service of notice, 10,
1141

Oath:

Oath of jury, 10, 1152

Objection to execution of writ and
setting aside inquest, 10, 1159

Objection to assessment, 10, 1159

Excessive damages, 10, 1159

Mistake, 10, 1160

Motion on affidavits, 10, 1160

Presumption of legal assess-
ment, 10, 1161

Setting aside inquest, 10, 1161

Admission and exclusion of
testimony, 10, 1163

Case made, 10, 1164

Grounds generally, 10, 1161

Objection, how taken and
proceeding thereon, 10,
1163Sheriff's instructions, 10,
1162

Writ of error, 10, 1163

Open and close, 10, 1156

Presumption of legal assessment, 10,
1161

Proceedings on writ, 10, 1135

Rights of parties at inquest, 10,
1154

Burden of proof, 10, 1156

INQUESTS AND INQUIRIES, *con.*Rights of parties at inquest, *cont'd.*

Defendant cannot contest the merits, 10, 1157

Evidence showing new cause of action, 10, 1158

Generally, 10, 1154

Open and close, 10, 1156

Production of proof, 10, 1155

Right of defendant generally, 10, 1156

Right of defendant to contest amount of damages, 10, 1156

Right of plaintiff, 10, 1155

Right to cross-examination, 10, 1159

Right to instructions, 10, 1159

Setting aside inquest, see *infra*, Objection to execution of writ and setting aside inquest.

Statutes:

Assessment by statutory methods, 10, 1148

Vacation, 10, 1139

When granted, 10, 1139

Where executed, 10, 1139

INQUIRY, see **INQUESTS AND INQUIRIES**.**INQUIRY, WRIT OF:**

Defaults, 6, 21

Detinue, 6, 659

Dower, 7, 170

INQUISITION (see **CORONER'S INQUESTS; INQUESTS AND INQUIRIES**):

Forcible entry and detainer, 9, 29

Insane person, see: **INSANE PERSONS**.

Mills and milldams, 14, 13

IN REM, see **JUDGMENTS**.**IN REM AND IN PERSONAM:**

Vendor's liens, 22, 701, 741

INSANE PERSONS, 10, 1169

Actions and suits against, 10, 1225

Appearance and defense by attorney, 10, 1229

Appearance and defense by general guardian or committee, 10, 1230

Effect of judgment, 10, 1226

General principles affecting, 10, 1225

Guardian *ad litem*, 10, 1230

Method of appearance and defense, 10, 1229

Service of process, 10, 1227

Setting aside judgment, 10, 1226

Suits against lunatics personally, 10, 1225

Suits against lunatics under guardianship, 10, 1226

Suits in restraint by equity of actions at law, 10, 1226

INSANE PERSONS, *cont'd.*

Actions and suits by and against insane persons, 10, 1223

Power of insane persons to sue, 10, 1223

Substitution of guardian *ad litem* for next friend, 10, 1225

Suits by committee or guardian, 10, 1225

Suits by next friend, 10, 1224

Suits by next friend where committee's interests are adverse, 10, 1225

Suits by next friend where insanity is not adjudicated and no committee appointed, 10, 1224

Adjournment, 10, 1197

Affidavits, 10, 1180

Restraining orders to protect property pending inquisition, 10, 1183

Affidavits of merits or defense, 1, 349

Answers in equity pleading, 1, 886

Appeals, 2, 31; 10, 1206

Appellate regulations and procedure, 10, 1206

Review of proceedings, 10, 1206

Whether and when appeal lies, 10, 1206

Who may appeal, 10, 1206

Appearances, 2, 673

Application, 10, 1177

Affidavits, 10, 1180

Institution of proceedings, 10, 1177

Requisites of petition, 10, 1179

Verification, 10, 1180

Who may apply, 10, 1178

Arraignment and plea, 2, 767

General issue, 2, 785

Attorneys:

Appearance and defense by attorney, 10, 1229

Representation by counsel or next friend, 10, 1193

Bail and recognizance, 3, 186

Bankruptcy, 22, 353

Bills to impeach decrees and judgments, 3, 612

Burden of proof:

Insanity as a defense, 10, 1217

Traverse, 10, 1204

Chancery, see *infra*, Suits in chancery.

Collateral issue, insanity as, 10, 1212

Action at law, 10, 1214

Criminal cases, 10, 1214

Suits in chancery, 10, 1212

Commission (see *infra*, Execution of commission):

New commission on trial, 10, 1201

INSANE PERSONS, *cont'd.*

Commission, *cont'd.*

Supersedes of the commission on restoration to mental soundness, see infra, Supersedes of the commission on restoration to mental soundness.

Committee:

Service of process, 10, 1228

Suits by, 10, 1225

Continuance:

Insanity as a defense, 10, 1223

Costs, 10, 1208

Apportionment of costs, 10, 1209

Charging lunatic's estate with costs, 10, 1209

Death of party, 10, 1210

Discretion of court, 10, 1208

Imposing costs on defendant, 10, 1209

Imposing costs on petitioners, 10, 1208

Proceedings to supersede the commission on restoration to mental soundness, 10, 1212

Proper tribunal to tax, 10, 1208

Traverse, 10, 1205

Criminal cases, 10, 1218

Continuance and new trial, 10, 1223

Determination by court or without jury, 10, 1220

Determination from evidence, 10, 1222

Duty of court to have preliminary trial, 10, 1219

Duty of court to have preliminary trial where doubt exists, 10, 1219, 1220

Insanity as a defense, 10, 1218

Insanity at or after time of trial, 10, 1218

Insanity considered at time of commission of crime, 10, 1222

Instructions to jury, 10, 1223

Jury, 10, 1222

Method of determination, 10, 1220

Special jury, 10, 1221

Verdict, 10, 1221

Death:

Costs, 10, 1210

Proceedings to supersede the commission, 10, 1212

Traverse, 10, 1205

Defense, see infra, Insanity as a defense.

Dismissal of proceedings, 10, 1197

Divorce, 7, 62

Annulment suits, 7, 63

Defenses, 7, 94

English divorce act, 7, 63

Insane defendants, 7, 65

INSANE PERSONS, *cont'd.*

Divorce, *cont'd.*

Insanity after suit commenced, 7, 66

Right of guardian to sue for divorce, 7, 62

Statutes, 7, 64, 66

Suits for alimony without divorce, 7, 63

Whether divorce granted against insane defendants, 7, 65

Ejectment:

Ejectment by lunatics, 7, 291

Equity, see infra, Suits in chancery.

Error, writ of:

Review of proceedings, 10, 1207

Evidence:

Effect of inquisition as evidence, 10, 1212

Insanity as a defense, 10, 1217

Examination, see infra, Personal examination.

Execution of commission, 10, 1190

Matters pertaining to jury, 10, 1190

Number of jurors, 10, 1190

Qualifications and conduct of jurors, 10, 1191

Trial, 10, 1190

Finding, 10, 1195

Foreclosure of mortgages, 9, 353

General issue, 10, 1216

Guardian *ad litem*, 10, 1230

Cases necessitating guardian *ad litem*, 10, 1230

Committee's interests conflict, 10, 1231

Defense of lunatic, 10, 1230

Determination of insanity before appointment, 10, 1232

Duty of court to appoint and effect of failure, 10, 1231

Substitution of guardian *ad litem* for next friend, 10, 1225

Where there is committee, 10, 1230

Where there is no committee, 10, 1230

Who appointed, 10, 1232

Guardians, 9, 891

Actions by guardian in name of ward, 9, 931

Notice of hearing, 9, 900

Suits against lunatics under guardianship, 10, 1226

Suits by, 10, 1225

Homicide:

Averment of defendant's sanity, 10, 150

Imposition, see infra, Application.

Informations in equity, 10, 859

Injunctions (*see infra, Restraining orders to protect property pending inquisition*):

INSANE PERSONS, *cont'd.*

- Injunctions, *cont'd.*
 - Restraint by equity of actions at law, 10, 1226
- Inquisition (see *infra*, Appeals; Execution of commission; Issuance of commission; Method of determination; Notice of proceedings; Restraining orders to protect property pending inquisition):
 - Adjournment, 10, 1197
 - Costs, see *infra*, Costs.
 - Dismissal of proceedings, 10, 1197
 - Effect of inquisition as evidence, 10, 1212
 - Finding, 10, 1195
 - Issue to be tried, 10, 1191
 - Necessity of inquisition or jury trial, 10, 1180
 - New commission on trial, 10, 1201
 - Notice of proceedings, see *infra*, Notice of proceedings.
 - Personal examination, see *infra*, Personal examination.
 - Presence of party, see *infra*, Presence of party.
 - Representation by counsel or next friend, 10, 1193
 - Return of proceedings and action of court thereon, 10, 1198
 - Setting aside inquisition, see *infra*, Setting aside inquisition.
 - Supersedeas of the commission on restoration to mental soundness, see *infra*, Supersedeas of the commission on restoration to mental soundness.
 - Suspension, 10, 1197
 - Traverse, see *infra*, Traverse.
 - Venue of inquisition or trial, 10, 1192
 - Verdict, 10, 1195
- Insanity as a collateral issue, 10, 1212
 - Action at law, 10, 1214
 - Criminal cases, 10, 1214
 - Suits in chancery, 10, 1212
- Insanity as a defense, 10, 1214
 - Averments, 10, 1216
 - Burden and extent of proof, 10, 1217
 - Criminal cases, see *infra*, Criminal cases.
 - General issue, 10, 1216
 - Nature of special pleading, 10, 1215
 - Necessity of special pleading, 10, 1214
 - Requisites as to filing plea, 10, 1216
 - Right to allege insanity, 10, 1214
 - Under special plea, 10, 1214

INSANE PERSONS, *cont'd.*

- Insanity as the principal issue, 10, 1173
 - Institution of proceedings, see *infra*, Application.
- Instructions, 10, 1223
- Introductory, 10, 1173
- Issuance of commission, 10, 1181
 - Court satisfied as to insanity, 10, 1182
 - Directions and requirements, 10, 1182
 - Discretion in issuing, 10, 1181
 - In general, 10, 1181
 - Mental incapacity, 10, 1182
 - When issued, 10, 1181
- Issue to be tried, 10, 1191
- Issues to the jury, 11, 648
- Judicial sales (see *infra*, Real property):
 - By commissioners in insanity, 12, 9
- Jurisdiction, 10, 1173
 - Courts of co-ordinate jurisdiction, 10, 1177
 - Nonresidents, 10, 1175
 - Over residents in general, 10, 1173
- Jurisdiction of proceedings, 10, 1173
- Jury:
 - Insanity as a defense, 10, 1220, 1221, 1222
 - Matters pertaining to jury, 10, 1190
 - Necessity of inquisition or jury trial, 10, 1180
 - Number of jurors, 10, 1190
 - Qualifications and conduct of jurors, 10, 1191
- Leases, 10, 1238
- Malpractice:
 - Action for wrongfully certifying that patient is insane, 16, 535
- Marriage (annulment):
 - Allegation of insanity, 13, 877
- Method of determination, 10, 1180
 - Commission in chancery, 10, 1181
 - Necessity of inquisition or jury trial, 10, 1180
 - Trial in courts other than chancery, 10, 1181
- Mortgages, 10, 1238
- New commission on trial, 10, 1201
- New trial:
 - Insanity as a defense, 10, 1223
- Next friend (see **NEXT FRIEND**), 10, 1193, 1224
 - Substitution of guardian *ad litem* for next friend, 10, 1225
 - Suits by next friend, 10, 1224
 - Suits where committee's interests are adverse, 10, 1225

INSANE PERSONS, *cont'd.*

- Next friend, *cont'd.*
 - Where insanity not adjudicated and no committee appointed, 10, 1224
- Nonresidents:
 - Jurisdiction, 10, 1175
- Notice:
 - Sale of real property, 10, 1236
 - Supersedeas of the commission on restoration to mental soundness, 10, 1210
- Notice of proceedings, 10, 1184
 - Appearance as a cure or waiver of, 10, 1188
 - Doctrine that notice is unnecessary, 10, 1185
 - Effect of failure to give, 10, 1188
 - Necessity for, to alleged lunatic, 10, 1184
 - Necessity for, to other persons, 10, 1186
 - Notice to relatives, 10, 1187
 - Order of court requiring notice, 10, 1184
 - Personal notice, 10, 1186
 - Record of, 10, 1189
 - Statutory regulations, 10, 1185
 - Time of giving, 10, 1187
- Opening, amending, and vacating judgments, 15, 238
- Partition:
 - Parties defendant, 15, 795
- Personal examination, 10, 1194
 - Matter of discretion, 10, 1194
 - Presence of party by order of court, 10, 1195
 - When made, 10, 1194
- Petition (see *infra*, Application), 16, 518
 - Restraining orders to protect property pending inquisition, 10, 1183
 - Supersedeas of the commission on restoration to mental soundness, 10, 1210
- Physicians and surgeons:
 - Action for wrongfully certifying that patient is insane, 16, 535
- Plea*, see *infra*, Insanity as a defense.
- Presence of party, 10, 1193
 - Personal examination, 10, 1194, 1195
 - Presence by order of court, 10, 1193
 - Presence dispensed with, 10, 1194
 - Presence not absolutely necessary, 10, 1194
 - Right to be present, 10, 1193
- Proceedings*, see *infra*, Inquisition.

INSANE PERSONS, *cont'd.*

- Property (see *infra*, Restraining orders to protect property pending inquisition; Sale of property):
 - Lease, 10, 1238
 - Mortgage, 10, 1238
- Publication*, see PUBLICATION.
- Real property:
 - Lease, 10, 1238
 - Mortgage, 10, 1238
 - Sale of real property, 10, 1233
 - Application for order of sale, 10, 1235
 - By whom sale conducted, 10, 1237
 - Cases necessitating order of sale, 10, 1235
 - Effect of errors or irregularities, 10, 1237
 - Effect of order of sale, 10, 1236
 - Jurisdiction, 10, 1233
 - Method of sale, 10, 1237
 - Necessity for order of authorization, 10, 1234
 - Notice of proceedings, 10, 1236
 - Power of court to authorize, 10, 1233
 - Public or private sale, 10, 1237
 - Report and confirmation of sale, 10, 1238
 - Setting aside sale, 10, 1238
 - What property to be sold, 10, 1236
- Records:
 - Notice of proceedings, 10, 1189
 - Recovery*, see *infra*, Supersedeas of the commission on restoration to mental soundness.
- Rescission, cancellation, and reformation of contracts, 18, 765
 - Averment of mental incapacity, 18, 820
 - In suits for reformation, 18, 821
 - In suits for rescission, 18, 820
- Instructions, 18, 852
- Restraining orders to protect property pending inquisition, 10, 1183
- Affidavits, 10, 1183
 - Authority of court to issue, 10, 1183
- Petition, 10, 1183
- Returns:
 - Return of proceedings and action of court thereon, 10, 1198
- Review of proceedings (see *infra*, Appeals; Traverse):
 - Certiorari, 10, 1208
 - Writ of error, 10, 1207

INSANE PERSONS, *cont'd.*

- Sale of property, 10, 1233
 - Personal property, 10, 1233
 - Real property, 10, 1233
- Sentence, 19, 500
 - Suspension of sentence, 19, 450
- Service of process (see PUBLICATION), 10, 1227
 - On committee or on lunatic and committee, 10, 1228
 - On lunatic personally, 10, 1227
 - Where personal notice is required, 10, 1227
 - Where personal service cannot be effected, 10, 1228
- Setting aside inquisition, 10, 1199
 - Authority for, 10, 1199
 - Defect or irregularity, 10, 1200
 - Error or illegality, 10, 1200
 - Finding contrary to evidence, 10, 1201
 - Finding not responsive to issue, 10, 1201
 - Grounds for, 10, 1200
- Sheriff's sales*, see *infra*, Real property.
- Substitution of parties:
 - Where party becomes insane pending suit, 20, 1037
- Suits in chancery, 10, 1212
 - Action at law, 10, 1214
 - Determination by chancellor, 10, 1212
 - Determination by issue to jury, 10, 1213
 - Verdict of a jury, 10, 1213
- Supersedeas of the commission on restoration to mental soundness, 10, 1210
 - Costs, 10, 1212
 - Death of party as bar to proceedings, 10, 1212
 - Issue to be decided, 10, 1211
 - Method of determining restoration, 10, 1210
 - Notice, 10, 1210
 - Petition, 10, 1210
 - When not superseded, 10, 1211
 - When superseded, 10, 1211
- Suspension of proceedings, 10, 1197
- Traverse, 10, 1202
 - Action of court on return of, 10, 1205
 - Burden of proof, 10, 1204
 - Costs, 10, 1205
 - Death of party as affecting, 10, 1205
 - General use of, 10, 1202
 - Issue to be tried, 10, 1204
 - Party having interest, 10, 1204
 - Party having no interest, 10, 1203
 - Petitioner, 10, 1203
 - Rights of lunatic, 10, 1203

INSANE PERSONS, *cont'd.*

- Traverse, *cont'd.*
 - To whom allowed, 10, 1203
 - When allowed, 10, 1203
 - When denied, 10, 1203
 - Where tried, 10, 1204
 - Whether matter of right or of discretion, 10, 1202
 - Trial*, see *infra*, Inquisition.
 - Venue of inquisition or trial, 10, 1192
 - Verdict, 10, 1195
 - Insanity as a defense, 10, 1221
 - Verification, 10, 1180
 - Writ de lunatico inquiren do*, see *infra*, Inquisition.
- INSOLVENCY, 11, 1**
- See BANKRUPTCY.
- Affidavits:**
- Affidavit of consenting creditors to discharge, 11, 13
 - Affidavit to petition for discharge, 11, 11
- Amendments:**
- Petition by creditors for discharge, 11, 16
 - Petition for discharge, 11, 10
 - Schedule, 11, 18
- Answers in code pleading:**
- Discharge in bankruptcy, 1, 849
- Appeal bonds and undertakings:**
- Subsequent insolvency, 1, 1011
- Appeals, 2, 201; 11, 41**
- Assignee in bankruptcy, 2, 201
 - Certiorari, 11, 46
 - Finality of order, 11, 43
 - Final judgments, 2, 57
 - Presumptions, 11, 45
 - Proceedings on appeal, 11, 45
 - Substitution, 2, 201
 - Time of entering appeal, 11, 44
 - What considered, 11, 45
 - When appeal lies, 11, 42
 - Who may appeal, 11, 41
- Application*, see *infra*, Jurisdiction.
- Assignee, suits by, 11, 40
- Assignment for benefit of creditors:**
- Appointment of receiver, 2, 915
- Assumpsit, 2, 1032**
- Attachment, 3, 87**
- Audita querela*, 3, 116
- Bail and recognizance, 3, 185**
- Bankruptcy:**
- As to proceedings under United States bankruptcy statute*, see BANKRUPTCY.
- Banks and banking:**
- Receiving deposit during insolvency, 3, 259
- Bond:**
- Debtor, 11, 27
 - Petition by creditors, 11, 17

INSOLVENCY, *cont'd.*

- Certiorari, 11, 46
 - Objections to discharge, 11, 34
- Change of venue, 4, 386
- Collateral attack on discharge, 11, 34
- Concealing property:
 - Examination of persons charged with concealing property, 11, 28
- Consent of creditors to discharge, 11, 11
- Contempt, 4, 809
- Courts, see *infra*, Jurisdiction.
- Creditors (see *infra*, Petition for discharge):
 - Consent of creditors to discharge, 11, 11
 - Affidavit of consenting creditors, 11, 13
 - In general, 11, 11
 - Relinquishment of securities, 11, 12
- Creditors' bills, see CREDITORS' BILLS.
- Definition, 11, 3
- Discharge (see *infra*, Petition for discharge; Who may apply for discharge), 11, 31
 - As evidence, 11, 32
- Discharge as a defense, 11, 35
 - Discharge *pendente lite*, 11, 36
 - Discontinuance by plaintiff without costs, 11, 39
 - Form of plea, 11, 37
 - How set up, 11, 35
 - Notice to plea of general issue, 11, 38
 - Plea should set out discharge, 11, 38
 - Plea should show conformity with statute, 11, 38
 - Plea should show residence, 11, 38
 - Proof of discharge, 11, 37
 - Reply, 11, 39
 - Sufficiency of plea, 11, 38
 - Verification by record, 11, 39
 - When no opportunity for pleading, 11, 37
- Effect of discharge, 11, 32
- Impeaching discharge, see *infra*, Impeaching discharge.
- Mandamus to compel discharge, 11, 32
- Opposing debtor's discharge, see *infra*, Opposing debtor's discharge.
- When granted, 11, 31
- Discontinuance:
 - Discontinuance by plaintiff without costs where defendant obtains a discharge in insolvency, 11, 39

INSOLVENCY, *cont'd.*

- Dismissal, discontinuance, and non-suit, 11, 17
- Bankruptcy of plaintiff, 6, 930
- Costs, 6, 973
- Right of insolvent, 6, 912
- Want of prosecution, 6, 917
- Ejectment, 7, 278
- Evidence:
 - Effect of discharge as evidence, 11, 32
- Examination, 11, 27
 - Of insolvent, 11, 27
 - Of persons charged with concealing property, 11, 28
- Executors and administrators, see SETTLEMENT OF DECEDENTS' ESTATES.
- Final judgments and decrees, 2, 57
- Fraud:
 - Opposition to discharge, 11, 30
 - Burden of proving the charges, 11, 31
 - Insolvent's defense, 11, 31
 - Jury trial, 11, 30
- Garnishees, summonses to, 11, 21
- Impeaching discharge, 11, 33
 - Certiorari, 11, 34
 - Collateral attack, 11, 34
 - Collateral attack in action, 11, 34
 - Collateral attack on motion, 11, 35
 - Direct proceedings, 11, 34
 - Formal objections, 11, 35
 - How impeached, 11, 34
 - In general, 11, 33
 - Jurisdictional defects, 11, 34
 - Petition to annul, 11, 34
- Injunctions (see INJUNCTIONS):
 - Bill, 10, 956
 - Dissolution of preliminary injunctions, 10, 1058
 - Irreparable injury, 10, 956
 - Materiality of allegation of insolvency, 10, 956
 - Trespass, 10, 958
 - When insolvency need not be alleged, 10, 958
 - Whether insolvency alone is sufficient to show irreparable injury, 10, 958
- Insurance:
 - Venue of action, 11, 387
- Issues to the jury, 11, 652
- Judicial sales:
 - Assignee in bankruptcy, 12, 8
- Jurisdiction, 11, 3
 - Creditor's application, 11, 7
 - Debtor's application, 11, 7
 - Equity jurisdiction, 11, 5
 - Extent of jurisdiction, 11, 4
 - How application made, 11, 6
 - How jurisdiction acquired, 11, 7

INSOLVENCY, *cont'd.*

- Jurisdiction, *cont'd.*
 - Original jurisdiction, 11, 3
 - Supervisory jurisdiction in supreme court, 11, 5
 - What courts have, 11, 3
- Mandamus, 13, 611
 - Insolvency proceedings, 13, 611, 612
 - To compel discharge, 11, 32
 - To discharge insolvent, 13, 611
- New promise:
 - Declaring on new promise, 11, 40
- Notice, 11, 22
 - To creditors, 11, 22
 - Necessity for, 11, 22
 - Notice by publication, 11, 24
 - Proof of notice, 11, 25
 - Publication in newspaper, 11, 24
 - Sufficiency of notice in general, 11, 22
 - To debtor, 11, 26
 - In general, 11, 26
 - Proceedings against partnership, 11, 26
- Oath*, see *infra*, Verification.
- Opposing debtor's discharge, 11, 28
 - Charge of fraud, 11, 32
 - In general, 11, 28
 - Insolvent's defense to charge of fraud, 11, 31
 - Issues of fraud, 11, 30
 - Jury trial where fraud is alleged, 11, 30
 - Time of entering opposition, 11, 30
 - Vacating proceedings, 11, 29
 - Waiver of opposition, 11, 30
 - Withdrawing opposition, 11, 31
- Partnership, 15, 898
 - Notice to debtor, 11, 26
 - Parties, 15, 889
 - Petition for discharge, 11, 14
 - Who may apply for discharge, 11, 8
- Petition:
 - Petition to annul discharge, 11, 34
- Petition for discharge, 11, 9
 - Partnership, 11, 14
 - Petition by creditors, 11, 14
 - Amendment, 11, 16
 - Bond, 11, 17
 - Dismissal, 11, 17
 - In general, 11, 14
 - Signature, 11, 16
 - Sufficient petition, 11, 15
 - Verification, 11, 16
 - Petition by debtor, 11, 9
 - Account of creditor, 11, 9
 - Affidavit of consenting creditors, 11, 13

INSOLVENCY, *cont'd.*

- Petition for discharge, *cont'd.*
 - Petition by debtor, *cont'd.*
 - Affidavit to petition, 11, 11
 - Allegation of insolvency, 11, 9
 - Alleging residence, 11, 10
 - Amendment, 11, 10
 - Conclusion, 11, 10
 - Consent of creditors, 11, 11
 - Formal objections, 11, 9
 - In general, 11, 9
 - Relinquishment of securities, 11, 12
 - Second application, 11, 13
 - To whom addressed, 11, 10
- Plea*, see *infra*, Discharge.
- Prohibition:
 - Assumption of jurisdiction by another court, 16, 1119
- Publication, 11, 24
- Puis darrain continuance*, 17, 266
- Receivers (see RECEIVERS):
 - Suits by, 11, 40
- Reply:
 - Defendant's plea of discharge, 11, 39
- Residence:
 - Alleging residence in petition for discharge, 11, 10
 - Creditors' place of residence, in schedule, 11, 19
 - Petition for discharge, 11, 10
 - Who may apply for discharge, 11, 18
- Schedule of debtor, 11, 17
 - Account of creditor, 11, 19
 - Amendment of schedule, 11, 18
 - Cause and consideration of indebtedness, 11, 20
 - Creditors' place of residence, 11, 19
 - In general, 11, 17
 - Presenting schedule in former case, 11, 18
 - Statement of assets, 11, 21
 - Statement of liabilities, 11, 20
 - Summons to garnishees, 11, 21
 - Swearing to schedule, 11, 18
- Second application for discharge, 11, 13
- Security for costs, 19, 353
 - Action for tort, 19, 354
 - Insolvency of nominal plaintiff, 19, 354
 - Plaintiff, 19, 353
 - Statutes, 19, 358
- Set-off, recoupment, and counterclaim*, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.
- Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.

INSOLVENCY, *cont'd.*

Showing authority of trustee, 11, 40

Signature:

Petition for discharge, 11, 16

Suits by assignee, trustee, or receiver, 11, 40

Trustee, suits by, 11, 40

United States courts, see **BANKRUPTCY**.

Vendor's liens, 22, 735

Verification:

Petition for discharge, 11, 16

Swearing to schedule, 11, 18

Who may apply for discharge, 11, 8

Creditor, 11, 8

Debtor, 11, 8

Partnership, 11, 8

Residents, 11, 8

Winding up corporations, 22, 1237, 1269

Effect of insolvency, 22, 1226

Witnesses, see *infra*, Examination.**INSPECTION OF BOOKS (see PRODUCTION OF DOCUMENTS; STOCK AND STOCKHOLDERS):**

Mandamus:

Return or answer, 13, 737

Patents, 16, 137

INSPECTION OF THE PERSON:

Marriage (annulment), 13, 882

Impotency, 13, 882

In general, 13, 882

Order for inspection, 13, 884

When refused, 13, 883

INSTALMENTS:

Covenant, 5, 348

Splitting causes of action, 1, 154

INSTRUCTIONS, 11, 47

Absolute drunkenness, 11, 203

Accomplices, 11, 324

Absence of request, 11, 328

Accomplice testimony in general, 11, 324

Advising acquittal where testimony is uncorroborated, 11, 326

Instructing jury to view testimony with caution, 11, 325

Instructions as to who are accomplices, 11, 329

Introductory statements, 11, 325

No testimony by accomplice, 11, 326

Nothing to show witness accomplice, 11, 326

Accuracy, see *infra*, Certainty.

Acquiescence, 11, 203

Admissions, 11, 333

Criminal cases, 11, 334

Instructions as to admissions of record, 11, 333

Instructions giving undue weight to, 11, 335

Miscellaneous examples, 11, 336

INSTRUCTIONS, *cont'd.*Admissions, *cont'd.*

View that court may caution against, 11, 334

View that court should not caution against, 11, 333

Adoption, 11, 203

Adultery, 1, 308

Adverse possession, 11, 204

Agreed case:

Assumption upon agreed statement of facts, 11, 132

Aider by verdict, 22, 946

Alibi, 11, 358

Applying doctrine of reasonable doubt, 11, 361

Instructions as to failure to prove alibi, 11, 365

Instructions disparaging defense improper, 11, 360

Instructions held to violate rule, 11, 360

Instructions proper under rule that burden of proving alibi is not on the defendant, 11, 364

Instructions proper under rule that burden of proving alibi is on defendant, 11, 363

Necessity of instructing on alibi defense, 11, 358

Necessity of request, 11, 369

Ambiguity, 11, 141

Appeals, 2, 477

Abstract charge, 2, 575

Assumption of facts, 2, 573, 576

Burden on appellant, 1, 483

Charges of excessive length, 2, 481

Charge to be reviewed as a whole, 2, 577

Comment on the evidence, 2, 574

Conflicting instructions, 2, 571

Considered as a whole, 2, 479

Contradictory instruction, 2, 579; 11, 150

Criminal cases, 2, 570

Erroneous definition, 2, 575

Erroneous instruction not affecting controverted issues, 2, 571

Error cured by further instruction, 2, 577

Error in detached phrase, 2, 578

Error in giving or refusing instructions, 2, 567

Error though verdict is manifestly correct, 2, 567

Exceptions, 2, 480

Expression of opinion, 2, 573

Favorable to appellant, 2, 572

Followed by jury, 2, 481

Harmless error, 2, 567, 575

Inadvertent error, 2, 578

Inconsistent instructions, 2, 579

INSTRUCTIONS, *cont'd.***Appeals, *cont'd.***

- In general, 2, 477
 - Instruction given at appellant's request, 2, 523
 - Instruction not applicable, 2, 584
 - Jury not misled, 2, 572
 - Prejudicial error, 2, 575
 - Prejudicial to appellant, 2, 571
 - Presumption of correctness, 2, 477
 - Presumptions as to whether instructions were presented in writing, 11, 252
 - Presumptions on appeal, 11, 136
 - Presumption that instructions are based on the evidence, 2, 484
 - Record not containing whole charge, 2, 485
 - Refusal to charge, 2, 580
 - Refusal to instruct on immaterial matters, 2, 582
 - Refused request, 2, 485
 - Request of charge made by both parties, 2, 525
 - Review of modification of erroneous requested instructions, 11, 247
 - Statements of charge, 2, 482
 - Subsequent instruction calls attention to erroneous instruction, 2, 579
 - Transcript on appeal, 2, 268
 - Vague instructions, 2, 584
 - Verdict manifestly correct, 2, 582
 - Waiver of evidence from instructions of jury, 2, 560
 - Weight of evidence, 2, 576
 - Where record does not contain all instructions, 2, 482
 - Written instructions, 11, 268
- Argumentativeness, 11, 142**
- Harmless error, 11, 144
 - Impropriety of giving argumentative instructions, 11, 142
 - Reversal for argumentativeness, 11, 145
 - Singling out and giving undue prominence to issues and evidence, 11, 188
 - Stating law correctly, 11, 144
 - Whether grounds for reversal, 11, 144
- Arguments of counsel, 11, 367**
- As to consideration to be given arguments, 11, 367
 - Attorney's comment on defendant's failure to testify in criminal cases, 2, 724
 - Correcting improper arguments by instructions, 11, 368

Index Pl. & Pr. — 33

INSTRUCTIONS, *cont'd.***Arguments of counsel, *cont'd.***

- Instruction to disregard comments on matters not in evidence, 2, 731
 - Prejudice cured by, 2, 753
- Arson, 2, 833**
- Assault and battery, 2, 854**
- Curing defective instruction, 2, 856
 - Degrees, 2, 855
 - In general, 2, 854
 - Issue not raised, 2, 856
 - Language of statute, 2, 854, 855
 - Malice, 2, 855
 - Statutory definition, 2, 854
- Assignment of errors, 2, 948**
- No error in part of charge, 2, 951
 - Reference to bill of exceptions, 2, 951
 - Scope of assignment, 2, 962
 - Specific assignment, 2, 948
 - Specification for each instruction, 2, 950
 - Where the charge or instruction is lengthy, 2, 949
- Basing instructions on belief from evidence, 11, 183**
- Admitted facts, 11, 185
 - Belief from instructions, 11, 185
 - Ground for reversal, 11, 184
 - "If you believe," 11, 183
 - "If you believe from evidence," 11, 184
 - "Inclined to believe," 11, 185
- Bastardy, 3, 303**
- Bias, 11, 323**
- Bigamy, 3, 328**
- Bills of exceptions, 3, 402, 440**
- Facts, 3, 440
 - Instructions given, 3, 440
 - Instructions refused, 3, 441
 - Showing instruction, 3, 440
- Books:**
- Reading decisions, text-books, or statutes, 11, 272
 - Reading from books and papers as part of charge, 11, 262
- Breach of promise of marriage, 3, 694**
- Care, 11, 203**
- Carelessness, 11, 203**
- Carrying weapons, 3, 877**
- Case made on appeal, 3, 891**
- Cautionary instructions:**
- As to arguments of counsel, 11, 367
 - As to character, see *infra*, Character.
 - As to circumstantial evidence, 11, 358
 - As to conflict in evidence, 11, 341
 - As to defense of alibi, 11, 358

INSTRUCTIONS, *cont'd.*Cautionary instructions, *cont'd.*

- As to evidence to establish identity, 11, 366
- As to failure to testify, 11, 350
- As to number of witnesses, 11, 342
- As to positive and negative testimony, 11, 344
- As to reasonable doubt, 11, 357
- As to variance in testimony of witnesses, 11, 343
- Cautioning against sympathy or prejudice, 11, 371
- Credibility of witnesses, see infra, Credibility of witnesses.*
- Limiting effect of evidence, 11, 369
- Presumption of innocence, 11, 354

Certainty, 11, 137

- Accurate, 11, 138
- Clear, 11, 138
- Explicit, 11, 138
- Instructions held vicious for indefiniteness and uncertainty, 11, 137
- Instructions must be direct and certain, 11, 137
- Leaving jury uncertain, 11, 138
- Must not be ambiguous, 11, 141
- Must not be argumentative, see infra, Argumentativeness.*
- Must not be obscure, vague, or involved, 11, 140
- Technical terms to be avoided, 11, 139

Character, 11, 346

- Effect of good character where crime is atrocious, 11, 347
- Good character creating reasonable doubt, 11, 346
- Introductory statement, 11, 346
- Mere proof of good character not ground for acquittal, 11, 348
- Necessity of instruction, 11, 349
- Presumption of innocence from good character, 11, 349
- What instructions proper, 11, 346
- Where no proof of good character is offered, 11, 349

Charging on the weight of the evidence, 11, 91

- Applications of the rule, 11, 95
- Court not bound to express opinion on the evidence, 11, 96
- Erroneous opinion, 11, 95
- How federal practice affected by state, 11, 96
- Introductory statement, 11, 91
- Necessity of informing jury that opinion is advisory only, 11, 94

INSTRUCTIONS, *cont'd.*Charging on the weight of the evidence, *cont'd.*

Rule that court may express opinion as to the weight of the evidence, 11, 91

Rule that court should not express opinion as to the weight of the evidence, 11, 97

Applications of rule, 11, 103

Charges intimating that fact is proved, 11, 105

Determining facts preliminary to certain evidence, 11, 115

Effect of subsequent charge leaving question to jury, 11, 117

Examples, 11, 103, 107

Expressing opinion by interrogatories to jury, 11, 111

How federal practice affected by state, 11, 96

In general statement of rule, 11, 97

Intimation of opinion otherwise than by express instruction, 11, 114

Judge's personal knowledge, 11, 103

What are charges on the weight of the evidence, 11, 103

What are not charges on the weight of the evidence, 11, 107

When rule is violated, 11, 102

Strong expressions of opinion not equivalent to binding instructions proper, 11, 95

Circumstantial evidence, 11, 358

Clearness, see infra, Certainty.

Clerical mistakes, 11, 136

Coercing jury to agree, 11, 304

Color of title, 11, 204

Compel, 11, 203

Compromise verdict, directing, 11, 306

Confessions, 11, 333

Criminal cases, 11, 334

Instructions as to admissions of record, 11, 333

Instructions giving undue weight to, 11, 335

Miscellaneous examples, 11, 336

View that court may caution against, 11, 334

View that court should not caution against, 11, 333

Conspiracy, 4, 734

INSTRUCTIONS, *cont'd.*

Construction of writings, see infra,
Province of court and jury.

Contradictory or inconsistent, II, 145
Appellate review, II, 150

Instances of instruction held inconsistent and contradictory, II, 147

Instructions held not contradictory, II, 145

Reason for rule, II, 148

Statement of rule, II, 145

When contradictory instructions harmless, II, 149

Whether erroneous instruction cured by subsequent correct instructions, II, 148

Counsel:

Presence of counsel, II, 279

Courts, see infra, Province of court and jury; Requests for instructions

Credibility of witnesses, II, 311

Accomplice testimony, II, 324

Admissions and confessions, see infra, Admissions.

Advising acquittal where testimony of accomplice is uncorroborated, II, 326

Bias, II, 323

Confessions, see infra, Confessions.

Expert witnesses, see infra, Expert witnesses.

Falsus in uno, falsus in omnibus, see infra, *Falsus in uno, falsus in omnibus.*

Impeached witnesses, II, 312

In general, II, 311

Instructioning jury to view testimony of accomplice with caution, II, 325

Instructions as to who are accomplices, II, 329

Instructions tending to discredit witness, II, 319

Instruction that jury cannot convict on testimony of impeached witnesses, II, 312

Instruction that jury may take interest and relationship into consideration, II, 315

Instruction that jury should take into consideration interest and relationship, II, 317

Interest, II, 315

Manner in testifying, II, 323

Necessity of instructing jury to view accomplice testimony with caution, II, 325

Relationship, II, 315

Statutes making corroboration necessary to conviction, II, 327

INSTRUCTIONS, *cont'd.*

Credibility of witnesses, *cont'd.*

Test as to credibility of interested and disinterested witnesses not the same, II, 321

Uncontradicted testimony, II, 311

Unsworn statement of accused, II, 322

Criminal procedure:

As to power or right of juries to judge the law, see infra, Province of court and jury.

Assumption of controverted facts, II, 124

Assumption of fact in proof, II, 128

Character, II, 346

Effect of good character where crime was atrocious, II, 347

Good character creating reasonable doubt, II, 346

Mere proof of good character not ground for acquittal, II, 348

Necessity of instructions, II, 349

Presumption of innocence, II, 349

Defining offense charged, II, 205
Failure of accused to testify, II, 350

Adverse comments as to failure to testify, II, 350

What instructions proper or necessary, II, 351

Instructions as to lower grades of offense, II, 211

Applications of the rule, II, 211

Confining attention of jury to offense actually involved, II, 211

How made, II, 212

When necessary, II, 211

Instructions as to punishment, II, 208

Consequences of verdict, II, 208

Effect of misstating punishment, II, 210

How charge framed, II, 209

Instructions as to lower grades of offense, II, 211

Overstating minimum penalty, II, 210

When assessed by the court, II, 208

When assessed by the jury, II, 208

Limiting effect of evidence, II, 369

INSTRUCTIONS, *cont'd.*Criminal procedure, *cont'd.*

Limiting instructions to pleadings, II, 167

Necessity of requesting instructions, II, 216

Rule in California, II, 228

Rule in Missouri and Texas, II, 228

Rule in Tennessee, Kentucky, and Oregon, II, 228

Rule that court must give instructions substantially covering the case whether requested or not, II, 231

Rule that court must not give any instruction unless requested, II, 231

Rule that court need not instruct at all unless requested, II, 230

Self-defense, II, 230

Presumption of innocence, II, 354

Duty to instruct on when requested, II, 354

Whether necessary to instruct on in absence of request, II, 356

Crossings, 5, 693

Cruelty to animals and children, 5, 697

Damages, 5, 780

Death by wrongful act, see DEATH BY WRONGFUL ACT.

Declarations of law in causes tried without a jury, II, 301

Chancery cases, II, 301

In actions at law, II, 301

Defining words and terms used, II, 202

Defining offense charged, II, 205

Legal technical terms, II, 203

Necessity for defining legal and technical terms, II, 203

Preponderance of evidence, II, 205

Terms held to need definition, II, 204

Wilfully, II, 205

Words and terms of ordinary significance, II, 202

Definition, II, 56

Diligent inquiry, II, 203

Directing verdict (see DIRECTING VERDICT):

Compromise verdict, II, 306

Directness, II, 137

Accurate, II, 138

Clear, II, 138

Explicit, II, 138

Instructions held vicious for indefiniteness and uncertainty, II, 137

INSTRUCTIONS, *cont'd.*Directness, *cont'd.*

Instructions must be direct and

certain, II, 137

Leaving jury uncertain, II, 138

Must not be ambiguous, II, 140

Must not be argumentative, see *infra*, Argumentativeness.

Must not be obscure, vague, or uncertain, II, 140

Technical terms to be avoided, II, 139

Disorderly houses, 7, 18

Divorce, 7, 119

Duress, 7, 252

Duty to refrain from prejudicial remarks or conduct:

General rule, 21, 994

Remarks or conduct held prejudicial and subject to review, 21, 997

Test of prejudicial remarks, 21, 996

Elements of charge, II, 136

Embezzlement, 7, 456

Distinction between embezzlement and larceny, 7, 457

In general, 7, 456

Intent, 7, 458

Reasonable doubt, 7, 459

Erroneous reasons for giving or refusing instructions, II, 207

Evidence (see *infra*, Charging on the weight of the evidence; Invading province of jury; Limiting instructions to pleadings and evidence; Reasonable doubt; Withdrawing incompetent evidence by instructions):*Alibi*, see *infra*, Alibi.

Assumption of matters not in evidence, II, 128

Assumption of matters which evidence shows do not exist, II, 131

Basing instructions on belief from evidence, II, 183

Admitted facts, II, 185

Belief from instructions, II, 185

Ground for reversal, II, 184

"If you believe," II, 183

"If you believe from evidence," II, 184

"Inclined to believe," II, 185

Cautionary instructions as to conflict in evidence, II, 341

Cautionary instructions as to positive and negative testimony, II, 344

Character, see *infra*, Character.

INSTRUCTIONS, *cont'd.***Evidence, *cont'd.***

Circumstantial evidence, 11, 358
 Conflict in evidence, 11, 341
 Duty in ruling upon evidence,
 21, 992

Identity, 11, 366

Ignoring issues, theories, and evidence, see infra, Ignoring issues, theories, and evidence.

Limiting effect of evidence, 11, 369

Civil cases, 11, 370

Criminal cases, 11, 369

Necessity of giving such instructions, 11, 369

Propriety of such instructions, 11, 369

Number of witnesses, 11, 342

"Preponderance of evidence," 11, 205, 342

Requests for instructions, see infra, Requests for instructions.

Singling out and giving undue prominence to issues and evidence, see infra, Singling out and giving undue prominence to issues and evidence.

Summing up evidence, see infra, Summing up evidence.

Variance in testimony of witnesses, 11, 343

Witnesses, see infra, Credibility of witnesses.

Exceptions and objections, see EXCEPTIONS AND OBJECTIONS.

Exemplary damages, 11, 204

Expert witnesses (see **EXPERT WITNESSES**), 11, 329

Application of same rules as with other evidence, 11, 332

Cautionary instructions, 11, 329

Instructions disparaging testimony, 11, 330

Instructions giving undue weight to testimony, 11, 331

Weight to be given testimony, 11, 329

Failure to testify:

Adverse comments as to failure to testify, 11, 350

Civil cases, 11, 352

Criminal cases, 11, 350

What instructions proper or necessary, 11, 351

False personation, 8, 856

False representations and deceit, 8, 916

Falsus in uno, falsus in omnibus, 11, 337

Instructions that jury may disregard evidence proper, 11, 337

INSTRUCTIONS, *cont'd.*

Falsus in uno, falsus in omnibus, con.

Instructions that jury may or should disregard evidence unless corroborated, 11, 339

Instructions that jury should disregard evidence improper, 11, 338

Necessity of instructing as to this maxim, 11, 341

Omitting word "material" in charging, 11, 341

Omitting words "knowingly" and "willfully" in charging, 11, 340

Propriety of instructing as to this maxim, 11, 337

Feloniously, 11, 203

Fixtures, 9, 17

For an illegitimate purpose, 11, 204

Former conviction or acquittal, 9, 641

Framing instructions hypothetically, 11, 152

General manner of charging, 11, 136

Giving, see infra, Marking "given" or "refused" on instructions.

Giving undue prominence to issues and evidence, see infra, Singling out and giving undue prominence to issues and evidence.

Grades of offense:

Instructions as to lower grades of offense, 11, 211

Applications of the rule, 11, 211

Confining attention of jury to offense actually involved, 11, 211

How framed, 11, 212

When necessary, 11, 211

Grand juries:

Charge to the grand jury, 10, 380

Gross negligence, 11, 204

Guaranty, 11, 203

Harmless error:

Presumption of fact, 11, 136

Highways, see STREETS AND HIGHWAYS.

Homicide, see HOMICIDE.

Hypothetical instructions, 11, 152

Conflict in the evidence, 11, 153

Form of hypothesis, 11, 153

In general, 11, 152

Nothing to counteract the evidence, 11, 153

Identity:

As to evidence to establish identity, 11, 366

Ignoring issues, theories, and evidence, 11, 190

Ignoring evidence, 11, 191

Ignoring issues and theories, 11, 190

INSTRUCTIONS, *cont'd.*

- Ignoring issues, theories, and evidence, *cont'd.*
- Instances of ignoring evidence, 11, 193
- Instructions held not objectionable as ignoring evidence, 11, 193
- Instructions ignoring material evidence erroneous, 11, 191
- Refusal of instructions ignoring material evidence, 11, 194
- Inaccuracies in expression, 11, 136
- Inconsistency*, see *infra*, Contradictory or inconsistent.
- Innocence, presumption as to, 11, 354
- Duty to instruct on when requested, 11, 354
- Whether necessary to instruct on in absence of request, 11, 356
- Inquests and inquiries, 10, 1159
- Insane persons, 10, 1223
- Instructions after retirement of jury, 11, 283
 - At request of jury, 11, 284
 - At request of parties, 11, 285
 - Changing tenor of charge, 11, 288
 - On court's own motion, 11, 283
 - Questions not presented by jury, 11, 288
 - Repetition of charge, 11, 287
 - Repetition of portion of charge, 11, 287
 - What instructions may be given, 11, 287
- Intent:
 - Requests for instructions, 11, 230
- Intent to defraud creditors, 11, 204
- Interest, 11, 315
- Interpretation of writings*, see *infra*, Province of court and jury.
- Invading province of jury, 11, 91
 - Charging on the weight of the evidence, 11, 91
 - Applications of the rule, 11, 95
 - Court not bound to express opinion on the evidence, 11, 96
 - Erroneous opinion, 11, 95
 - How federal practice affected by state, 11, 96
 - Introductory statement, 11, 91
 - Necessity of informing jury that opinion is advisory only, 11, 94
 - Rule that court may express opinion as to the weight of the evidence, 11, 91

INSTRUCTIONS, *cont'd.*

- Invading province of jury, *cont'd.*
- Charging on the weight of the evidence, *cont'd.*
 - Rule that court should not express opinion as to the weight of the evidence, 11, 97
- Applications of the rule, 11, 103
- Charges intimating that fact is proved, 11, 105
- Determining facts preliminary to certain evidence, 11, 115
- Effect of subsequent charge leaving question to jury, 11, 116
- Examples, 11, 103, 107
- Expressing opinion by interrogatories to jury, 11, 111
- How federal practice affected by state, 11, 96
- In general, statement of rule, 11, 97
- Intimation of opinion otherwise than by express instruction, 11, 114
- Judge's personal knowledge, 11, 103
- What are charges on the weight of the evidence, 11, 103
- What are not charges on the weight of the evidence, 11, 107, 111
- When rule is violated, 11, 102
- Strong expressions of opinion not equivalent to binding instructions proper, 11, 95
- What may be assumed in instructions and requests, 11, 116
- Actions on contracts, 11, 127
- Assumption of agency, 11, 123
- Assumption of matters admitted by the parties, 11, 131
- Assumption of matters by way of illustration, 11, 135
- Assumption of matters conclusively shown, 11, 132
- Assumption of matters in controversy, 11, 116
- Assumption of matters not in evidence, 11, 128

INSTRUCTIONS, *cont'd.*Invading province of jury, *cont'd.*

What may be assumed in instructions and requests, *cont'd.*

Assumption of matters which evidence shows do not exist, 11, 131

Assumption of measure of damages, 11, 124

Assumption upon agreed statement of facts, 11, 132

Criminal prosecutions, 11, 124, 128

Harmless error, 11, 136

Instructions submitting question without assumption of matters in controversy, 11, 121

Possible existence of facts, 11, 130

Presumptions on appeal, 11, 136

Refusal of instructions assuming matters in controversy, 11, 121

Sales, 11, 126

Trover, 11, 126

What is an assumption of matters in controversy, 11, 123

What is not an assumption of matters in controversy, 11, 124

Where evidence is all one way, 11, 134

Work and services performed, 11, 126

Issues (see *infra*, Statement of issues):

Ignoring issues, theories, and evidence, see infra, Ignoring issues, theories, and evidence.

Singling out and giving undue prominence to issues and evidence, see infra, Singling out and giving undue prominence to issues and evidence.

Issues to the jury, 11, 687

Appellate review, 11, 748

Directing verdict, 11, 689

General power and duty to give, 11, 687

New trial for errors, 11, 729

Errors not prejudicial, 11, 729

Errors prejudicial, 11, 729

Where no instructions are given, 11, 729

On evidence given, 11, 688

On the law applicable to the case, 11, 688

Pertinence of instructions, 11, 688

Return, 11, 695

INSTRUCTIONS, *cont'd.*

Jury (see *infra*, Instructions after retirement of jury; Invading province of jury; Method of presenting instructions to jury; Province of court and jury):

Declarations of law in causes tried without a jury, 11, 301

Instructing jurors to apply personal knowledge to facts, 11, 303

Urging or coercing jury to agree, 11, 304

Directing compromise verdict, 11, 306

Discretion of trial judge, 11, 304

Stating time jury will be kept out, 11, 306

Written instructions in jury room, 12, 599

Knowingly:

Falsus in uno, falsus in omnibus, 11, 340

Larceny, see LARCENY.

Law:

Giving undue prominence to propositions of law, 11, 190

Length of instructions, 11, 150

Instructions ought to be as few as practicable, 11, 151

Jury not to be left uninstructed because of too numerous requests, 11, 151

Practice of asking and giving numerous and lengthy instructions condemned, 11, 150

Libel and slander, 13, 108

Cautionary instructions, 13, 110

Charging on weight of evidence, 13, 109

Directing verdict, 13, 111

Error cured by instructions, 13, 111

Giving undue prominence to evidence, 13, 109

Harmless error, 13, 111

Improper assumptions of fact, 13, 109

Limiting effect of evidence, 13, 110

Limiting instructions to pleadings and evidence, 13, 108

Requests for instructions, 13, 110

Limiting effect of evidence, 11, 369

Civil cases, 11, 370

Criminal cases, 11, 369

Necessity of giving such instructions, 11, 369

Propriety of such instructions, 11, 369

INSTRUCTIONS, *cont'd.*

- Limiting instructions to pleadings and evidence, 11, 158
- Basing instructions on rejected testimony, 11, 183
- Civil cases, 11, 161
- Criminal cases, 11, 167
- Evidence, 11, 168
- Evidence raising conjecture, 11, 182
- Ground for reversal, 11, 164
- Harmless error, 11, 159
- Illustrations, 11, 160
- Impropriety of instructions not based on evidence, 11, 170
- In general, 11, 158
- Instructions applicable to incompetent evidence, 11, 164
- Instructions as to qualifications and exceptions to rules, 11, 182
- Instructions not based on pleadings and evidence, 11, 161
- Instructions to be based on pleadings and evidence, 11, 158
- Issues mutually disregarded, 11, 166
- Limiting instructions to evidence, 11, 168
- Limiting instructions to pleadings, 11, 161
- Limiting recovery to amount prayed, 11, 162
- Pleadings, 11, 161
- Presumptions on appeal, 11, 183
- Rule that instructions may be based on incompetent evidence admitted without objection, 11, 165
- Rule that instructions must be strictly limited to issues raised by the pleadings, 11, 164
- Submitting to jury issue not warranted by the pleadings and evidence, 11, 159
- Trifling statements, 11, 182
- Variance not objected to, 11, 167
- What evidence sufficient to warrant instructions, 11, 181
- When instructions not based on evidence ground for reversal, 11, 178
- Malicious mischief, 13, 418
- Malicious prosecution:
 - Advice of counsel, 13, 475
 - Damages, 13, 475
 - Instigation by the defendant, 13, 464
 - Instructing as to inference of malice, 13, 474
 - Instructions as to probable cause, 13, 464
 - Malice, 13, 473

INSTRUCTIONS, *cont'd.*

- Malicious prosecution, *cont'd.*
 - Malicious abuse of process, 13, 475
 - Probable cause, 13, 464
 - Termination in favor of plaintiff, 13, 472
- Malpractice*, see MALPRACTICE.
- Mandate:
 - New trial, 13, 860
- Marking "given" or "refused" on instructions, 11, 268
 - In general, 11, 268
 - Necessity for exceptions, 11, 268
 - Where instructions are shown to have been given, 11, 269
- Material:
 - Falsus in uno, falsus in omnibus*, 11, 341
- Material facts, 11, 204
- Mayhem, 13, 938
- Mechanics' liens, 13, 1028
- Method of presenting instructions to jury, 11, 272
 - Decisions, 11, 272
 - Going in person to jury-room to give instructions, 11, 276
 - In general, 11, 272
 - Manner and emphasis in delivering instructions, 11, 275
 - Necessity of delivering instructions in open court, 11, 275
 - Necessity of presence of accused, 11, 282
 - Necessity of presence of counsel, 11, 279
 - Necessity of showing prejudice in order to reverse, 11, 278
 - Opinions, 11, 272
 - Reading decisions, text-books, or statutes, 11, 272
 - Remarks tending to weaken or strengthen effect of instructions, 11, 274
 - Sending copy of statutes into jury-room, 11, 277
 - Sending instructions to jury-room, 11, 277
 - Statutes, 11, 273
 - Text-book, 11, 273
 - View that counsel must be present or attempt made to notify them, 11, 279
 - View that presence of counsel is unnecessary, 11, 281
- Waiver of presence of accused, 11, 282
- Waiver of requirement that instructions should be given in open court, 11, 278
- Modifying instructions, 11, 372
- Negative testimony, 11, 344
- Negligence, 11, 203
- Negotiable instruments, 14, 697

INSTRUCTIONS, *cont'd.*

- New trial (see **NEW TRIAL**), 13, 860
- Numbering, 11, 270
- Requests for instructions, 11, 238
- Number of instructions:
 - Instructions ought to be as few as practicable, 11, 151
 - Jury not to be left uninstructed because of too numerous requests, 11, 151
 - Practice of asking and giving numerous and lengthy instructions condemned, 11, 150
- Number of witnesses, 11, 342
- Objections*, see **EXCEPTIONS AND OBJECTIONS**.
- Obscenity, 14, 1164
- Obscurity, 11, 140
- Office of instructions, 11, 56
- Opinions of courts*, see **OPINIONS OF COURTS**.
- Parol evidence, 11, 85
- Partnership, 15, 944
 - As to liability of firm for contract of one member, 15, 947
 - Effect of representation of partnership, 15, 946
 - Existence of partnership, 15, 945
 - In general, 15, 944
 - Nature of partnership property, 15, 947
 - Ratification, 15, 947
 - What constitutes a partnership, 15, 945
- Passengers, 15, 1147
 - Duty to instruct, 15, 1147
 - Negligence, 15, 1149
 - Scope of instruction, 15, 1148
- Penalties and penal actions, 16, 295
- Perjury, 16, 349
- Personal injuries*, see **PERSONAL INJURIES; RAILROADS**.
- Personal knowledge of jurors, 11, 303
- Pleadings*, see *infra*, Limiting instructions to pleadings and evidence.
- Positive testimony, 11, 344
- Precedents, as to following, 11, 136
- Prejudice, cautioning against, 11, 371
- Premature suits, 16, 886
- Preponderance of evidence, 11, 205
- Presence of accused, 11, 282
- Presence of counsel, 11, 279
- Presumptions (see *infra*, Invading province of jury):
 - Assuming facts by way of illustration, 11, 206
- Presumption of innocence, 11, 354
 - Duty to instruct on when requested, 11, 354
 - Whether necessary to instruct on in absence of request, 11, 356

INSTRUCTIONS, *cont'd.*

- Presumptions, *cont'd.*
 - Presumptions as to whether instructions were presented in writing, 11, 252
- Presumption of law, 11, 205
- Written instructions, 11, 268
- Presumptive notice, 11, 204
- Probate and contest of wills, 16, 1038
 - Duty to instruct, 16, 1038
- Features common to all instructions, 16, 1039
- Fraud, 16, 1038
- Limiting instructions to evidence, 16, 1039
- Obscure or confused instructions, 16, 1040
- Repetition of instructions, 16, 1039
- Testamentary capacity, 16, 1038
- Undue influence, 16, 1038
- Undue prominence, 16, 1039
- Validity of execution, 16, 1038
- Province of court and jury (see *infra*, Invading province of jury), 11, 57
- Construction of writings, 11, 78
 - Bonds, 11, 82
 - Construction of parol contracts, 11, 88
 - Contracts, 11, 81
 - Deeds, 11, 81
 - Effect of misconstruction, 11, 84
 - Effect of submitting construction to jury, 11, 84
 - Exceptions to rule, 11, 80
 - Foreign law, 11, 90
 - Leases, 11, 82
 - Legal effect of law, 11, 91
 - Meaning of terms, 11, 89
 - Mortgages, 11, 82
 - Orders, 11, 82
 - Ordinances, 11, 89
 - Other writings for the construction of the court, 11, 83
 - Parol testimony admitted, 11, 85
 - Reason for rule, 11, 80
 - Records, 11, 82
 - Special verdict, 11, 87
 - Statutes, 11, 89
 - To what writings rule applies, 11, 81
 - Wills, 11, 82
 - Writings which require no explanation, 11, 78
 - Writings which require parol explanation, 11, 84
- Power or right of juries to judge the law, 11, 59
- Charging jury to regard instructions, 11, 60

INSTRUCTIONS, *cont'd.*

- Province of court and jury, *cont'd.*
 - Power or right of juries to judge the law, *cont'd.*
 - Civil cases, 11, 59
- Criminal cases, 11, 61
 - Connecticut, 11, 68
- Decisions on the question, 11, 62
 - Georgia, 11, 71
 - Illinois, 11, 68
- In America at common law, 11, 64
 - Indiana, 11, 68
 - In England, 11, 61
 - Louisiana, 11, 71
 - Maryland, 11, 68
 - Massachusetts, 11, 71
- Under organic and statutory provisions declaring juries judges of the law in criminal cases, 11, 67
- Views of text-writers, 11, 61
- View that jury may disregard instructions, 11, 67
- View that jury must follow instructions, 11, 64
- Disregard of instructions, 11, 60
- Reasons why juries should not have power to judge the law, 11, 73
 - Absence of remedy for erroneous decision, 11, 76
 - Contravention of constitutional provisions, 11, 77
 - Contravention of fundamental common-law maxims, 11, 77
 - Resulting uncertainty in the law, 11, 73
 - Unfitness to exercise this power, 11, 75
- Questions of fact for jury, 11, 58
- Questions of law for court, 10, 57
- Prudence, 11, 203
- Public officers, 17, 199
- Punishment, instructions as to, 11, 208
 - Consequences of verdict, 11, 208
 - Effect of misstating punishment, 11, 210
 - How charge framed, 11, 209
 - Instructions as to lower grades of offense, 11, 211
 - Overstating minimum penalty, 11, 210

INSTRUCTIONS, *cont'd.*

- Punishment, instructions as to, *cont'd.*
 - When assessed by the court, 11, 208
 - When assessed by the jury, 11, 208
- Questions of law and fact, *see infra*, Invading province of jury; Province of court and jury.
- Quieting title, 17, 359
- Railroads, *see* RAILROADS.
- Ratification, 11, 203
- Ratify, 11, 203
- Reading:
 - Reading decisions, text-books, or statutes, 11, 272
 - Reading from books and papers as part of charge, 11, 262
- Reasonable doubt, 11, 357
 - Alibi, 11, 361
 - Defining reasonable doubt, 11, 358
 - Good character creating reasonable doubt, 11, 346
 - In absence of request, 11, 357
 - What instructions are necessary, 11, 358
 - When requested, 11, 357
- Reasons:
 - Erroneous reasons for giving or refusing instructions, 11, 207
- Receiving stolen goods, 17, 897
- Refused, *see infra*, Marking "given" or "refused" on instructions.
- Relationship, 11, 315
- Remotely, 11, 203
- Repetition of instructions, 11, 288
 - Application of principle to facts, 11, 298
 - Applications of rule, 11, 297
 - Clear language, 11, 299
 - Criminal trials, 11, 299
 - Instructions after retirement of jury, 11, 287
 - Limitations and qualifications of rule, 11, 298
 - Presumptions on appeal, 11, 300
 - Propriety of refusing to repeat instructions already given, 11, 288
 - Reason for the rule, 11, 297
 - Repetition usually not a ground for reversal, 11, 299
 - Stating grounds of refusal to jury, 11, 299
- Replevin*, *see* REPLEVIN.
- Repudiation, 11, 203
- Requests for instructions, 11, 213
 - Duty of court to instruct on request, 11, 213
 - Conflict in or weakness of evidence not a ground for refusal, 11, 215

INSTRUCTIONS, *cont'd.*Requests for instructions, *cont'd.*Duty of court to instruct on request, *cont'd.*

Reversible error, II, 214

Statement of rule, II, 213

Manner of complying with request properly framed, II, 247

Modification of erroneous requested instructions, II, 244

Erroneous qualification of erroneous request, II, 246

How modifications may be made, II, 246

Power of court to modify, II, 244

Review on appeal, II, 247

What modification proper, II, 245

Necessity of requesting instructions, II, 216

Applications of rule, II, 225

California, II, 228

Charge uncertain or needing limitation, II, 224

Circumstantial evidence, II, 230

Colorado, II, 233

Exceptions to rule, II, 227

Georgia, II, 231

Insufficiency of saving exceptions, II, 224

Intent, II, 230

Iowa, II, 231

Kansas, II, 232

Kentucky, II, 228

Lesser grades of crime, II, 230

Matters in mitigation of damages, II, 225

Michigan, II, 231

Missouri, II, 228

Nebraska, II, 231

Necessity of requesting a fuller and more explicit instruction, II, 217

North Carolina, II, 232

Oregon, II, 228

Rule as to misdirection, II, 216

Rule as to partial misdirection, II, 217

Rule as to total nondirection, II, 230

Rule in criminal cases, II, 228

Rule that court must give instructions substantially covering the case, whether requested or not, II, 231

Rule that court must not give any instruction unless requested, II, 231

INSTRUCTIONS, *cont'd.*Requests for instructions, *cont'a.*Necessity of requesting instructions, *cont'd.*

Rule that court need not instruct at all unless requested, II, 230

Self-defense, II, 230

Tendency to mislead, II, 224

Tennessee, II, 228

Texas, II, 228

Vermont, II, 232

Washington, II, 233

Numbering, II, 238

Presenting requests, II, 238

Requirements governing request, II, 234

As to matter of substance, II, 234

As to presenting requests in writing, II, 238

As to signing and numbering requests, II, 238

Instruction needing explanation or modification, II, 237

Must be correct as entirety, II, 234

Qualification of request, II, 236

Separating request into parts, II, 236

Series of propositions, II, 235

Right of court to instruct on its own motion, II, 216

Rule that court must follow language of request, II, 253

Rule that instructions asked may be given in court's own language, II, 247

Better course to follow in complying with request, II, 251

Illustrations of rule, II, 250

Presumptions on appeal, II, 252

Requirement that all proper points of request be covered, II, 251

Requirement that request be not materially qualified, II, 251

Statement of rule, II, 247

Signing, II, 238

Time of presenting requests for instructions, II, 238

Discretion of court as to granting requests not presented in time, II, 238

Improper argument of counsel, II, 243

INSTRUCTIONS, *cont'd.*

- Requests for instructions, *cont'd.*
 - Time of presenting requests for instructions, *cont'd.*
 - Interrupting court or counsel, 11, 242
 - Omissions of errors in general charge, 11, 242
 - Points overlooked in hurry of trial, 11, 243
 - Time of submitting propositions of law on trial by court, 11, 239
 - View that it may become error to refuse instructions not presented in time, 11, 240
 - View that requests not presented in time are properly refused, 11, 239
 - Want of explicitness in general charge, 11, 243
 - When requests for instructions considered premature, 11, 243
 - Where cause is submitted without argument, 11, 241
- Writing, 11, 238
- Requisites of charge, 11, 136
- Rescission, cancellation, and reformation of contracts, 18, 851
- Retirement of jury*, see *infra*, Instructions after retirement of jury.
- Reward, 18, 1158
- Right of property, trial of, 18, 1186
- Riot, 18, 1207
- Robbery, 18, 1231
- Rules of court, 18, 1252
- Seduction*, see SEDUCTION.
- Self-defense:
 - Requests for instructions, 11, 230
- Set-off, recoupment, and counterclaim, 19, 804
- Sham and frivolous pleadings, 20, 108
- Signing instructions, 11, 270
 - Assignments of error, 11, 272
 - Signature of court, 11, 271
 - Signature of parties or counsel, 11, 270
- Signing requests for instructions, 11, 238
- Singling out and giving undue prominence to issues and evidence, 11, 185
 - Applications of the rule, 11, 188
 - Argumentativeness, 11, 188
 - Giving undue prominence by repetition, 11, 189
 - Instructions held not to violate rule against singling out evidence, 11, 187
 - Lessening the importance of evidence, 11, 189

INSTRUCTIONS, *cont'd.*

- Singling out and giving undue prominence to issues and evidence, *cont'd.*
 - Limitations and exceptions to rule, 11, 189
 - Positive misdirection, 11, 188
 - Repetition, 11, 189
 - Singling out evidence, 11, 185
 - Singling out issues, 11, 185
- Singling out and giving undue prominence to propositions of law, 11, 190
- Special interrogatories to juries (see SPECIAL INTERROGATORIES TO JURIES), 20, 304
- Special verdict:
 - Instructions in cases where special verdict is directed, 11, 302
- Specific performance, 20, 477
- Statement of facts on appeal, 20, 564
- Statement of issues, 11, 153
 - Approval of statement given, 11, 157
 - Duty of court to state issues without referring jury to pleadings, 11, 153
 - How issues are stated, 11, 155
 - Limitations of rule, 11, 156
 - Manner of stating issues, 11, 157
 - Reference to pleadings by agreement, 11, 157
 - Where other instructions correctly state issues, 11, 157
 - Withdrawal of issue, 11, 156
- Statutes:
 - Reading decisions, text-books, or statutes, 11, 272
- Stipulations, 20, 632
- Street railways*, see STREET RAILWAYS.
- Streets and highways*, see STREETS AND HIGHWAYS.
- Style of charge, 11, 136
- Substantial, 11, 203
- Substantially, 11, 203
- Summing up evidence, 11, 194
 - Circumstances, 11, 197
 - Claims and theories, 11, 198
 - Construction, 11, 196
 - Discretion of court as to summing up, 11, 200
 - Effect of misstatement, 11, 198
 - Evidence and theories, 11, 199
 - Existence or nonexistence of evidence, 11, 197
 - In what jurisdictions not permissible, 11, 201
 - In what jurisdictions permissible, 11, 194
 - Manner of stating evidence, 11, 196

INSTRUCTIONS, *cont'd.*

- Summing up evidence, *cont'd.*
 - Order of recapitulation, 11, 197
 - Repetition of testimony, 11, 200
 - Statement prejudicial on one side, 11, 200
 - Statutory authority, 11, 195
 - Testimony of particular witness, 11, 197
 - What fulness of statement required, 11, 199
 - Words spoken by witness, 11, 197
- Sundays and holidays, 20, 1194
- Sympathy, cautioning against, 11, 371
- Telegraphs and telephones, see TELEGRAPHS AND TELEPHONES.
- Tender, 21, 570
- Terms, see *infra*, Defining words and terms used.
- Theories, see *infra*, Ignoring issues, theories, and evidence.
- Threats and threatening letters, 21, 673
- Time of presenting requests for instructions, see *infra*, Requests for instructions.
- Title, ownership, and possession, 21, 743
- Trespass, see TRESPASS.
- Trespassing, vicious, and diseased animals, 21, 897
- Trespass on the case, 21, 923
- Trespass to try title, see TRESPASS TO TRY TITLE.
- United States courts:
 - Invading province of jury, 11, 96
- Urging jurors to agree, 11, 304
- Usages and customs, 22, 412
- Usury, see USURY.
- Vagueness, 11, 140
- Vendor and purchaser (see VENDOR AND PURCHASER):
 - Purchaser's action for damages, 22, 760
 - Purchaser's action to recover back purchase money, 22, 766
- Verdict:
 - Compromise, 11, 306
 - Instructions in cases where special verdict is directed, 11, 302
- Waiver of presence of accused, 11, 282
- Waiver of written instructions, 11, 265
- Warranty, 11, 204
- Waters and watercourses, 22, 1154
- Weight of evidence, see *infra*, Invading province of jury.

INSTRUCTIONS, *cont'd.*

- Wilfully, 11, 205
 - Falsus in uno, falsus in omnibus*, 11, 340
- Withdrawing incompetent evidence by instructions, 11, 307
 - Efficiency of remedy, 11, 307
 - Exclusion of evidence, 11, 311
 - Necessity of objecting to evidence, 11, 310
 - Necessity of requesting instructions, 11, 310
 - What instructions sufficient, 11, 309
 - Where prejudice apparent, 11, 309
- Withdrawing instructions, 11, 372
- Witnesses (see *infra*, Credibility of witnesses):
 - Failure of accused to testify, 11, 350
 - Adverse comments as to failure to testify, 11, 350
 - What instructions proper or necessary, 11, 351
 - Failure to produce countervailing evidence, 11, 353
 - Failure to testify in civil cases, 11, 352
 - Number of witnesses, 11, 342
 - Cautionary instructions, 11, 342
 - Instructions as to number of witnesses, 11, 342
 - Preponderance of evidence, 11, 342
 - Variance in testimony of witnesses, 11, 343
- Words, see *infra*, Defining words and terms used.
- Work and labor, 22, 1380
- Writing:
 - Presumptions, 11, 252
 - Requests for instructions, 11, 238
- Written instructions, 11, 254
 - Loss of written instructions, 11, 267
 - Necessity for instructing in writing, 11, 254
 - Absence of request, 11, 256
 - Additions, 11, 261
 - At common law, 11, 254
 - Harmless error, 11, 256
 - Having charge taken down by stenographer, 11, 260
 - Modifications, 11, 261
 - Oral explanations, 11, 261
 - Particular oral communications, 11, 258
 - Reading from books and papers as part of charge, 11, 262
 - Statement of rule, 11, 254

INSTRUCTIONS, *cont'd.*Written instructions, *cont'd.*Necessity for instructing in writing, *cont'd.*

Subsequent reduction of oral charge to writing, II, 260

Under statutory requirements, II, 254

What are instructions within the rule, II, 257

What is a sufficient compliance with the rule, II, 259

Presumptions on appeal or error, II, 268

Taking instructions to jury-room, II, 267

Time of presenting and answering requests for written instructions, II, 264

Waiver of written instructions, II, 265

Waiver of written instructions by express agreement, II, 265

Waiver of written instructions by failure to except to oral charge, II, 266

Waiver of written instructions by failure to request written instructions, II, 266

INSURABLE INTEREST:

Conditions precedent, 4, 652

INSURANCE, II, 375

Accident insurance

Venue and forum, II, 386

Accounting, II, 380

Actions, *see infra*, Venue and forum.

Actions at law, II, 377

Form of action, II, 377

In general, II, 377

Agency, *see infra*, Service of process.

Agents as parties to actions, II, 391

Amendments:

Amendment of pleadings, II, 427

Answer, see infra, Plea or answer.

Assignees, II, 399, 401

Attorneys' fees, II, 434

Bailments:

Bailee's right to bring action, II, 391, 392

Cancellation of policy, II, 380

Complaint, see infra, Declaration, petition, or complaint.

Consideration, II, 413

Courts, see infra, Venue and forum.

Declaration, petition, or complaint, II, 411

Accident, casualty, and fidelity insurance, II, 418

Allegations peculiar to suits on particular kinds of policies, II, 415

INSURANCE, *cont'd.*Declaration, petition, or complaint, *cont'd.*

Alleging estoppel, II, 420

Alleging notice and proofs, II, 415

Amount of loss, II, 416

Breach of contract, II, 414

Consideration, II, 413

Fire insurance, II, 415

In action against foreign insurance company, II, 420

In assumpsit, II, 411

Insurable interest, II, 412, 416

Life and benefit insurance, II, 416

Marine insurance, II, 418

Necessary allegations enumerated, II, 411

Necessity of attaching copy of policy, II, 415

Performance of conditions of policy, II, 413

Prayer, II, 420

Proportion of loss to insurance, II, 415

Specific allegations, II, 411

Statutory forms, II, 411

Terms of policy, II, 413

Waiver of notice and proof, II, 416

Demurrer, II, 420

Directing verdict, II, 431

Equity, suits in, II, 378

Executors and administrators:

Parties to action on policy, II, 390

Fire insurance, see infra, Declaration, petition, or complaint.*Foreign insurance companies, see infra*, Service of process; Venue and forum.

Forthwith, II, 429

Immediately, II, 429

Insolvency:

Venue of action, II, 387

Insurable interest, II, 411, 416

Intervention, II, 401

Joinder of parties, II, 401

Beneficiaries, II, 402

Defendants, II, 403

Plaintiffs, II, 401

Judgment, II, 434

Amount of recovery, II, 434

Attorneys' fees, II, 434

Recovery in excess of proofs or loss, II, 434

Jurisdiction, see infra, Venue and forum.

Mandamus:

Mutual benefit insurance, II, 382

Marine insurance, II, 382

Venue and forum, II, 386

INSURANCE, *cont'd.*

- Mortgages:
 - Who may sue upon policy, II, 394
- Mutual insurance, II, 380, 381
- Mandamus, II, 382
- Nature and character of action, II, 375
- Original process, II, 403
- Parties, II, 389
 - Agents, II, 391
 - Assignees, II, 399
 - Assignees of defendants, II, 401
 - Bailees, II, 391
 - Beneficiaries, II, 393
 - Co-owners, II, 393
 - Defendants, II, 401
 - Executors and administrators, II, 390
 - Heir, II, 391
 - Insurance by agent or bailee for whom it may concern, II, 392
 - Interveners, II, 401
 - Joinder of defendants, II, 403
 - Joinder of plaintiffs, II, 401
 - Mortgagees, II, 394
 - Partners, II, 393
 - Suits by the insured, II, 389
 - Who may sue, II, 389
- Partnership:
 - Who may sue upon policy, II, 393
- Petition, see infra*, Declaration, petition, or complaint.
- Plea or answer, II, 421
 - Attaching copy of policy or application to answer, II, 424
 - Breaches of condition, II, 422
 - Breaches of representations or warranties, II, 423
 - Fraud, II, 423
 - General denial, II, 422
 - General issue, II, 421
 - In general, II, 421
 - Miscellaneous defenses, II, 424
 - Specific pleas, II, 421
- Policy:
 - Equitable assignments:
 - Suit by assignee in name of assignor, 7, 736
 - Splitting causes of action, I, 157
- Process, II, 403
 - Return, II, 410
- Questions of law and fact, II, 427
 - Directing verdict, II, 431
 - Questions for court, II, 431
 - Questions for jury II, 427
 - Accident or suicide II, 430
 - As soon as possible, II, 429
 - Contents of a lost policy, II, 430
 - Examples, II, 427, 431
 - Forthwith, II, 429

INSURANCE, *cont'd.*

- Questions of law and fact, *cont'd.*
- Questions for jury, *cont'd.*
 - Immediately, II, 429
 - In general, II, 427
 - Materiality, II, 427
 - Meaning of terms used in policy, II, 428
 - Misrepresentations, II, 427
 - Seaworthiness, II, 430
 - Temperate habits, II, 430
 - Truth or falsity of statements, II, 428
 - Whether a person was totally disabled within the meaning of certificate of benefit insurance, II, 431
 - Whether notice of loss sufficient, II, 429
- Reformation of instruments, II, 378
 - In general, II, 378
 - Reformation as a prerequisite, II, 379
 - Where reformation is required, II, 379
- Reinstatement:
 - Suits in equity, II, 380
- Rejoinder, II, 426
- Replications or replies, II, 425
 - Departure, II, 425
 - Duplicity, II, 426
 - In general, II, 425
 - In respect of authority of defendant's agent, II, 425
- Return, II, 410
- Seaworthy, II, 430
- Service of process, II, 404
 - Agents, II, 405
 - Constructive service, II, 410
 - On whom service may be made, II, 404
 - Public officers, II, 408
 - Revocation or cessation of agency, II, 409
 - Statutory appointees, II, 407
 - Statutory mode exclusive, II, 404
 - Withdrawal from the state, II, 409
- Specific performance, II, 378
- Suits in equity, II, 378
- Tontine insurance, II, 380
- Trial, II, 427
- United States courts, II, 387
- Venue and forum, II, 383
 - Accident insurance actions, II, 386
 - Action against foreign insurance company, II, 383
 - Action on a policy of insurance is transitory, II, 383
 - County, II, 384
 - Federal courts, II, 387
 - In general, II, 383

INSURANCE, *conf'd.*

- Venue and forum, *conf'd.*
 - Insolvent company, II, 387
 - Insurance policy as assets of decedent, II, 384
 - Marine insurance actions, II, 386
 - Provisions in charter, by-laws, or policy, II, 386
 - Removal of cause, II, 387
 - Tribunals of society or order, II, 388
- Verdict, II, 433
 - Directing verdict, II, 431
 - General verdict, II, 433
 - Special verdict, II, 433
- Verification, II, 426

INSURANCE COMPANIES:

- Carriers, 3, 837

INTENT (see ASSAULT AND BATTERY):

- Abduction, I, 51
- Abortion:
 - Allegation of intent, I, 64
 - Construction of pleadings, 4, 745
- Counterfeiting*, see COUNTERFEITING.
- Disorderly conduct, 7, 4
- Disorderly houses, 7, 9, 13
- Disturbing meetings, 7, 43
- Indictments (see INDICTMENTS):
 - Charging the offense, 10, 477
- Instructions:
 - Requests for instructions, II, 230
- Larceny*, see LARCENY.
- Lewdness, 13, 25
- Perjury*, see PERJURY.
- Threats and threatening letters, 21, 673, 674

INTEREST, II, 435

See USURY.

- Allegation of interest of foreign state, II, 438
- Amount in controversy, I, 719
 - Accrued interest, when calculable, I, 719
 - Accrued interest, when not calculable, I, 720
 - Waiver of interest, I, 708
- Conflict of laws, II, 438
- Costs:
 - Interest and costs not considered in determining amount in controversy, 5, 160
- Debt, 5, 916
 - Interest as damages, 5, 933
- Executions, 8, 431
 - Conformity to judgment, 8, 431
 - Interest not allowed by judgment, 8, 431
 - Validity of writ irregular as regards interest, 8, 432
- Judgments, II, 970
 - Alternative forms of judgment, II, 972
 - Certainty, II, 973

INTEREST, *conf'd.*

- Judgments, *conf'd.*
 - Default, II, 973
 - Harmless error, II, 973
 - In general, II, 970
 - Interest on demand, II, 971
 - Judgment on awards, II, 1054
 - Judgment on note, II, 972
 - Provisions in judgment for interest, II, 971
 - Right to interest as affected by pleadings, II, 970
 - Right to interest as affected by verdict, II, 970
 - Specifying rate, II, 972
 - When recoverable, II, 970
- Necessity of claiming in pleading, II, 435
 - At law, II, 435
 - In equity, II, 437
 - When not expressly stipulated, II, 435
 - When stipulated by contract, II, 436

Set-off, recoupment, and counterclaim, 19, 810

Splitting causes of action, I, 157

Time for recovery, II, 438

INTERLOCUTORY JUDGMENTS AND DECREES, see FINAL JUDGMENTS AND DECREES, 5, 950; II, 965

Appeals, 2, 369

Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.

Judgments, II, 822

INTERNAL REVENUE, II, 439

- Actions to enforce payment of legacy and succession taxes, II, 440
- Actions to recover taxes illegally collected, II, 441
- Civil actions, II, 439
- Criminal procedure:
 - Indictment for violation, II, 441
 - Charging different offenses, II, 442
 - Essential averments of indictment, II, 441
 - Joinder of defendants, II, 442
 - Necessity for indictment, II, 441
- Forfeiture:
 - Suits for forfeiture for violation of internal revenue, II, 439
 - Information, II, 440
 - Jurisdiction, II, 439
 - Jurisdiction of suits *in personam*, II, 440
 - Jurisdiction of suits *in rem*, II, 439
 - Nature of suit, II, 439
 - Indictment, II, 441

INTERNAL REVENUE, *cont'd.*

- Indictment for violation, II, 441
- Informations, II, 440
- Joinder of defendants, II, 442
- Succession taxes:
 - Actions to enforce payment of legacy and succession taxes, II, 440

INTERNATIONAL LAW:

Extradition, see EXTRADITION.

INTERPLEADER, II, 444

See INTERVENTION; RIGHT OF PROPERTY, TRIAL OF.

- Abiding the event, I, 61
- Actions at common law, II, 445
- Affidavits:

- Denying collusion, II, 467

- Agency, II, 450

- Amendments:

- Amendment of bill of interpleader, II, 468

- Answer, II, 469

- Attorney's fees:

- Where bill of interpleader sustained, II, 476

- Bailments:

- Bailor and bailee, II, 452

- Bills in the nature of interpleader, II, 479

- Conditions essential to maintenance of bill, II, 480

- Costs, II, 480

- Decree, II, 480

- Frame of the bill, II, 480

- Object of the bill, II, 479

- Prayer, II, 480

- Bills of interpleader, II, 446

- Affidavit denying collusion, II, 467

- Amendment of bill, II, 468

- Another equitable remedy, II, 448

- Averments of bill, II, 463

- Bailor and bailee, II, 452

- Bills by sheriff, II, 450

- Claimants' rights uncertain, II, 461

- Conditions essential to maintenance of bill, II, 447

- Costs on dismissal of bill, II, 477

- Costs on sustaining the bill, II, 475

- Debtor and creditor, II, 450

- Decree:

- Decree between defendants, II, 473

- Directing actions, issue, or reference, II, 473

- Dismissal of plaintiff, II, 472

- Dismissal without prejudice, II, 473

- Defendants claiming the same fund or thing, II, 452

- Index Pl. & Pr. — 34

INTERPLEADER, *cont'd.*

Bills of interpleader, *cont'd.*

Defendant's pleadings and proceedings before hearing, II, 468

Answer, II, 469

Bringing money into court, II, 470

Cross-bill, II, 470

Demurrer or motion to dismiss, II, 468

Grounds of demurrer, II, 468

Motion to dismiss, II, 469

Plea, II, 469

Replication and preparing cause for hearing, II, 470

Definition, II, 446

Derivative claims, II, 450

Essential averments, II, 463

Exceptions and objections, II, 471

Final decree between defendants, II, 475

Frame of the bill, II, 463

Hearing and decree on the bill, II, 471

Decree, II, 472

Decree between defendants, II, 473

Dismissal of plaintiff, II, 472

Dismissal without prejudice, II, 473

Final decree between defendants, II, 473

Objections at the hearing, II, 471

Interpleader by cross-bill, II, 447

Laches, II, 462

Landlord and tenant, II, 451

No independent liability incurred to one claimant, II, 459

No other adequate remedy, II, 447

Parties to the bill, II, 463

Plaintiff claiming no interest in subject-matter, II, 455

Plaintiff ignorant of claimants' rights, II, 461

Plaintiff indifferent and disinterested, II, 455

Plaintiff indifferent as between claimants, II, 455

Plaintiff in possession of the fund, II, 460

Plaintiff not a wrongdoer, II, 457

Plaintiff not favoring or colluding with either claimant, II, 458

Plaintiff not liable to both claimants, II, 459

Plaintiff without laches, II, 462

Prayer, II, 466

Principal and agent, II, 450

INTERPLEADER, *cont'd.*Bills of interpleader, *cont'd.*

- Privy of title between the claimants, 11, 449
- Remedy at law, 11, 447
- Removal of cause to federal court, 11, 478
- Retaining the bill for other relief or the same relief on other grounds, 11, 474
- Verification, 11, 467
- Code complaints in the nature of interpleader, 11, 481
- Code complaints of interpleader, 11, 478
- Coextensive with bills of interpleader, 11, 478
- Concurrent with statutory interpleader, 11, 478
- Decree, 11, 479
- Hearing, 11, 479
- Pleadings, 11, 479

Collusion, 11, 467

Affidavit denying collusion, 11, 467

Common law, 11, 445

Complaints, see *infra*, Code complaints of interpleader.

Costs, 5, 157

Bills in the nature of interpleader, 11, 480

Costs on sustaining bill of interpleader, 11, 475

Counsel fees and expenses, 11, 476

Obtained on motion or at the hearing, 11, 477

Plaintiff guilty of bad faith, 11, 476

Plaintiff proceeding in good faith, 11, 475

On dismissal of bill of interpleader, 11, 477

Counsel fees, 11, 476

Cross-bill, 11, 470

Decree:

Bills in the nature of interpleader, 11, 480

Code complaints of interpleader, 11, 479

Decree between defendants, 11, 473

Directing action, issue, or reference, 11, 473

Dismissal of plaintiff, 11, 472

Dismissal without prejudice, 11, 473

Demurrers in chancery, 11, 468

Equity, see *infra*, Bills of interpleader.

Funds and deposits in court 11, 470

Issues to the jury, 11, 636

Setting aside or disregarding verdict, 11, 707

INTERPLEADER, *cont'd.*

Laches, 11, 462

Landlord and tenant, 11, 451; 12, 903, 922

Parties to action:

Bills of interpleader, 11, 463

Payment into court, 11, 470

Plea, 11, 469

Prayer for relief, 11, 466

General relief, 11, 467

Prayer for injunction, 11, 466

Specific relief, 11, 467

That defendant interplead, 11, 466

Removal of causes, 11, 478

Reward, 18, 1159

Security for costs, 19, 361

Sheriffs:

Bill by sheriff, 11, 450

Substitution of parties (see SUBSTITUTION OF PARTIES), 20, 1047

Trusts and trustees:

Instructions of court, 22, 66

Verification:

Bills of interpleader, 11, 467

Wills, 22, 1203

INTERPRETATION, see CONSTRUCTION; CONSTRUCTION OF PLEADINGS. Verdict, see VERDICT.**INTERPRETATION OF WILLS, see WILLS.****INTERPRETERS, 6, 528; 8, 95**

Depositions, 6, 528

Discovery:

Communications between attorney and client, 6, 751

Examination of witnesses, 8, 95

Deaf and dumb witness, 8, 96

Impeaching interpreter, 8, 96

In general, 8, 95

Witness unable to speak English language intelligibly, 8, 95

INTERROGATORIES, 1, 255, 285; 3, 344; 4, 786, 796; 6, 75, 487; 9, 820**See ANSWERS IN EQUITY PLEADING; LETTERS ROGATORY; SPECIAL INTERROGATORIES TO JURIES.**

Admiralty, 1, 255

By defendant, 1, 256

By libellant, 1, 255

Bills in equity, 3, 344

General interrogatories, 3, 344

Interrogating part, 3, 344

Special interrogatories, 3, 345

Contempt, 4, 786, 796

Defaults:

Failure to answer, 6, 75

Depositions, 6, 495

Examples, 6, 495, 497

In general, 6, 494

Proof of service, 6, 496

Settling interrogatories, 6, 496

Time of filing, 6, 495

INTERROGATORIES, *cont'd.**Examination of parties before trial, see***EXAMINATION OF PARTIES BEFORE TRIAL.***Garnishment, see GARNISHMENT.*

Mandamus, 13, 553

Penalties and penal actions, 16, 293

Production of documents, 6, 807

Rescission, cancellation, and reformation of contracts, 18, 853

Scandal and impertinence (*see SCANDAL AND IMPERTINENCE*), 19, 184, 185**INTERSTATE COMMERCE, 11, 482**

Actions to enforce orders of commission, 11, 491

Appeal, 11, 492

Jurisdiction, 11, 491

Nature of remedy, 11, 492

Necessary parties, 11, 492

Who may institute proceedings, 11, 491

Actions to recover damages, 11, 492

Complaint, 11, 493

Jurisdiction, 11, 492

Adjournment, 11, 487

Amendments:

Answer, 11, 487

Complaints, 11, 486

Answer, 11, 486

Amendment, 11, 487

Contents and effect of failure to answer, 11, 486

Verification, 11, 486

Complaints, 11, 485

Actions to recover damages, 11, 493

Amendment, 11, 486

Must be by petition, 11, 485

Must be supported by evidence, 11, 485

Names of parties, 11, 485

Verification, 11, 485

Criminal procedure, 11, 493

Generally, 11, 493

Indictment of agents, 11, 493

When indictment will lie, 11, 493

Damages:

Actions to recover damages, 11, 492

Demurrers:

Method of demurring to complaint, 11, 486

Depositions, 11, 487

Dismissal, discontinuance, and nonsuit, 11, 488

Findings:

Submission of proposed findings, 11, 488

Hearing, 11, 487

Adjournment, 11, 487

Stay of proceedings, 11, 487

Time and place, 11, 487

INTERSTATE COMMERCE, *cont'd.*

Intervention, 11, 485

Jurisdiction:

Actions to enforce orders of commission, 11, 491

Actions to recover damages, 11, 492

Jurisdiction of the commission, 11, 483

Names of parties, 11, 485

Orders, 11, 489

Actions to enforce orders of commission, 11, 491

Parties:

Actions to enforce orders of commission, 11, 492

Proceedings before interstate commerce commission, 11, 484

Complaint concerning several carriers, 11, 484

Complaint concerning single carrier, 11, 484

Interest of complainant, 11, 485

Intervention, 11, 485

Petition (*see infra*, Complaints):

Rehearing, 11, 488

Proceedings before interstate commerce commission, 11, 483

Answer, 11, 486

Complaints, see infra, Complaints.

Depositions, 11, 487

Dismissal and discontinuance, 11, 488

Effect of decision of commission as precedent, 11, 491

Hearing, 11, 487

Jurisdiction of the commission, 11, 483

Method of demurring, 11, 486

Orders, 11, 489

Parties, 11, 484

Rehearing, 11, 488

Reparation, 11, 490

Replication, 11, 487

Report, 11, 490

Service of papers, 11, 487

Stipulation as to facts, 11, 488

Submission of proposed findings, 11, 488

Rehearing, 11, 488

Application by one not a party, 11, 489

Consideration of petition, 11, 489

In general, 11, 488

Petition, 11, 488

Reopening case without application, 11, 489

Reparation, 11, 490

Replications and replies, 11, 487

INTERSTATE COMMERCE, *cont'd.*

- Report, 11, 490
 - Essentials of report, 11, 490
 - Necessity for report, 11, 490
 - Service of process, 11, 487
 - Stipulation as to facts, 11, 488
 - United States courts, 11, 491
 - Actions to recover damages, 11, 492
 - Civil actions to enforce orders of commission, 11, 491
 - Criminal proceedings, 11, 493
 - Proceedings in general, 11, 491
 - Verification:
 - Answer, 11, 486
 - Complaints, 11, 485
- INTERVENTION, 11, 494**
- See **INTERPLEADER; RIGHT OF PROPERTY, TRIAL OF.**
- Admiralty:**
- How accomplished, 1, 288
 - Suit for wages, 1, 288
- Amendments, 11, 507**
- Answer to petition, 11, 508**
- Appeals, 2, 154; 11, 511**
- After final judgment, 2, 156
 - Appeal from order refusing leave, 11, 505
 - From what judgment or orders, 2, 155
 - Intervention subsequent to decree, 2, 156
 - Who may appeal, 2, 154
 - Who may intervene, 2, 155
- Assignment for benefit of creditors, 2, 873**
- Chattel mortgages, 4, 524**
- Complaints, 11, 506**
- Amendment, 11, 507
 - Dismissal of complaint, 11, 508
 - Essential averments, 11, 506
 - In general, 11, 506
- Consent, 11, 502**
- Corporations, 5, 60**
- Costs, 5, 157**
- Liability for costs, 11, 511
- Courts, see infra, Leave to intervene.*
- Creditors' bills, 5, 553**
- Definition, 11, 495**
- Demurrer, 11, 508**
- Right of intervener to demur, 11, 509
- Dismissal, discontinuance, and non-suit, 6, 856**
- Effect of termination of the suit, 6, 986
- Dismissal of petition, 11, 508**
- Divorce, 7, 59**
- Effect of judgment in suit, 11, 511
 - Eminent domain, 7, 504
- Exceptions and objections, 8, 192; 11, 505**
- Existence of another remedy, 11, 502**

INTERVENTION, *cont'd.*

- Inconsistent pleas, 11, 509
- Insurance, 11, 401
- Interstate commerce, 11, 485
- Issues to the jury, 11, 636
 - Setting aside or disregarding verdict, 11, 707
- Judgment, effect of, 11, 511
- Jurisdiction, 11, 495
- Jury:
 - Right of intervener to jury trial, 11, 509
- Leave to intervene, 11, 504
 - Appeal from order refusing leave, 11, 505
 - Necessity for, 11, 504
- Liability of intervener, 11, 509
- Intervener must not retard suit, 11, 510
- Intervener must take suit as he finds it, 11, 509
- Liability for costs, 11, 511
- Lost instruments and records:
 - Re-execution and restoration of lost instruments, 13, 352
- Mandamus, 13, 551, 664
 - Collusion between relator and respondent, 13, 665
 - Defendants, 13, 666
 - Persons whose rights are affected, 13, 664
 - Plaintiffs, 13, 665
 - Restrictions on intervention, 13, 666
 - To compel permission to intervene, 13, 551
 - Vacation of erroneous order, 13, 552
- Mechanics' liens, 13, 967
- Objections to intervention, 11, 505
 - Waiver of right to object, 11, 506
 - When to be taken, 11, 505
- Optional exercise of right, 11, 502
- Parties, see infra, Who may intervene.*
- Patents, 16, 75
- Petition, 11, 506
 - Amendment, 11, 507
 - Dismissal of petition, 11, 508
 - Essential averments, 11, 506
 - In general, 11, 506
- Privity, 11, 500
- Receivers, 17, 768
- Removal of causes, 18, 167, 282
- Replevin, 18, 510
- Retarding suit, 11, 510
- Review, 18, 1010
- Rights of intervener, 11, 509
 - Intervener must not retard suit, 11, 510
 - Intervener must take suit as he finds it, 11, 509
 - Liability for costs, 11, 511

INTERVENTION, *cont'd.*

- Rights of intervener, *cont'd.*
 - Right to demur, 11, 509
 - Right to jury trial, 11, 509
 - Right to plead inconsistent pleas, 11, 509
 - Right to prosecute original suit, 11, 509
- Sequestration:
 - In Louisiana, 19, 554
- Service of process, 11, 507
- Set-off, recoupment, and counter claim:
 - Against intervener, 19, 730
- Statutes:
 - Statutory requirements, 11, 502
 - Time for intervention, 11, 503
- Suretyship, 16, 937
- Time for intervention, 11, 503, 511
 - In equity, 11, 504
 - Under statutes, 11, 503
- Trover and conversion, 21, 1054
- Waiver of right, 11, 503, 506
- Who may intervene, 11, 495
 - Attachment proceedings, 11, 498
 - Beneficiaries of a trust, 11, 500
 - Compliance with statutory requirements, 11, 502
 - Equity, 11, 498
 - Exercise of right optional, 11, 502
 - Existence of another remedy, 11, 502
 - In general, 11, 495
 - Intervention by consent, 11, 502
 - Parties in privacy, 11, 500
 - Parties without privacy or interest, 11, 500
 - Party having an interest generally, 11, 496
 - Party having beneficial interest in the decree, 11, 499
 - Persons belonging to a class represented in the suit, 11, 499
 - Strangers seeking to litigate with plaintiff, 11, 501
 - Under statutes, 11, 495
 - Waiver of right, 11, 503
- Winding up corporations, 22, 1261

INTOXICATING LIQUORS, 11, 513

See CERTIORARI; CIVIL DAMAGE ACTS; DRUNKENNESS; JURY.

- Actions for recovery of penalties and forfeitures, 11, 578
 - Certainty in declaration and complaint, 11, 578
 - Complaint by overseer of the poor, 11, 578

Agency:

- Sale to or by agent, 11, 550, 554

Amendments:

- Indictment, 11, 574
- Warrant, 11, 587

INTOXICATING LIQUORS, *cont'd.*

Apologies, see *infra*, Three-mile law.

Carriers of goods:

- Unlawful transportation of liquors, 11, 572

Certainty of allegation, 11, 515

Character of defendant, 11, 535

Common seller of liquor, 11, 564

How offense is charged, 11, 564

In general, 11, 564

Joinder of defendants, 11, 565

Proof, 11, 565

Unnecessary allegations, 11, 565

Complaints, see *infra*, Indictments complaints, and informations.

Conjunctive allegations, 11, 519

Contra formam statuti, 11, 520

Counts (see *infra*, Verdict):

- Election as to counts or offenses, 11, 575

Joinder of offenses, 11, 573

Declaration and complaint, 11, 578

Certainty in declaration and complaint, 11, 578

Complaint by overseer of the poor, 11, 578

Description of place in complaint and warrant, 11, 582

Defects cured by verdict, 11, 577

Definiteness and certainty in pleadings:

- Indictments, complaints, and informations for unlawful sales, barbers, and gifts, 11, 515

Disjunctive or conjunctive allegations, 11, 518

Distilling unlawfully, 11, 569

Druggists:

Indictment for unlawful sale by druggist, 11, 567

In general, 11, 567

Sold as a beverage, 11, 567

Unnecessary averments, 11, 567

Negative averments, 11, 529, 530

Duplicity, 11, 522

Acts constituting distinct offenses, 11, 524

As to liquors sold, 11, 523

As to place, 11, 523

As to time, 11, 522

Cognate acts, 11, 525

Dual character of purchaser, 11, 522

Joint and several sales, 11, 522

Keeping place and selling, 11, 525

Selling and giving away, 11, 525

Selling at retail to be drunk on premises, 11, 524

Selling on Sunday at retail or without license, 11, 524

Unlawfully sold or caused to be sold, 11, 524

INTOXICATING LIQUORS, *cont'd.*

Election day:

- Averments as to place, 11, 541
- Indictment, 11, 557
- Indictment for keeping open at prohibited time, 11, 571

Election of remedies:

- Election as to counts or offenses, 11, 575

- Exposing with intent to sell, 11, 567
- Following language of statute, 11, 520, 530

Forfeiture, 11, 580

- Adopting complaint as part of warrant, 11, 586

Amendment, 11, 587

- Building occupied by defendant and another, 11, 584

Claim to seized liquors, 11, 587

- Complaint, libel, or information after seizure, 11, 582

Description of liquors to be seized, 11, 585

- Description of place in complaint and warrant, 11, 582

Description of vehicle, 11, 584

- Directing search of several places, 11, 587

Direction as to time of service of warrant, 11, 587

Kinds of liquor, 11, 585

Name, 11, 584

- Nature of the proceeding, 11, 580

Occupancy, street, and number, 11, 584

Officer's return, 11, 587

Ownership, 11, 584

Proof, 11, 585

Quantity of liquor, 11, 585

- Repugnant words of description, 11, 584

Requisites of complaint or information, 11, 581

- Requisites of warrant generally, 11, 586

Variance, 11, 585

Gifts, see *infra*, Indictments, complaints, and informations.

Habitual drunkards:

- Indictment for sale to habitual drunkard, 11, 559

Averment as to habit, 11, 559

- Averment as to notice, 11, 560

Occupation of defendant, 11, 560

Holiday:

- Indictment, 11, 557

Idem sonans, 11, 554

- Indictments, complaints, and informations, 11, 515

Alleging name of purchaser, 11, 547

INTOXICATING LIQUORS, *cont'd.*Indictments, complaints, and informations, *cont'd.*Alleging name of purchaser, *con.*

- As means of identification, 11, 548

Necessity of alleging, 11, 547

Sales to agent, 11, 550

- Sufficiency of allegation, 11, 549, 550

Alleging sham gift, 11, 536

Amendments, 11, 574

- Averment as to defendant, 11, 535

Character or occupation, 11, 535

Residence, 11, 536

- Averment as to mode of sale or gift, 11, 542

Averment as to place, 11, 540

Form of averment, 11, 542

- Presumption after verdict, 11, 541

Sale without license, 11, 541

Selling at retail, 11, 541

- Selling on election day, 11, 541

When must be made, 11, 540

- When need not be made, 11, 540

Averment as to price, 11, 547

Averment as to time, 11, 537

Continuando, 11, 538

In general, 11, 537

Laying venue, 11, 540

On or about, 11, 538

Sale on Sunday, 11, 537

- Sunday as surplusage, 11, 538

Averment of kind of liquor sold, 11, 545

- Averment of quantity of liquor sold, 11, 543

Form of averment, 11, 543

- Necessity of averment, 11, 543

Averment peculiar to particular offense, 11, 556

- Averment that liquor sold was intoxicating, 11, 545

Certainty of allegation, 11, 515

As general requisite, 11, 515

- Certainty required in a complaint for violation of a municipal ordinance, 11, 517

Disjunctive or conjunctive allegations, 11, 518

- Indictment should state particular facts, 11, 516

Mere belief of complainant, 11, 516

Statutory form, 11, 517

INTOXICATING LIQUORS, *cont'd.*

Indictments, complaints, and informations, *cont'd.*

Charging offense differently in different counts, 11, 526

Common seller of liquor, 11, 564

Counts, election as to, 11, 577

Defects cured by verdict, 11, 577

Disjunctive or conjunctive allegations, 11, 518

Alternative averment as to kind of liquor, 11, 518

Charging acts not unlawful, 11, 518

Charging offenses in the alternative, 11, 518

Conjunctive allegations, 11, 519

Disjunctive allegations, 11, 518

Disjunctive as to place, 11, 519

Druggist, 11, 567

Duplicity, 11, 522

Acts constituting distinct offenses, 11, 524

As to liquors sold, 11, 523

As to place, 11, 523

As to time, 11, 522

Cognate acts, 11, 525

Dual character of purchaser, 111, 522

Joint and several sales, 11, 522

Keeping place and selling, 11, 525

Selling and giving away, 11, 525

Selling at retail to be drunk on premises, 11, 524

Selling on Sunday at retail or without license, 11, 524

Unlawfully sold or caused to be sold, 11, 524

Election as to counts or offenses, 11, 575

Election day, 11, 557

Following language of statute, 11, 520

In general, 11, 520

Negative averments, 11, 530

Where statute does not create an offense, 11, 521

Words of equivalent import, 11, 520

Forfeiture, see infra, Forfeiture.

Gift, alleging sham, 11, 536

Habitual drunkards, 11, 559

Infants, 11, 557

Joinder of offenses, see infra, Joinder of offenses.

Keeping and exposing with intent to sell, 11, 567

INTOXICATING LIQUORS, *cont'd.*

Indictments, complaints, and informations, *cont'd.*

Keeping open at prohibited time, 11, 571

Laying venue, 11, 540

Legal holiday, 11, 557

License, 11, 556

Local option, 11, 560

Minors, 11, 557

Negative averments, 11, 528

Allegation that owner has no license, 11, 529

Exceptions and defenses, 11, 533

Following language of statute, 11, 530

Form of averment, 11, 529, 532

Form of negative averment, 11, 534

Local option law, 11, 529

Necessity, 11, 533

Negative pregnant, 11, 531

Of license or authority to sell, 11, 528

Presumption of license, 11, 533

References from one count to another, 11, 532

Sale by druggist, 11, 529

Sale by two or more jointly, 11, 532

Unnecessary averments, 11, 530

When necessary, 11, 528

When not necessary, 11, 528

Prohibited hour, 11, 557

Prohibition law, 11, 564

Retailing without license, 11, 556

Sale without having paid special tax or posted receipt, 11, 559

Scienter, 11, 535

Screen law, 11, 573

Searches and seizures, see infra, Searches and seizures.

Selling liquor to be drunk on premises, 11, 559

Sufficient allegation that liquor was intoxicating, 11, 546

Sunday, 11, 556, 537, 571

Surplusage, 11, 527

In general, 11, 527

Knowledge, 11, 528

License, 11, 528

Place where liquor was to be drunk, 11, 527

Purchaser, 11, 528

Sales, barters, and gifts, 11, 527

Sunday, 11, 538

Three-mile law, 11, 563

Tippling house, 11, 566

INTOXICATING LIQUORS, *cont'd.*

Indictments, complaints, and informations, *cont'd.*

Unlawfully manufacturing and distilling, 11, 569

Unlawfully selling at prohibited time, 11, 556

Unlawful prescription by physician, 11, 570

Unlawful sales, barters, and gifts, in general, 11, 515

Unlawful transportation of liquors, 11, 572

Use to be made of the article sold, 11, 537

Variance, 11, 551

As to act of selling, 11, 551

Idem sonans, 11, 554

Joint and separate sales, 11, 555

Kind of liquor sold, 11, 551

Local option district, 11, 555

Name of purchaser, 11, 553

Place, 11, 553

Proof of different offense generally, 11, 551

Purpose of sale, 11, 555

Quantity of liquor sold, 11, 552

Sale to agent, 11, 554

Sale to agent of undisclosed principal, 11, 554

Sale to minor, 11, 555

Venue, 11, 540

Infants:

Indictment for unlawful sale to minor:

"Father," 11, 558

"Master," 11, 558

Necessary allegations, 11, 557

Unnecessary allegations, 11, 558

Variance, 11, 555

Informations, see *infra*, Indictments, complaints, and informations.

Intent (see *infra*, Scienter):

Keeping and exposing with intent to sell, 11, 568

Intoxicating, 11, 545

Joinder of offenses, 11, 573

In same count, 11, 574

In separate counts, 11, 573

Joinder of parties:

Common seller of liquor, 11, 565

Jury, see *JURY*.

Kinds of liquor:

Searches and seizures, 11, 585

Kinds of liquor sold, 11, 545

Variance, 11, 551

Knowledge, 11, 535

Surplusage, 11, 528

INTOXICATING LIQUORS, *cont'd.*

Licenses:

Averment of kind of liquor sold, 11, 545

Indictment for retailing without license, 11, 556

Negative averments, 11, 528

Presumption of license, 11, 533

Retailing without license, 11, 556

Surplusage, 11, 528

Local-option law:

Indictment for violation of, 11, 560

Allegation as to adoption of local-option law, 11, 561

Division of district, 11, 562

Gift or exchange, 11, 563

In general, 11, 560

Negative averments, 11, 529

Variance, 11, 555

Violation of prohibition law, 11, 564

Mandamus:

Return or answer, 13, 737

Manufacturing unlawfully, 11, 569

Minors, see *infra*, Infants.

Name:

Description of place in complaint and warrant, 11, 584

Name of purchaser, 11, 547

As means of identification, 11, 548

Idem sonans, 11, 554

Necessity of alleging, 11, 547

Sale to agent, 11, 550

Sufficiency of allegation, 11, 549, 550

Variance, 11, 553

Negative averments, 11, 528, 533

Allegation that the owner had no license, 11, 529

Exceptions and defenses, 11, 533

Following language of statute, 11, 530

Form of averment, 11, 529, 532

Form of negative averment, 11, 534

General averment, 11, 532

Local-option law, 11, 529

Necessity, 11, 533

Negative pregnant, 11, 531

Of license or authority to sell, 11, 528

Presumption of license, 11, 533

References from one count to another, 11, 532

Sale by druggist, 11, 529

Sale by two or more jointly, 11, 532

Unnecessary averments, 11, 531

When necessary, 11, 528

When not necessary, 11, 528

INTOXICATING LIQUORS, *cont'd.*

Physicians and surgeons:
 Indictment for unlawful prescription by physician, 11, 570
 Place (see *infra*, Local-option law; Three-mile law):
 Averments as to place in indictment, 11, 540
 Form of averment, 11, 542
 Presumption after verdict, 11, 541
 Sale without license, 11, 541
 Selling at retail, 11, 541
 Selling on election day, 11, 541
 When must be made, 11, 540
 When need not be made, 11, 540
 Description of place in complaint and warrant for seizure of liquors, 11, 582
 Duplicity, 11, 523
 Keeping and exposing with intent to sell, 11, 568
 Selling liquor to be drunk on premises, 11, 559
 Surplusage, 11, 527
 Unlawful transportation of liquors, 11, 572
 Variance, 11, 553
 Prescription of physician, 11, 570
 Presumption of license, 11, 533
 Price, averment as to, 11, 547
 Prohibition, 11, 564
 Quantity of liquor sold, 11, 643
 Form of averment, 11, 543
 Necessity of averment, 11, 543
 Variance, 11, 552
 Repugnancy, 11, 550
 Residence of defendant, 11, 536
 Scienter, 11, 535
 Screen law, violation of, 11, 573
 Searches and seizures, 11, 580
 Adopting complaint as part of warrant, 11, 586
 Amendment, 11, 587
 Building occupied by defendant and another, 11, 584
 Claim to seized liquors, 11, 587
 Complaint, libel, or information after seizure, 11, 582
 Description of liquors to be seized, 11, 585
 Description of place in complaint and warrant, 11, 582
 Description of vehicle, 11, 584
 Directing search of several places, 11, 587
 Direction as to time of service, 11, 587
 Kinds of liquor, 11, 585
 Name, 11, 584

INTOXICATING LIQUORS, *cont'd.*

Searches and seizures, *cont'd.*
 Nature of the proceeding, 11, 580
 Occupancy, street, and number, 11, 584
 Officer's return, 11, 587
 Ownership, 11, 584
 Proof, 11, 585
 Quantity of liquor, 11, 585
 Repugnant words of description, 11, 584
 Requisites of complaint or information, 11, 581
 Requisites of warrant generally, 11, 586
 Variance, 11, 585
 Spirituous, 11, 545
 Statutes:
 Following language of statute, 11, 520, 530
 Sunday:
 Averments of sale on, in indictment, 11, 537
 Indictment, 11, 556
 Keeping open at prohibited time, 11, 571
 Surplusage, 11, 527
 In general, 11, 527
 Knowledge, 11, 528
 License, 11, 528
 Place where liquor was to be drunk, 11, 527
 Purchaser, 11, 528
 Sales, barter, and gifts, 11, 527
 Sunday, 11, 538
 Three-mile law:
 Indictment for violation of, 11, 563
 Centre of district, 11, 563
 Description of college, 11, 564
 In general, 11, 563
 Order of court, 11, 563
 Time:
 Averments as to indictment, 11, 537
 Continuando, 11, 538
 In general, 11, 537
 Laying venue, 11, 540
 On or about, 11, 538
 Sale on Sunday, 11, 537
 Sunday as surplusage, 11, 538
 Duplicity, 11, 522
 Indictment for selling at prohibited hour, 11, 557
 Indictment for unlawfully selling on prohibited day, 11, 556
 Sale on election day, 11, 557
 Sale on legal holiday, 11, 557
 Sale on Sunday, 11, 556

INTOXICATING LIQUORS, cont'd.**Time, cont'd.**

Keeping and exposing with intent to sell, 11, 568

Keeping open at prohibited time, 11, 571

At prohibited hours, 11, 572

Election day, 11, 571

On prohibited days, 11, 571

Sunday, 11, 571

Tippling house, 11, 566

Transportation of liquors, unlawful, 11, 572

Variance, 11, 551

As to act of selling, 11, 551

Idem sonans, 11, 554

Joint and separate sales, 11, 555

Kind of liquor sold, 11, 551

Local-option district, 11, 555

Name of purchaser, 11, 553

Place, 11, 553

Proof of different offense, generally, 11, 551

Purpose of sale, 11, 555

Quantity of liquor sold, 11, 552

Sale to agent, 11, 554

Sale to agent of undisclosed principal, 11, 554

Sale to minor, 11, 555

Searches and seizures, 11, 585

Verdict, 11, 580

Venue:

Laying venue, 11, 540

Verdict, 11, 578

Alternative verdict, 11, 580

Conviction of included offense, 11, 580

Defects cured by verdict, 11, 577

General verdict, 11, 578

Irreconcilable counts, 11, 579

One good count, 11, 579

Separate verdicts on separate counts, 11, 580

Several counts of same nature, 11, 579

Special verdict, 11, 579

Specifying count, 11, 580

Variance, 11, 580

Warrants, see infra, Searches and seizures.

INTOXICATION:

Civil damage acts, see CIVIL DAMAGE ACTS.

Impeachment of witnesses, 10, 311

New trial, see NEW TRIAL.

INVENTIONS, see PATENTS.**INVESTMENTS:**

Trusts and trustees, see TRUSTS AND TRUSTEES.

IRRELEVANCY, see SCANDAL AND IMPERTINENCE; SHAM AND FRIVOLOUS PLEADINGS; STRIKING OUT; SURPLUSAGE; IRRELEVANT OR REDUNDANT MATTER.

IRRELEVANCY, cont'd.

Answers in equity pleading:

Answer to irrelevant matter, 1, 874

IRRIGATION, 11, 589

Amendments, 11, 596

Answer, 11, 595

Complaint, see infra, Declaration and complaint.

Condemnation proceedings, 11, 590

Declaration and complaint, 11, 593

Insufficient averments, 11, 594

Sufficient averments, 11, 593

Decrees, 11, 596

Districts, 11, 589

Eminent domain (see EMINENT DOMAIN), 11, 590

Injunctions, 11, 597

Irrigation districts, 11, 589

Joinder of counts and causes, 11, 593

Joinder of parties, 11, 592

Defendants, 11, 592

Plaintiffs, 11, 592

Judgments, 11, 596

Mandamus, 11, 596

Parties to actions, 11, 591

Examples, 11, 591, 592

In general, 11, 591

Proper parties, 11, 591

Petition, 11, 593

ISSUE (see GENERAL ISSUE):

Instructions, see INSTRUCTIONS.

Joinder of issue:

Prayers for relief, see PRAYERS FOR RELIEF.

Judgments, see JUDGMENTS.

Notes of issue, see NOTES OF ISSUE.

Tender of issue, see PLEAS AT LAW.

ISSUES TO THE JURY, 11, 599

Accounts and accounting, 11, 649

Action directed instead of issue, 11, 752

Appellate review, 11, 755

Bringing on for further directions, 11, 754

Costs, 11, 755

Effect of verdict and judgment, 11, 755

Grounds, 11, 753

In general, 11, 752

New trial, 11, 754

Object, 11, 753

Proceedings on verdict and judgment in court directing action, 11, 754

Trial, 11, 754

Actions and proceedings at law, 11, 620

Additional issues, 11, 672

Admissions, 11, 686

Adopting verdict, 11, 705

Affidavits.

Application, 11, 655

Alabama, 11, 608

ISSUES TO THE JURY, *cont'd.*

Amendments, II, 673

Answer:

Introducing and reading answer,
II, 684Appellate review (see *infra*, New
trial), II, 738Action directed instead of issue,
II, 755Admission or rejection of evi-
dence, II, 750

Allowance of issue, II, 738

Bill of exceptions, II, 739, 741

Decree on merits or remand of
case, II, 751Direction of issue by appellate
court, II, 751Exceptions and objections not
taken below, II, 750

Findings of fact, II, 741

Form, II, 739

General effect of verdict and
action of court, II, 745

Instructions, II, 748

Manner of framing, II, 739

Method of submission, II, 739

Methods of securing appellate
review, II, 741Motion for new trial and appeal,
II, 741

New trial, II, 743

Of allowance or refusal of issue,
II, 738

Bill of exceptions, II, 739

Decree of appellate court, II,
740Improper direction of issue,
II, 740Improper refusal of issue,
II, 740Power to review in general,
II, 738Review of form, manner of
framing, settlement, etc.,
II, 739Review of method of sub-
mission, II, 739

Writ of error, II, 739

Proceedings at trial, verdict, ac-
tion of court, etc., II, 741

Refusal of issue, II, 738

Review of grant or refusal of
new trial, II, 743

Scope of review, II, 745

Settlement, II, 739

Transmission of exceptions in
evidence, II, 744Verdict general instead of
special, II, 747Verdict or decree against evi-
dence or weight thereof, II, 747Where errors or irregularities
occurred at the trial, II, 748**ISSUES TO THE JURY, *cont'd.***Appellate review, *cont'd.*Where no steps are taken to
avoid verdict or decree, II, 743Where verdict should have been
disregarded or set aside, II,
746

Writ of error, II, 739, 743

Application, II, 654

Affidavit, II, 655

Application for proper and ma-
terial issue, II, 655Demand in pleading or by inde-
pendent application, II, 655

Evidence, II, 655

Ex mero motu, II, 654*New trial*, see *infra*, New trial.

Notice of motion, II, 655

Requisites and accompaniments
of application or demand, II,
655Time of application and order
for issue, II, 657After reference to master,
II, 661At or within a definite time,
II, 658

Before hearing, II, 657

Before or after pleadings
closed, II, 660Before or after testimony
taken, II, 661On hearing and during trial,
II, 660

Arizona, II, 609

Arkansas, II, 609

Attachment, II, 633

Attorney, see *infra*, Counsel.

Bankruptcy, II, 652

Bills of exceptions, see *infra*, Excep-
tions and objections.

Boundaries, II, 652

Burden of proof, II, 682

By whom granted, II, 653

Court of proper county, II, 653

In general, II, 653

Jurisdiction, II, 653

Single judge, II, 653

California, II, 609

Cancellation, II, 634

Certificate to judge, effect of, II, 705

Chancery, see *infra*, Equity cases.

Change of venue, II, 676

Colorado, II, 609

Contents, see *infra*, Scope, contents,
and requisites.*Contest of wills*, see PROBATE AND
CONTEST OF WILLS.

Continuance, II, 681

Costs, II, 735

Action directed instead of issue,
II, 755

Application for new trial, II, 737

ISSUES TO THE JURY, *cont'd.*Further hearing and trial, *cont'd.*Where verdict covers entire case,
II, 697Where verdict does not cover
entire case, II, 697

Garnishment, II, 633

General form of issues II, 668

General principles governing: grant-
ing, or denying, II, 626

Georgia, II, 609

Habeas corpus, II, 634

Heirship, II, 652

Illinois, II, 610

Impaneling, see *infra*, Jury.

Indiana, II, 610

Injunctions, II, 641

Setting aside or disregarding
verdict, II, 707

Insanity, II, 648

Insolvency and bankruptcy, II, 652

Instructions, II, 687

Appellate review, II, 74

Directing verdict, II, 689

General power and duty to give,
II, 687

New trial for errors, II, 729

Errors not prejudicial, II,
729

Errors prejudicial, II, 729

Where no instructions are
given, II, 729

On evidence given, II, 688

On the law applicable to the
case, II, 688Pertinence of instructions, II,
688

Return, II, 695

Interpleader, II, 636

Setting aside or disregarding
verdict, II, 707

Intervention, II, 636

Setting aside or disregarding
verdict, II, 707

Introduction, II, 605

Iowa, II, 611

Judge:

Effect of certificate, II, 705

Powers and duties of judge, II,
680

Examples, II, 680

In general, II, 680

Judgments (see *infra*, Final decision
by court), II, 693Equitable relief against judg-
ments, II, 1216*Pro forma* decree or judgment,
II, 699

Jurisdiction, II, 653

Jury (see *infra*, By whom granted),
II, 678Common, special, or struck
jury, II, 678**ISSUES TO THE JURY, *cont'd.***Jury, *cont'd.*General conduct and control of
trial, II, 679New trial for misconduct or
irregularity of jury, II, 729Presenting issues to the jury,
II, 681Summoning, impaneling, and
qualification, II, 678Sworn to try issues submitted,
II, 679

Time of impaneling, II, 678

Kansas, II, 612

Kentucky, II, 612

Leases, II, 651

Legal and equitable issues in the
same action or suit, II, 620Difference between plaintiff and
defendant in respect to legal
and equitable issues, II, 621

Equitable issues, II, 621

In general, II, 620

Legal issues, II, 620

Order of trial of issues, II, 620

Legitimacy, II, 652

Liens, II, 640

Lost papers, II, 651

Marriage, II, 652

Maryland, II, 612

Massachusetts, II, 612

Materiality of issues, II, 632

Mechanics' lien:

Setting aside or disregarding
verdict, II, 708

Michigan, II, 614

Minnesota, II, 614

Minuteness, II, 632

Miscellaneous instances, II, 652

Mississippi, II, 614

Missouri, II, 614

Mistake, II, 40

Montana, II, 614

Mortgages, II, 639

Motions (see *infra*, Application):Motion for new trial and appeal,
II, 741*New trial*, see *infra*, New trial.

Nature, II, 605

Nevada, II, 616

New Hampshire, II, 614

New Jersey, II, 615

New trial (see *infra*, Appellate re-
view), II, 712, 741Action directed instead of issue,
II, 754Appellate review of grant or
refusal of new trial, II, 743

Application or motion for, II, 714

As to time, II, 717

At what stage of proceed-
ings, II, 717

How made, II, 718

ISSUES TO THE JURY, *cont'd.*

-New trial, *cont'd.*
 Application or motion for, *cont'd.*
 New York, 11, 716
 Notice of motion, 11, 718
 Propriety and necessity, 11, 714
 When made, 11, 717
 Where made, 11, 715
 Costs, 11, 736, 737
 Court must be satisfied, 11, 722
 Discretion of court, 11, 714
 Equitable and legal principles, 11, 721
 Errors committed on the trial, 11, 728
 In admission or rejection of evidence, 11, 728
 In instruction, 11, 729
 Errors on trial, 11, 723
Ex mero motu, 11, 714
 Fourth trial, 11, 733
 Granting new trial without setting aside verdict, 11, 732
 Incorrect or improper verdict, 11, 724
 Dissatisfaction of one of judges, 11, 726
 Trial court satisfied or dissatisfied, 11, 725
 Verdict against the evidence or weight thereof, 11, 724
 Verdict insensible, contradictory, or uncertain, 11, 727
 Verdict not responsive or determinative of issues, 11, 727
 Verdict too broad, 11, 727
 Virginia, 11, 726
 In general, 11, 712
 Inheritance in question, 11, 721
 Jury, 11, 729
 Misconduct or irregularity of jury, 11, 729
 Motion for, 11, 714
 New evidence, 11, 731
 New trials subsequent to second trial, 11, 732
 Principles governing granting or refusing, 11, 720
 Proceedings on new trial, 11, 734
 Setting aside or disregarding verdict, 11, 708
 Surprise at trial, 11, 730
 Terms and conditions on granting, 11, 732
 Third trial, 11, 733
 Upon application, 11, 714
 Upon what the court proceeds for determination, 11, 718
 Consideration of exceptions, 11, 719

ISSUES TO THE JURY, *cont'd.*

New trial, *cont'd.*
 Upon what the court proceeds for determination, *cont'd.*
 In general, 11, 718
 Procurement of proceedings and evidence, 11, 719
 Record of proceedings and evidence for appellate court, 11, 719
 Verdict against the evidence, 11, 733
 Verdict contradictory, 11, 733
 Verdict not given in evidence, 11, 735
 Where issue of right and verdict conclusive, 11, 733
 Where issues are discretionary or of right, 11, 720
 Where necessary objections were not made, 11, 720
 Where the court is not satisfied, 11, 722
 New York, 11, 615
 Nonsuit, 11, 692
 North Carolina, 11, 617
 Notice of motion, 11, 655
 Notice of motion for new trial, 11, 718
 Nuisances, 11, 643
 Number of questions or issues submitted, 11, 664
 Numerous, 11, 632
 Object, 11, 607
 Ohio, 11, 617
 Opening and closing, 11, 682
 Order for trial of issue, 11, 656
 Necessity for, 11, 656
 Requisites, 11, 656
 Sufficiency, 11, 657
 Time of application and order for issue, 11, 657
 After reference to master, 11, 661
 At or within a definite time, 11, 658
 Before and after pleadings closed, 11, 660
 Before and after testimony taken, 11, 661
 Before hearing, 11, 657
 On hearing and during trial, 11, 660
 Orders:
 Setting aside order, 11, 673
 Oregon, 11, 617
 Partition, 11, 635
 Partnership, 11, 648
 Accounting, dissolution, and settlement, 15, 1097
 Direction of issue to try fact of partnership, 15, 998

ISSUES TO THE JURY, *cont'd.*

- Verdict, *cont'd.*
 - New trial for incorrect or improper verdict, *cont'd.*
 - Verdict against the evidence or weight thereof, 11, 724
 - Verdict insensible, contradictory, or uncertain, 11, 727
 - Verdict not responsive or determinative of issues, 11, 727
 - Verdict too broad, 11, 727
 - Virginia, 11, 726
 - Return of findings and proceeding at trial, 11, 694
 - Setting aside or disregarding verdict*, see *infra*, *Setting aside or disregarding verdict*.
 - Verdict against the evidence or weight thereof, 11, 724
 - Virginia, 11, 619
 - Washington, 11, 619
 - West Virginia, 11, 616
 - Wills (see **PROBATE AND CONTEST OF WILLS**):
 - Bills in equity and statutory actions to set aside wills, 22, 1220
 - Bill in equity to establish wills, 22, 1217
 - Wisconsin, 11, 619
 - Withdrawing issues, 11, 673
 - Writing:
 - Final decision by court, 11, 701
- JAIL LIMITS:**
- Escape, 7, 928
- JEOFAILS, 11, 796**
- See **AMENDMENTS**.
- Aider by verdict, 22, 950
 - Amendment distinguished from, 11, 756
 - Definiteness and certainty in pleadings, 6, 280, 283
 - Origin of the term, 11, 756
 - Penalties and penal actions, 16, 299
 - Scope of statute, 11, 756
 - Verdict, 22, 950
- JEOPARDY (see FORMER CONVICTION OR ACQUITTAL):**
- Burglary:
 - Joinder of burglary and larceny, 3, 786, 792
 - Dismissal, discontinuance, and non-suit, 6, 990
 - Drunkness, 7, 230
 - Error, writ of, 7, 858
 - Treason, 21, 777

JOINDER, 11, 757See **MISJOINDER**.

- Prayers for relief, 16, 785
- Alternative relief, 16, 787
- Inconsistent prayers, 16, 788

JOINDER, *cont'd.*

- Prayers for relief, *cont'd.*
 - In general, 16, 785
 - Injunction and damages, 16, 787
 - Legal and equitable relief, 16, 787
- JOINDER IN DEMURRERS**, see **DEMURRERS; DEMURRERS TO EVIDENCE**.
- JOINDER OF ACTIONS, 15, 79**
 - Bonds, 3, 638
 - Death by wrongful act, 5, 850
 - Judgments, 11, 1168
 - Judgments as contracts, 11, 835
 - Mandamus, 13, 504
 - Acts relating to the same matter, 13, 505
 - Mandamus and other proceedings, 13, 504
 - Mandamus to enforce several rights, 13, 505
 - Partition, 15, 802
- Partnership:
 - Actions against partners, 15, 926
 - Assignees, 15, 919
 - Surviving partner, 15, 919
- JOINDER OF CHARGES:**
 - False imprisonment, 8, 854
- JOINDER OF COUNTS AND CAUSES (see COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS):**
 - Abduction, 1, 52
 - Abortion, 1, 65
 - Administrators, 1, 210
 - Admiralty, 1, 257
 - One suit as bar to another, 1, 258
 - Right to join, 1, 257
 - Aider by verdict, 22, 949
 - An action to recover real property, 1, 200
 - Answers in code pleading*, see **ANSWERS IN CODE PLEADING**.
- Appeals:
 - Joinder of good and bad counts, 2, 465
 - Misjoinder of counts, 2, 465
 - Arrest of judgment, 2, 802
 - Assault and battery, 2, 844
 - Slander, 1, 188
 - Assumpsit, 1, 169
 - Breach of promise of marriage, 3, 684
 - California, 1, 190
 - Carriers, 3, 854
 - Cause of action must exist at time of commencement of suit, 1, 209
 - Cause of action not affecting all parties, 1, 209
 - Causes of action arising *ex contractu*, 1, 194
 - Causes of action *ex delicto* and *ex contractu*, 1, 194
 - Certiorari, 1, 206

JOINDER OF COUNTS AND CAUSES, *cont'd.*

Certiorari and mandamus, 1, 174
 Code pleading, 1, 180
 Adjacent landowners claiming damages *in solido*, 1, 184
 Assault and battery, 1, 188
 Causes of action arising out of the same transaction, 1, 181
 Code states, 1, 180
 Courts inclined to segregation, 1, 188
 Damage to land and personal injury, 1, 186
 Different code provisions, 1, 180 to 183
 Equitable damages asked touching land, 1, 187
 False imprisonment and malicious prosecution, 1, 189
 False imprisonment and slander, 1, 188
 Full relief, 1, 206
 Inconsistent causes of action, 1, 183
 Injury to property and person by same negligent act, 1, 184
 Injury to real property and other causes of action, 1, 186
 Meaning of the term transaction, 1, 185
 Multifariousness, 1, 189
 Person and property injured by the same negligent act, 1, 189
 Real property, 1, 188
 Same transaction, 1, 181
 Single cause of action, 1, 183
 Single contract, 1, 183
 "Transaction," 1, 185
 Transaction must give cause of action in same right, 1, 190
 Two kinds of relief, 1, 183
 Warranty and fraud, 1, 189
 Common law, 1, 163
 Conspiracy, 4, 718
 Conversion of property, 1, 195
 Corporations:
 Joinder of claims against corporation with one against stockholder, 20, 720
 Counterfeiting, 5, 292
 Covenant, 5, 368
 Covenant and assumpsit, 1, 169
 Damages, 5, 773
 Death by wrongful act, 5, 850, 851
 Debt, 5, 921
 Debt and assumpsit, 1, 168
 Debt and detinue, 1, 168
 Demurrers:
 Waiver of defects by failure to demur, 6, 377
 Who may sue, 6, 311
 Divorce, 1, 199; 7, 82

CAUSES, *cont'd.*

Divorce proceedings, 1, 199
 Ejectment, 1, 173; 7, 312
 Apartments in same building, 7, 313
 Consolidation of causes, 7, 313
 General rule stated, 7, 312
 Uniformity of rule, 7, 313
 Elections, 7, 403
 Betting on elections, 7, 405
 Embezzlement, 7, 446
 Election between counts, 7, 450
 Embezzlement and false pretenses, 7, 450
 Embezzlement and larceny, 7, 449
 In general, 7, 446
 Larceny and embezzlement, 7, 456
 Successive acts constituting one offense, 7, 447
 When the copulative may be used, 7, 448
 Equity, 1, 175
 Equitable remedies as touching land under the code, 1, 187
 Joinder in equity, 1, 180
 Equity actions at law and suits in equity, 1, 175
 Estoppel, 8, 10
 Exceptions and objections, 8, 201
Ex contractu and *ex delicto*, 1, 170
 Causes of action arising *ex contractu* under the code, 1, 197
 Code pleading, 1, 194
 Torts under the code, 1, 204
Ex delicto (see *Ex contractu* and *ex delicto*), 1, 204
 Executors and administrators, 1, 177; 6, 662
 Actions against executors and administrators, 8, 681
 In individual and representative capacity, 8, 680
 Objection for misjoinder, 8, 682
 Code pleading, 1, 210
 How misjoinder cured, 8, 665
 Objections for misjoinder, 8, 664
 What may be joined, 8, 662
 What may not be joined, 8, 663
 Extortion, 8, 797
 False imprisonment, 8, 844
 Libel and slander, 1, 189
 Malicious prosecution, 1, 189
 Joinder, 1, 189
 Slander, 1, 189
 False pretenses, 8, 881
 False representations and deceit, 8, 910
 Forcible entry and detainer, 1, 206; 9, 60

JOINDER OF COUNTS AND JOINDER OF COUNTS AND CAUSES, *cont'd.*

Foreclosure of mortgages, 1, 203
 Forgery, 9, 600
 Assisting in forging, 9, 602
 Different grades of same offense, 9, 600
 Different modes of committing offenses, 9, 602
 Distinct and substantive offenses, 9, 604
 Remedy for misjoinder, 9, 604
 Fornication, 9, 645
 Fraud and contract:
 Code pleading, 1, 194
 Fraud and warranty, 1, 189, 194
 Full relief, 1, 206
 Game and game laws, 9, 764
 Gaming, 9, 791
 Charging specific offense, 9, 793
 Election of count by prosecution, 9, 792
 Generally, 9, 791
 Particularity required, 9, 792
 General rule, 1, 169
 Herder's lien, 1, 205
 Husband, 1, 210
 Husband and wife, 10, 239
 Actions against husband and wife, 10, 267
 How objection for misjoinder taken, 10, 240
 In general, 10, 239
 Inconsistent account, 1, 166
Indictments, see **INDICTMENTS**.
 Injunctions:
 Real action and injunction, 1, 202
 Tort and injunction under the codes, 1, 204
 Injuries to character, 1, 193
 Injuries to property, 1, 199
 Injury to personal property by same, 1, 165
 Irrigation, 11, 593
 Joinder of actions dependent on form, 1, 164
 Judgments, 1, 193; 11, 1168
 Judgments against partnership in different names, 1, 193
 Libel and slander, 1, 174; 13, 60
 Assault and battery, 1, 188
 Assault and battery and injury to property, 13, 61
 Different sets of words, 13, 62
 False imprisonment, 1, 189
 In general, 13, 60
 Libel, slander, and malicious prosecution, 13, 61
 Malicious prosecution, 1, 193
 Several defendants, 13, 62
 Louisiana, 1, 176
 Malicious prosecution, 13, 423
 Abuse of process, 13, 424

CAUSES, *cont'd.*

Malicious prosecution, *cont'd.*
 False imprisonment, 13, 423
 How objections for misjoinder taken, 13, 425
 In general, 13, 423
 Libel, 13, 424
 Separate counts and paragraphs, 13, 424
 Slander, 1, 174; 13, 424
 Mandamus, 1, 206
 Mandamus and certiorari, 1, 174
 Marriage (annulment):
 Joinder of causes for ancillary relief, 13, 878
 Master and servant:
 Actions for injuries to employees, 13, 911
 Mechanics' liens, 1, 205; 13, 992
 Miscellaneous cases, 1, 190
Money counts, see **MONEY COUNTS**.
 Multifariousness, 1, 189
 Negotiable instruments, 14, 569, 585
 Effect of admission of instrument under common counts, 14, 569
 In general, 14, 585
 Joinder of special and common counts in general, 14, 568
 Necessity of common counts, 14, 569
 Several notes in one count, 14, 587
 Nuisances, 14, 1115
 Abatement and damages, 14, 1116
 Amendment, 14, 1116
 Erection and continuance of nuisance, 14, 1115
 Official bonds, 15, 119, 167
 Partition, 1, 202; 15, 802
 Code pleading, 1, 202
 Partnership, 15, 919
 Actions against partners, 15, 926
 Assignees, 15, 919
 Surviving partner, 15, 919
 Passengers, 15, 1143
 Patents:
 Bill in equity for infringement, 16, 94
 Infringement of one or more claims, 16, 94
 Uniting different grounds of relief, 16, 95
 Uniting several defendants, 16, 97
 Uniting several patents, 16, 95
 Interference and infringement, 16, 27
 Payment, 16, 200
 Penalties and penal actions, 1, 172, 198; 16, 281
 Code pleading, 1, 191

- JOINDER OF COUNTS AND CAUSES, *cont'd.***
 Construction of statutes, 16, 283
 Distinct penalties, 16, 281
 Effect on jurisdiction, 16, 283
 Limitations upon joinder, 16, 282
 Separate counts, 16, 282
 Statutory and common-law causes, 16, 281
 Personal injuries, 16, 374
 Injuries to husband and wife, 16, 375
 Injuries to person and property, 16, 374
 Injury to person and cause of action for death, 16, 375
 Legal and equitable causes of action, 16, 376
 Plaintiff different, 1, 166
 Pledges, 16, 637, 650
 Public officers, 17, 149
 Quieting title, 17, 344
Qui tam actions, see *infra*, Penalties and penal actions.
 Railroads:
 Injuries to animals, 17, 555
 Contract and tort, 17, 556
 Injuries at same time or different times, 17, 556
 Same cause in one count or several counts, 17, 557
 Several causes in one suit, 17, 555
 Injury to crops, 17, 628
 Injury to land and property, 17, 627
 Real action and injunction, 1, 202
 Real property, 1, 173, 200
 Actions to recover under the code, 1, 200
 Codes, 1, 186
 Segregation of real property causes, 1, 188
Redemption, see *REDEMPTION*.
 References, 17, 993
 Remittitur:
 Misjoinder of counts and causes, 18, 139
 Replevin, 1, 174, 205; 18, 534
 Under codes, 1, 205
 Representative, 1, 177, 210
Rescission, cancellation, and reformation of contracts, see *RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS*.
 Sales, 19, 34
 Warranties and false representations, 19, 109
 Same transaction, 1, 188
 Sheriffs and constables, 20, 131, 174
 Single cause of action, 1, 165
Slander, see *infra*, Libel and slander.
- JOINDER OF COUNTS AND CAUSES, *cont'd.***
 Statement of the same case in different forms, 1, 174
 Stock and stockholders (see *STOCK AND STOCKHOLDERS*), 20, 681
 Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 768
 Supplemental pleadings, 21, 73
Surplusage, irrelevant or redundant matter, see *SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER*.
Taxation, see *TAXATION*.
 Time, 1, 209
 Tort and contract, 1, 170
 Tort and injunction, 1, 204
 Torts, 1, 204
 Transaction, 1, 185
 Trespass (see *TRESPASS*), 1, 169
 Trespassing, vicious, and diseased animals, 21, 889
 Continuous trespasses, 21, 890
 In general, 21, 889
 Trespass on the case, 1, 169; 21, 905
 Assumpsit and case, 21, 906
 Trover, 1, 168
 Trover and case, 21, 906
 Vi et armis and case, 21, 906
 Trespass to try title, 21, 928
 Trover and case, 1, 168
 Trover and conversion (see *TROVER AND CONVERSION*), 1, 196
 Trusts and trustees, 22, 195
 United States courts, 22, 296
 Vendor and purchaser:
 Purchaser's action for damages, 22, 753
 Warranty, breach of, and fraud, 1, 167
 Waters and watercourses, 22, 1152, 1162, 1169, 1174
 Ways, 22, 1186
 Work and labor, 22, 1363
 Joinder of counts, 22, 1363
 Separate statement of causes of action, 22, 1364
 Several items constituting single cause of action, 22, 1364
- JOINDER OF DEFENDANTS:**
 False pretenses, 8, 882
 Internal revenue, 11, 442
 Rape, 17, 661
- JOINDER OF DEFENSE** (see *ANSWERS IN CODE PLEADING*):
 Answers in equity pleading, 1, 889
- JOINDER OF EVIDENCE:**
 Burglary, 3, 782
 Burglary and accessory, 3, 782
 Burglary and aiding and abetting, 3, 783
 Burglary and assault, 3, 783
 Burglary and larceny, 3, 784
 Burglary and receiving stolen goods, 3, 796

JOINDER OF EVIDENCE, *cont'd.***Burglary, *cont'd.***

Burglary and robbery, 3, 796

In general, 3, 782

Several burglaries, 3, 784

Conviction of lesser offense under indictment for higher:

Assault and battery, 2, 856

JOINDER OF ISSUE:*Prayers for relief*, see PRAYERS FOR RELIEF.**JOINDER OF OFFENSES:**

Disorderly houses, 7, 8

Extortion, 8, 794

False pretenses, 8, 881

Homicide, see HOMICIDE.

Incest, 10, 338

Indictments, see INDICTMENTS.*Larceny*, see LARCENY.

Obscenity, 14, 1154

Public officers, 17, 239

Rape, 17, 661

Added counts, 17, 661

Assault with intent to commit and attempt, 17, 661

In general, 17, 661

Prosecutor not compelled to elect, 17, 661

Rape and assault with intent to commit rape, 17, 661

Varying charges to meet age of female, 17, 661

Receiving stolen goods, 17, 896

Riot, 18, 1204

Robbery, 18, 1230

Separate trials, see SEPARATE TRIALS.*Set-off*, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.**JOINDER OF PARTIES, 15, 527**

See CREDITORS' BILLS.

Accessories and the like, 1, 67

Joinder with principal, 1, 69

Actions *ex contractu*, 15, 528

Actions for money had and received, 15, 540

Averment of excuse for non-joinder, 15, 532

Contracts both joint and several, 15, 538

Controlling effect of interest of promisee, 15, 535

Death of a joint obligee, 15, 531

General rules of interpretation, 15, 534

Implied contracts, 15, 539

Interest of promisee, 15, 536

Interests under distinct contracts, 15, 528

Interests under the same contract, 15, 528

Interpretation of express contracts, 15, 534

JOINDER OF PARTIES, *cont'd.***Actions *ex contractu*, *cont'd.***

Joinder of personal representative and survivor, 15, 532

Joint and several contracts, 15, 538

Joint contracts, 15, 528

Language ambiguous, 15, 535

Language unambiguous, 15, 537

Services rendered or goods sold, 15, 540

Several contracts, 15, 533

Severance of interest, 15, 533

Actions *ex delicto*:

At common law, 15, 541

Dismissal of suit, 15, 546

Fraud, 15, 542

Libel and slander, 15, 542

Malicious prosecution, 15, 542

Protection accorded by court, 15, 546

Right to indemnity, 15, 546

Right to use names of necessary co-plaintiffs, 15, 545

When plaintiffs may but need not join, 15, 543

When plaintiffs may or may not join, 15, 541

When plaintiffs must join, 15, 544

Defendants, see *infra*, Defendants at common law.

Adultery, 1, 308

Agency:

Joinder of agent with principal, 16, 895

Agents of corporations, 16, 896

Agents with an interest, 16, 895

General rule, 16, 895

When either may sue or be sued, 16, 896

Where fraud is charged, 16, 896

Joinder of principal and agent in action for tort, 15, 560

Answers:

Misjoinder under codes, 15, 760, 762, 764

Nonjoinder under codes, 15, 754

Appeals, see APPEALS.**Bonds:**

Defendants, 3, 642

Plaintiffs, 3, 641

Bridges, 3, 701

Carriers:

Action against carriers, 3, 837

Joinder as affected by form of action, 3, 841

JOINDER OF PARTIES, *cont'd.*

- Certiorari, 4, 174
- Circumstances authorizing, 4, 175
 - In general, 4, 174
- Joint defendants in civil actions, 4, 175
 - To save expense, 4, 174
- Change of venue, 4, 419
- Chattel mortgages:
 - Foreclosure:
 - Misjoinder of parties, 4, 523
 - Mortgagor and assignee, 4, 522
 - Other mortgagees, 4, 522
 - Parties defendant, 4, 522
 - Parties plaintiff, 4, 520
 - Persons claiming an interest, 4, 522
 - Unnecessary parties, 4, 523
- Civil damage acts, 4, 543
 - Joinder of husband and wife, 4, 544
 - Joinder of seller and surety on his bond, 4, 545
 - Joinder of sellers, 4, 544
 - Joinder of sellers and owners of premises, 4, 546
 - Joinder of wife and children, 4, 543
- Codes and practice acts (see *infra*, Nonjoinder):
 - Defendants, 15, 737
 - Actions *ex delicto*, 15, 740
 - Actions to recover real property, 15, 741
 - General rule, 15, 737
 - Illustrations of general rule, 15, 739
 - Joinder of several to ascertain which is liable, 15, 746
 - Joint contracts made joint and several, 15, 744
 - Mandatory joinder, 15, 746
 - Permissive joinder, 15, 737
 - Persons jointly and severally liable, 15, 745
 - Persons liable separately for same debt on different obligations, 15, 743
 - Persons severally liable on same instrument, 15, 741
 - Special statutory provisions, 15, 740
 - Sureties on same or separate instruments, 15, 743
 - Survivors and representatives of deceased obligor, 15, 743
 - Tenants in common, joint tenants, or commissioners, 15, 746
- Misjoinder, see infra*, Misjoinder.

JOINDER OF PARTIES, *cont'd.*

- Codes and practice acts, *cont'd.*
 - Plaintiffs, 15, 731
 - Distinct causes of action, 15, 733
 - Mandatory joinder, 15, 734
 - No distinction between legal and equitable actions, 15, 736
 - One not interested, 15, 733
 - Permissive joinder, 15, 731
 - Unwilling plaintiffs made defendants, 15, 735
- Common scold, 4, 586
- Copyright, 5, 18
- Death:
 - Death of joint contractor, 15, 551
 - Death of joint obligee, 15, 531
 - Executors and administrators, 15, 552
 - Several contracts, 15, 553
- Death by wrongful act, 5, 857
 - Parties defendant, 5, 860
- Defendants:
 - Equity, 15, 674
 - General rules as to defendants, 15, 674
 - Joinder of defendants, 15, 675
 - Liability to be sued, 15, 674
- Defendants at common law, 15, 547
 - Actions *ex contractu*, 15, 548
 - Bankruptcy of one party, 15, 549
 - Claims barred as against one party, 15, 549
 - Death of joint contractor, 15, 551
 - Death of the last survivor, 15, 552
 - Exceptions to the rule as to joint contracts, 15, 549
 - Infants and married women, 15, 550
 - Interest under distinct contracts, 15, 548
 - Joint and several contracts, 15, 553
 - Joint contracts, 15, 548
 - Liabilities under same contract, 15, 548
 - Nominal and dormant partners, 15, 550
 - One party out of jurisdiction, 15, 550
 - Rules of interpretation as to what are joint and several contracts, 15, 555
 - Several contracts, 15, 553
 - Statutory changes, 15, 557
 - Actions *ex delicto*, 15, 557
 - Death of one joint tortfeasor, 15, 562

JOINDER OF PARTIES, *cont'd.*Defendants at common law, *cont'd.*Actions *ex delicto*, *cont'd.*

Exception as to joint owners of land, 15, 560

Joinder of master and servant or principal and agent, 15, 560

Joint torts, 15, 557

Several and distinct torts, 15, 562

Statement and application of rule, 15, 557

Tort founded on contract, 15, 563

Alternative liabilities, 15, 547

In general, 15, 547

Successive liabilities, 15, 547

Demurrers:

Defect of parties, 6, 319

Equity, 15, 681, 698

Misjoinder under codes, 15, 760, 762

Nonjoinder under codes, 15, 747

Waiver of defects by failure to demur, 6, 374

Who may demur:

For misjoinder of defendants, 6, 310

For misjoinder of plaintiffs, 6, 311

Demurrers in chancery:

Waiver of defects by failure to demur, 6, 434

Detinue, 6, 649

Defendant, 6, 649

Plaintiff, 6, 649

Discovery, 6, 763**Dismissal, discontinuance, and nonsuit, 6, 901**

Dismissal for misjoinder in chancery, 6, 901

Dismissal for misjoinder under code procedure, 6, 901

Misjoinder in equity, 15, 699

Nonjoinder in equity, 15, 699

Nonsuit for misjoinder, 6, 902

Disorderly houses, 7, 8**Druggists, 7, 226****Easements, 7, 257****Ejectment, 7, 313**

Coparceners, 7, 315

Death of codefendant, 7, 315

Ejectment by mortgagee, 7, 314

Joinder of defendants, 7, 314

Joinder of plaintiffs, 7, 313

Joint tenants, 7, 315

Objection for improper joinder, 7, 315

Person out of possession, 7, 314

Tenants in common, 7, 315

Widow and heirs, 7, 283

JOINDER OF PARTIES, *cont'd.*

Elections, 7, 380

Offenses against election laws, 7, 408

Eminent domain:

Appeals, 7, 640

Defendant, 7, 503

Parties plaintiff, 7, 501

Equitable attachment, 7, 793

Equity (see PARTIES TO ACTIONS):

Complainants, 15, 666

Nature of common interest authorizing joinder, 15, 670

Necessity of joint or common interest, 15, 666

Whether party should be complainant or defendant, 15, 672

Who may join, 15, 666

Raising, waiving, and curing objections (see PARTIES TO ACTIONS), 15, 681

Error, writ of, 7, 860

Amendments, 7, 864

Defendants, 7, 865

Dismissal or quashal, 7, 904

Effect of nonjoinder or misjoinder, 7, 864

Formal parties, 7, 863

General rule, 7, 860

Husband and wife, 7, 862

Reason of rule, 7, 861

Separate interests, 7, 863

Summons and severance, 7, 862

When joinder unnecessary, 7, 863

Exceptions and objections, 8, 188*Ex contractu*, see *infra*, Actions *ex contractu*.*Ex delicto*, see *infra*, Actions *ex delicto*; Defendants at common law.**Executors and administrators:**

Actions against representatives, 8, 680

Corepresentatives, 8, 661*Feme sole* after marriage, 8, 662

How objection for nonjoinder taken, 8, 661

In general, 8, 661

Under the codes, 8, 662

Equity, 8, 695

As defendants, 8, 695

As plaintiffs, 8, 695

Heirs and devisees, 10, 39**Heirs and devisees and personal representatives in equity, 10, 50****Joinder as plaintiffs in actions on joint obligations, 8, 662****Joinder of corepresentatives as defendants, 8, 680**

JOINDER OF PARTIES, *cont'd.***Executors and administrators, *cont'd.***

Joinder of defendants in actions
on joint obligations, 8, 680

Joinder of heirs and devisees,
10, 33

False imprisonment, 8, 844

False representations and deceit, 8,
896

Forcible entry and detainer, 9, 52

Fraud, 9, 682; 15, 542

Corporation, 9, 683

Defendants, 9, 682

Parties interested, 9, 684

Gaming, 9, 768

Garnishment:

Joinder of defendants, 9, 815

Guaranty, 16, 942

Guardians:

Actions by third persons against
guardian, 9, 936

Actions by third persons against
ward, 9, 935

Heirs and devisees:

Actions at law against heirs and
devisees on statutory liabili-
ties, 10, 38

Common-law actions against
heirs and devisees, 10, 31

Homesteads and exemptions, 10, 59,
62

Husband and wife, see HUSBAND AND
WIFE.

Indecent exposure, 10, 340

Indictments, 10, 554

Offenses that may be jointly
committed, 10, 554

Where the act is not capable of
joint commission, 10, 555

Infants:

Defendants, 15, 550

Injunctions, 10, 909

Plaintiff, 10, 905

Insurance, 11, 401

Beneficiaries, 11, 402

Defendants, 11, 403

Plaintiffs, 11, 401

Interest, severance of, 15, 533

Intoxicating liquors:

Common seller of liquor, 11,
565

Irrigation, 11, 692

Defendants, 11, 592

Plaintiffs, 11, 592

Joint and several contracts, 15, 534

Action for money had and re-
ceived, 15, 540

Consideration moving from sev-
eral persons jointly, 15, 539

Contracts both joint and several,
15, 538

Contracts expressly joint where
interest is several, 15, 536

JOINDER OF PARTIES, *cont'd.***Joint and several contracts, *cont'd.***

Controlling effect of interest of
promisee, 15, 535

General rules of interpretation,
15, 534

Implied contracts, 15, 539

Note payable to A or B, 15, 535

Separate consideration, 15, 539

Services rendered or goods sold,
15, 540

Where interest of each promisee
is specified, 15, 536

Where language is unambigu-
ous, 15, 535

Where language used is ambigu-
ous, 15, 537

Where the damage as well as the
interest is several, 15, 538

Joint contracts, 15, 528

Joint tenants and tenants in common,
11, 771

Action for recovery of real
property, 11, 775

Action for rent, 11, 779

Assumpsit on waiver of tort, 11,
772

Detinue, 11, 774

Exception to rule requiring join-
der, 11, 773

In general, 11, 771

Mesne profits, 11, 778

Objections for nonjoinder, 11,
774

Personal actions, 11, 771

Real actions, 11, 771

Replevin, 11, 774

Suit for use of property, 11, 771

Joint torts, 15, 557

Judgments, 11, 847

Against joint defendants, 11,
847

At common law where several
defendants are sued jointly in
an action *ex contractu*, 11, 847

Confession by one joint defend-
ant after action brought, 11,
849

Declaration against two charg-
ing a joint liability and a joint
plea, 11, 848

Default by some, successful de-
fense by others, 11, 851

Equitable relief against judg-
ments, 11, 1173

Exceptions to the general rule,
11, 850

Judgment as an entirety, 11, 858

Judgments as contracts, 11, 835

Relief between codefendants, 11,
860

Reversal as an entirety, 11, 859

Statutes, 11, 853

JOINDER OF PARTIES, *cont'd.***Judgments, *cont'd.***

Test as to whether several judgment is proper, 11, 856

Torts, 11, 852

When judgment joint, 11, 856

When judgment several, 11, 857

Lewdness, 13, 23

Libel and slander, 15, 542

Limited partnership, 15, 1115, 1116

Lost instruments and records, 13, 363

Malicious prosecution, 13, 427; 15, 542

Mandamus:

Joinder of relators, 13, 645

Respondents, 13, 564

Collection of taxes, 13, 657

Enforcing claims against municipal corporations, 13, 658

In general, 13, 654

Members of boards, 13, 659

Multiplicity of actions, 13, 656

Municipal corporations and officers, 13, 657

Officers of private corporations, 13, 658

Particular cases, 13, 657

Persons collaterally interested, 13, 655

Private corporations, 13, 658

Private individual interest in official acts, 13, 660

Title to office involved, 13, 659

Title to real property involved, 13, 660

Who cannot be joined, 13, 655

Who must be joined, 13, 656

Who need be joined, 13, 654

Married women:

Defendants, 15, 550

Master and owner:

Carriers, 3, 840

Master and servant:

Torts, 15, 560

Mills and milldams, 14, 7, 8

Misjoinder:

Codes and practice acts, 15, 757

Answer, 15, 762, 764

Defendants, 15, 762

Demurrer, 15, 760, 762

Federal courts, 15, 759

In general, 15, 757

Notice of objection, 15, 764

Plaintiffs, 15, 750

Remedy for misjoinder, 15, 758

Equity, 15, 695

Amendment, 15, 700

JOINDER OF PARTIES, *cont'd.***Misjoinder, *cont'd.*****Equity, *cont'd.***

Dismissal, 15, 699

How and when raised, 15, 695

Sufficiency of demurrer, 15, 698

Who may object, 15, 698

Misjoinder of defendants at common law, 15, 582

In actions *ex contractu*, 15, 582

In actions *ex delicto*, 15, 583

Severance, 15, 583

Misjoinder of plaintiffs at common law:

Actions *ex contractu*, 15, 580

Actions *ex delicto*, 15, 581

Motions, 14, 96

Negotiable instruments, see **NEGOTIABLE INSTRUMENTS**.

Nonjoinder:

Codes and practice acts, 15, 747

Demurrer, 15, 747

Appeal from judgment on demurrer, 15, 753

Demurrer for want of sufficient facts, 15, 750

Dismissal upon sustaining demurrer for nonjoinder of defendants, 15, 753

General demurrer insufficient, 15, 750

Right of court to bring in other parties, 15, 751

Specification of ground for demurrer, 15, 749

Waiver by failure to demur, 15, 750

Who may demur for nonjoinder of a defendant, 15, 752

Notice of objection for nonjoinder, 15, 764

Raising, waiving, and curing objections, 15, 747

Equity, 15, 681

Defect not jurisdictional, 15, 695

Demurrer, 15, 681

Dismissal, reversal, and amendment to remedy defect, 15, 690

Motion, 15, 687

Objection by court *sua sponte*, 15, 687

Plea or answer, 15, 685

Remedy of omitted party, 15, 695

Removal of defect pending objection, 15, 694

JOINDER OF PARTIES, *cont'd.*Nonjoinder, *cont'd.*Equity, *cont'd.*Time of objecting and
waiver by failure to object,
16, 688Nonjoinder of parties defendant at
common law, 15, 570Actions *ex contractu*, 15, 570Actions *ex delicto*, 15, 580

Demurrer, 15, 577

Failure to excuse nonjoinder, 15,
579

General issue, 15, 575

Intendment in support of de-
murrer or motion in arrest, 15,
578

Motion in arrest, 15, 577

Must give plaintiff a better writ,
15, 576Omission caused by discontinu-
ance, 15, 576

Oyer and demurrer, 15, 579

Plea in bar, 15, 570

Showing that joint contractor
still lives, 15, 578Verification, burden of proof,
bringing in new parties, etc.,
15, 577

What plea must aver, 15, 576

Nonjoinder of plaintiffs at common
law, 15, 564Actions *ex contractu*, 15, 564Actions *ex delicto*, 15, 567Demurrer and motion in arrest,
15, 569Form and sufficiency of plea, 15,
570Nonsuit at trial for variance, 15,
566

Plea in abatement, 15, 567

Statutory changes, 15, 567

Waiver of objections, 15, 567

Where nonjoinder does not ap-
pear upon face of pleadings,
15, 565

Nonjoinder under codes:

Answer, 15, 754

In general, 15, 754

Sufficiency of answer, 15, 755

Waiver by failure to plead,
15, 756

Nuisances, 14, 1107, 1108, 1138

In general, 14, 1138

Landlord and tenant, 14, 1140

Obscenity:

Indictments, 14, 1155

Officers of private corporations, 15,
71, 72

Official bonds:

Joinder of defendants, 15, 116

Joinder of different sets of sure-
ties, 15, 117**JOINDER OF PARTIES, *cont'd.***Official bonds, *cont'd.*

Joint and several, 15, 115

Joint bonds, 15, 116

Plaintiffs, 15, 107

Several bonds, 15, 117

Partition, 15, 804

Parties plaintiff, 15, 791

Partnership (see PARTNERSHIP):

Actions to charge estate of de-
ceased partner, 15, 1001Joinder of assignee for ben-
efit of creditors, 15, 1002Joinder of surviving part-
ners, 15, 1001Bill or complaint for accounting,
dissolution, and settlement, 15,
1087

Defendants, 15, 550

Suits in equity between partners
and third persons, 15, 988Actions to foreclose mort-
gages, 15, 989Action to set aside fraudu-
lent conveyance, 15, 989

Application of rule, 15, 988

General rule, 15, 988

Inability to render decree,
15, 990Joinder of all surviving part-
ners, 19, 993Joinder of dormant part-
ners, 15, 993

Joinder of heirs, 15, 993

Joinder of representatives
of deceased partners, 15,
991Objection to nonjoinder of
partners, 15, 994

Demurrer, 15, 994

Manner of raising, 15,
994

Plea, 15, 994

Time of raising, 15, 994

Parties by representation,
15, 991Suits by or against less than
all the partners, 15, 990Suit to recover demand due
partnership, 15, 988Unwilling plaintiff made de-
fendant, 15, 989Where all partners are not
joined, 15, 990Where joinder of some part-
ners will oust jurisdiction,
15, 990

Passengers, 15, 1144

Patents:

Bill in equity for infringement,
16, 94Infringement of one or more
claims, 16, 94

JOINDER OF PARTIES, *cont'd.***Patents, *cont'd.***

- Bill in equity for infringement, *cont'd.*
 - Uniting different grounds of relief, 16, 95
 - Uniting several defendants, 16, 97
 - Uniting several patents, 16, 95
- Corporations and their officers and agents, 16, 75
- Defendant in action for infringement, 16, 74
- Executors and administrators, 16, 72
- How objection made for misjoinder, 16, 78
- Joinder of assignee and assignor, 16, 67
- Nonjoinder or misjoinder of plaintiffs, 16, 78
- Owner and licensees, 16, 70, 71
- Penalties and penal actions, 16, 266
 - Construction of statutes, 16, 267
 - Defendants, 16, 267
 - Distinction between remedial and penal actions, 16, 266
 - Informers, 16, 266
 - Party aggrieved, 16, 266
 - Plaintiffs, 16, 266
 - Qui tam* actions, 16, 266
 - Torts, 16, 267
- Plaintiffs at common law, 15, 527
 - Contracts, 15, 527
 - Persons with or without interest, 15, 527
 - Torts, 15, 528
- Probate and contest of wills, 16, 1008
- Quieting title, 17, 318
 - Defendants, 17, 323
 - In general, 17, 318
 - Personal representatives, heirs, and devisees, 17, 319
 - Tenants in common, 17, 319
- Quo warranto*, see *QUO WARRANTO*.
- Receivers:
 - Actions by receivers, 17, 823
- Redemption:
 - Joinder of complainants, 17, 957
 - Junior mortgagees, 17, 957
 - Who may be joined, 17, 957
 - Who may not be joined, 17, 958
 - Joinder of defendants, 17, 962
 - Necessary and proper defendants, 17, 958
- Replevin, 18, 509
- Rescission, cancellation, and reformation of contracts:
 - Parties defendant, 18, 798
 - Parties plaintiff, 18, 796

JOINDER OF PARTIES, *cont'd.*

- Revival of judgments*, see *REVIVAL OF JUDGMENTS*.
- Reward, 18, 1151
- Sales, 19, 12, 14
- Scire facias:
 - Recognizances, 19, 309
- Separate trials*, see *SEPARATE TRIALS*.
- Several contracts, 15, 533
- Sheriffs and constables*, see *SHERIFFS AND CONSTABLES*.
- Specific performance*, see *SPECIFIC PERFORMANCE*.
- Stock and stockholders (see *STOCK AND STOCKHOLDERS*):
 - Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 770, 772
- Substitution of parties, 20, 1028
- Suretyship:
 - Action for contribution, 16, 961
 - Joinder of cosureties in action by surety against principal, 16, 955
- Taxation*, see *TAXATION*.
- Torts*, see *infra*, *Actions ex delicto*.
- Trade-marks and trade names:
 - Parties defendant, 21, 758
 - Parties plaintiff, 21, 757
- Trespass, 21, 805, 808
 - Joinder of plaintiffs, 21, 805
 - Defendants, 21, 806
 - Husband and wife, 21, 805
 - In general, 21, 805
 - Objections for misjoinder, 21, 808
 - Objections for nonjoinder, 21, 808
 - Tenants in common, 21, 805
 - Trespassing, vicious, and diseased animals, 21, 889
- Trespass to try title:
 - Defendants, 21, 930, 931
 - Misjoinder and nonjoinder, 21, 931
 - Plaintiffs, 21, 929
- Trover and conversion:
 - Parties defendant, 21, 1052
 - Buyer and seller, 21, 1053
 - Effect of misjoinder, 21, 1054
 - Husband and wife, 21, 1054
 - In general, 21, 1052
 - Joinder of defendants who have committed separate wrongs, 21, 1053
 - Joint tortfeasors, 21, 1053
 - Master and servant, 21, 1054
 - Principal and agent, 21, 1054
 - Plaintiff, 21, 1049
- Trusts and trustees*, see *TRUSTS AND TRUSTEES*.
- United States courts, 15, 701
 - Following state practice, 15, 706

JOINDER OF PARTIES, *cont'd.*United States courts, *cont'd.*

In general, 15, 701

Making parties under fictitious names, 15, 707

Parties collusively joined, 15, 706

Waste:

Trespass on the case in nature of waste, 22, 1106

JOINT PARTIES, see PARTIES TO ACTION.**JOINT STOCK ASSOCIATIONS, see CORPORATIONS; UNINCORPORATED ASSOCIATIONS.****JOINT TENANTS AND TENANTS IN COMMON:**

Accounts, 11, 758

Common law, 11, 758

Common-law receipt only, 11, 759

Necessary allegations, 11, 759

Actions against third persons, 11, 771

Exception to rule requiring joinder, 11, 773

Joinder in actions for recovery of real property, 11, 775

Joinder in actions for rent, 11, 779

Joinder in assumpsit on waiver of tort, 11, 772

Joinder in replevin or detinue, 11, 774

Joinder in trespass to land, 11, 777

Joinder of parties, 11, 771

Objections for nonjoinder, 11, 774

Actions and suits *inter sese*, 11, 758

Account at common law, 11, 758

Account only for actual receipt, 11, 759

Assumpsit, 11, 760

Conversion, 11, 765

Detinue, 11, 762

Ejectment, 11, 767

Equitable jurisdiction and remedies, 11, 769

Improvements, 11, 761

Injunction, 11, 770

Mesne profits, 11, 768

Parties, 11, 768

Receiver, 11, 770

Repairs, 11, 761

Replevin, 11, 762

Trespass, 11, 763

Trespass on the case, 11, 763

Trespass *quare clausum fregit*, 11, 763

Trespass to try title, 11, 767

Waste, 11, 767

Actions for rent by tenants in common or joint tenants, 12, 862

Assumpsit, 11, 760

Joinder in assumpsit on waiver of tort, 11, 772

JOINT TENANTS AND TENANTS IN COMMON, *cont'd.*

Burglary, 3, 779

Conversion:

Between joint tenants and tenants in common, 11, 755

Conversion by sale, 11, 766

Destruction by chattels, 11, 766

General rules, 11, 765

Mere detention, 11, 765

Property of divisible nature, 11, 766

Destruction of property, 11, 766

Detinue:

Between joint tenants and tenants in common, 11, 762

Joinder of parties, 11, 774

Dower:

Demand, 7, 154

Ejectment, 7, 312

Between joint tenants and tenants in common, 11, 767

Ejectment for ouster, 7, 318

Joinder of parties, 7, 315

Joinder of parties defendant, 7, 317

Joinder of parties plaintiff, 7, 315

Joint tenants, 7, 317

Suing separately, 7, 316

Tenants in common, 7, 315

Ouster a question for jury, 7, 319

Ouster by force, 7, 319

Possession of one possession of all, 7, 317

Proof of ouster, 7, 318

Eminent domain, 7, 511

Equitable jurisdiction and remedies, 11, 769

Executions, 8, 536

Indorsement of the levy, 8, 570

Levy upon land held in cotenancy or joint tenancy, 8, 551

Foreclosure of mortgages, 9, 520

Improvements, 11, 761

Injunctions, 11, 770

Joinder of parties, 11, 771

Action for recovery of real property, 11, 775

Action for rent, 11, 179

Assumpsit on waiver of tort, 11, 772

Detinue, 11, 774

Exception to rule requiring joinder, 11, 773

In general, 11, 771

Mesne profits, 11, 778

Objections for nonjoinder, 11, 774

Personal actions, 11, 771

Real actions, 11, 771

JOINT TENANTS AND TENANTS**IN COMMON, *cont'd.*****Joinder of parties, *cont'd.***

Replevin, 11, 774

Suit for use of property, 11, 771

Landlord and tenant:

Actions for rent by tenants in common or joint tenants, 12, 862

Larceny:

Allegation of ownership, 12, 967

Mechanics' liens:

Tenants in common as parties defendant, 13, 964

Mesne profits, 11, 768, 778

Parties to action:

Action between joint tenants and tenants in common, 11, 768

Partition, 15, 789

Parties plaintiff in equitable and statutory partition, 15, 783

Receiver, 11, 770

Redemption, 17, 954

Rent:

Actions for, 12, 862

Repairs, 11, 761

Replevin:

Between joint tenants and tenants in common, 11, 762

Joinder of parties, 11, 774

Trespass, 21, 805

Between joint tenants and tenants in common, 11, 763

Joinder of parties, 11, 777

Trespass on the case:

Between joint tenants and tenants in common, 11, 763

Trespass to try title:

Between joint tenants and tenants in common, 11, 767

Trover and conversion:

Action between joint tenants and tenants in common, 11, 765

Conversion by sale, 11, 766

Destruction by chattels, 11, 766

General rules, 11, 765

Mere detention, 11, 765

Property of divisible nature, 11, 766

Parties to actions, 21, 1046

Waste:

Between joint tenants and tenants in common, 11, 767

J. P.:

Abbreviations, 1, 43

JUDGES, 11, 780See **BILLS OF EXCEPTIONS; COURTS; JURY.****Affidavits:**

Authority to take, 1, 329

Bills of exceptions:

Certificate of the judge, 3, 389

JUDGES, *cont'd.**Case made on appeal, see CASE MADE ON APPEAL.*

Commitments, 4, 570

Criminal procedure:

Indictment, 11, 781

Death:

New trial, 14, 736

Rehearing, 18, 50

*Directing verdict, see DIRECTING VERDICT.**Disqualification, see infra, Practice where judge is disqualified.**Division of opinion, see DIVISION OF OPINION.**Duty to refrain from prejudicial remarks or conduct, see TRIAL.**Exceptions and objections (see infra, Practice where judge is disqualified):*

Authority of trial judge, 8, 178

Conduct of trial judge, 8, 272

Special and substitute judges, 11, 793

*Findings of court, see FINDINGS OF COURT.***Habeas corpus:**

To whom application made, 9, 1015

Impeachment, 11, 781

Indictment, 11, 781

Indictment for abuse of discretion or judicial power, 17, 254

*Instructions, see INSTRUCTIONS.**Issues to the jury, see ISSUES TO THE JURY.***Judgments:**Rendition of judgment by *de facto* judges, 11, 817

Rendition of judgment by disqualified judge, 11, 816

Signing by judge, 11, 960

Jury:

Communications by judge, 12, 619

*Issues to the jury, see ISSUES TO THE JURY.**Justices of the peace, see JUSTICES OF THE PEACE.**Minutes, see MINUTES.**New trial, see NEW TRIAL.*

Oath, 11, 791

Special and substitute judges, 11, 791

*Objections, see infra, Practice where judge is disqualified.**Practice where judge is disqualified, 11, 781*

Objection by parties, 11, 782

Calling upon another judge, 11, 783

Decision, 11, 783

How raised, 11, 782

JUDGES, *cont'd.*

Practice where judge is disqualified, *cont'd.*

Objection by parties, *cont'd.*

In general, 11, 782

Statutes, 11, 783

Waiver, 11, 783

Recusation on judge's motion, 11, 781

Preliminary examination:

Who may hold preliminary examination, 16, 837

Prohibition, see PROHIBITION.

Records, see RECORDS.

Recusation on judge's motion, 11, 781

References, see REFERENCES.

Removal of causes, see REMOVAL OF CAUSES.

Special and substitute judges, 11, 785

Constitutional limitations regarding, 11, 785

Definition, 11, 785

Duties, 11, 794

Mode of selection, 11, 788

Necessity and sufficiency of proof and authority, 11, 790

Oath, 11, 791

Objections to authority, 11, 793

Powers, 11, 794

Presumption of authority, 11, 792

Proof of authority, 11, 790

Selection, 11, 788

When may act, 11, 786

When necessary, 11, 786

Statement of facts on appeal, see STATEMENT OF FACTS ON APPEAL.

Substitute judges, see *infra*, Special and substitute judges.

Terms and sessions of court, see TERMS AND SESSIONS OF COURT.

Trial, see TRIAL.

United States courts, 22, 304

Vacation, see CHAMBERS AND VACATION.

JUDGMENT LIENS, see LIENS.**JUDGMENT ROLL, see RENDITION AND ENTRY OF JUDGMENTS.****JUDGMENTS, 11, 196**

See ABIDING THE EVENT; APPEAL BONDS AND UNDERTAKINGS; DECREES; FINDINGS OF COURT; FORCIBLE ENTRY AND DETAINER; OPENING, AMENDING, AND VACATING JUDGMENTS; ORDERS; RENDITION AND ENTRY OF JUDGMENTS; SATISFACTION OF JUDGMENTS; SENTENCES; VERDICT.

Abatement in pleading, 1, 30

Finality of judgment, 1, 30, 31

Judgment for defendant, 1, 30

Judgment for plaintiff on demurrer, 1, 30

JUDGMENTS, *cont'd.*

Abatement in pleading, *cont'd.*

Judgment for plaintiff on issue of fact, 1, 31

Puis darrein continuance, 1, 38

Accident:

Equitable relief against judgments, 11, 1180, 1184

Accord and satisfaction:

Equitable relief against judgments, 11, 1179

Accounts and accounting, 1, 86

Equitable relief against judgments, 11, 1175

Final judgments and decrees, 1, 87

Quod computet, 1, 87

Actions, form of, 11, 886

Declaration in debt, judgment, and assumpsit, 11, 886

General and special assumpsit, 11, 887

Judgment for damages in action of debt, 11, 887

Judgment in debt where declaration is in assumpsit or in case, 11, 886

Judgment must be warranted by the form of action, 11, 886

Actions on judgments, 11, 1085, 1167

Ad damnum clause, 11, 1146

At common law where judgment is void on its face, 11, 1141

Averment of jurisdiction, 11, 1130

Application of courts of record, 11, 1139

At common law in suits on foreign judgments, 11, 1312

Averment that court was one of general jurisdiction, 11, 1132

Averment that judgment was duly given, 11, 1137

Courts of general jurisdiction, 11, 1130

Courts of general jurisdiction of foreign and sister states, 11, 1131

Courts of inferior jurisdiction, 11, 1134

Cured by verdict, 11, 1136

Domestic court of general jurisdiction, 11, 1130

Foreign inferior courts, 11, 1140

Inferior courts of sister state, 11, 1136

Judicial notice of character of court, 11, 1133

JUDGMENTS, *cont'd.*Actions on judgments. *cont'd.*Averment of jurisdiction, *cont'd.*

Jurisdiction of subject-matter, 11, 1135

Mere general averment of jurisdiction, 11, 1135

Necessity of using the term duly, 11, 1138

Statutory regulation, 11, 1137

Sufficiency of declaration under statute, 11, 1138

Unauthorized jurisdiction of person, 11, 1135

Various forms of declaration, 11, 1133

Averment that judgment remains in force unsatisfied, 11, 1145

Demurrer, 11, 1145

Negating appeal, 11, 1146

Statement of rule, 11, 1145

Costs, 11, 1167

Declaration, petition, or complaint, 11, 1122

Ad damnum clause, 11, 1146

Alleging defendant's identity, 11, 1123

Alleging plaintiff's ownership, 11, 1123

Averment of jurisdiction, 11, 1130

Application to courts of record, 11, 1139

At common law in suits on foreign judgments, 11, 1132

Averment that court was one of general jurisdiction, 11, 1132

Averment that judgment was duly given, 11, 1137

Courts of general jurisdiction, 11, 1130

Courts of general jurisdiction of foreign and sister states, 11, 1131

Courts of inferior jurisdiction, 11, 1134

Cured by verdict, 11, 1136

Domestic court of general jurisdiction, 11, 1130

Foreign inferior courts, 11, 1140

Inferior courts of sister state, 11, 1136

Judicial notice of character of court, 11, 1133

JUDGMENTS, *cont'd.*Actions on judgments, *cont'd.*Declaration, petition, or complaint, *cont'd.*Averment of jurisdiction, *cont'd.*

Jurisdiction of subject-matter, 11, 1135

Mere general averment of jurisdiction, 11, 1135

Necessity of using the term duly, 11, 1138

Statutory regulation, 11, 1137

Sufficiency of declaration under statute, 11, 1138

Unauthorized jurisdiction of person, 11, 1135

Various forms of declarations, 11, 1133

Averment that judgment remains in force unsatisfied, 11, 1145

Demand for payment, 11, 1124

Description of judgment, 11, 1125

Amount of judgment, 11, 1126

Averment of amount, 11, 1127

Certainty and particularity, 11, 1125

Costs, 11, 1127

Date of judgment, 11, 1126

Description of court rendering judgment, 11, 1126

In hac verba, 11, 1127

Judgment affirmed on appeal, 11, 1127

Judgment to be discharged by lesser sum, 11, 1128

Names of parties, 11, 1126

Place where court was held, 11, 1126

Statement of rule, 11, 1125

Substantial conformity, 11, 1130

Variance, 11, 1128

Variance, examples, 11, 1128, 1130

Executors and administrators, 11, 1123

Exhibits, 11, 1143

Foreign and sister state judgments, 11, 1125

JUDGMENTS, *cont'd.*Actions on judgments, *cont'd.*Declaration, petition, or complaint, *cont'd.*

In general, 11, 1122

Leave to sue, 11, 1124

Original cause of action, 11, 1124

Profert of record, 11, 1140

Reason for suing, 11, 1124

Setting out proceedings, 11, 1141

Discharge, payment, and satisfaction, 11, 1164

Effect of issuance of execution and proceedings thereon, 11, 1111

Effect of pending appeal, 11, 1104

Effect of supersedeas, 11, 1105

Erroneous judgments, 11, 1110

Execution, remedy by, 11, 1089

Action and execution concurrent and cumulative, 11, 1089

Action lies though execution might issue, 11, 1089

Action not necessary, 11, 1091

Actions on judgments not favored, 11, 1091

Execution a cumulative remedy, 11, 1090

Necessity of action caused by plaintiff's default, 11, 1093

When necessity of a separate action exists, 11, 1092

Exhibits, 11, 1143

Assignment to plaintiff, 11, 1145

Authentication of exhibit, 11, 1144

Exhibit as part of pleadings, 11, 1144

Note sued on originally, 11, 1144

Record of judgment, 11, 1143

Whether judgment is a written instrument, 11, 1143

Final and interlocutory judgments, 11, 1104

Form of action, 11, 1113

Assumpsit, 11, 1114

Case, 11, 1115

Coin judgments, 11, 1115

Debt, 11, 1113

Domestic judgments, 11, 1113

Foreign judgments, 11, 1115

Sister state judgments, 11, 1114

Index Pl. & Pr. — 36

JUDGMENTS, *cont'd.*Actions on judgments, *cont'd.*Form of action, *cont'd.*

Specific performance, 11, 1114

Trustee process, 11, 1114

Fraud as plea, 11, 1166

In what court, 11, 1113

Joinder of actions, 11, 1168

Judgment in attachment, 11, 1103

*Judgments as causes of action, see infra, Judgments as causes of action.**Judgments in rem and in personam*, 11, 1103

Judgments of justices of the peace, 11, 1102

Jurisdiction, 11, 1113

Plea of want of jurisdiction, 11, 1159

"Duly given or made," 11, 1164

Duplicity in plea, 11, 1162

General denial or general issue, 11, 1163

How pleaded, 11, 1159

Plea need not state a defense, 11, 1163

Right to plead, 11, 1159

Special plea, 11, 1159

Strictness required in pleadings, 11, 1160

Strong *prima facie* defenses, 11, 1161

Sufficiency of plea of want of jurisdiction of the person, 11, 1162

Sufficiency of plea to jurisdiction of subject-matter, 11, 1162

What plea must negative, 11, 1160

Leave of court to sue, 11, 1093

Application for order, 11, 1097

Assigned judgments, 11, 1096

Cases not within the rule, 11, 1095

Declaration and complaint, 11, 1124

Demurrer, 11, 1098

Designating place of suit, 11, 1095

Discretion of court, 11, 1094

Distinction between granting and refusing leave as to conclusiveness, 11, 1094

Executors and administrators, 11, 1096

Federal courts, 11, 1096

JUDGMENTS, *cont'd.*Actions on judgments, *cont'd.*Leave of court to sue, *cont'd.*

Judgments of foreign and sister states, 11, 1096

Justices' judgments, 11, 1096

Leave to sue is jurisdictional, 11, 1094

Notice of motion for leave to sue, 11, 1097

Nunc pro tunc, 11, 1094

Objections to want of leave, 11, 1098

Purpose of statutes, 11, 1095

Retroactive operation, 11, 1094

Review on appeal, 11, 1095

Statement of rule, 11, 1093

Nil debet, 11, 1154

Domestic judgment, 11, 1154

Foreign judgments, 11, 1158

Issue of fact, 11, 1158

Judgments of justices in other states, 11, 1158

Judgments of sister states, 11, 1155

Nil debet and nul tiel record

11, 1158

Variance, 11, 1158

Nul tiel record, 11, 1149

Conclusion by verification or to the country, 11, 1154

Courts not of record, 11, 1150

Courts of record, 11, 1149

Defenses available under plea, 11, 1150

Defenses not available, 11, 1153

Extrinsic evidence, 11, 1152

Foreign judgment, 11, 1150

Judgments of justices, 11, 1150

Trial by inspection by the court, 11, 1153

Want of jurisdiction, 11, 1152

What may be shown under plea, 11, 1150

When proper plea, 11, 1149

Parties, 11, 1115

Assignees, 11, 1117

Enforcement of lien, 11, 1119

Executors and administrators, 11, 1116

Executors and administrators as defendants, 11, 1123

Foreign executors and administrators as defendants, 11, 1122

Identity of defendant, 11, 1119

Joint defendants, 11, 1119

JUDGMENTS, *cont'd.*Actions on judgments, *cont'd.*Parties, *cont'd.*

Joint obligation made joint and several by statute, 11, 1120

Legal owner, 11, 1119

Next friend, 11, 1116

Original plaintiff a nominal party, 11, 1117

Parties defendant, 11, 1119

Parties plaintiff, 11, 1115

Statutes as to assignees, 11, 1118

Plea or answer, 11, 1147

Affidavit of defense, 11, 1158

Denials, 11, 1148

Discharge, payment, and satisfaction, 11, 1164

Equitable defenses, 11, 1147

Fraud, 11, 1166

General rules, 11, 1148

Nil debet, 11, 1154*Nul tiel record*, 11, 1149

Pleading new matter, 11, 1148

Res judicata, 11, 1147

Scope of inquiry, 11, 1147

Want of jurisdiction, 11, 1148, 1159

Profect of record, 11, 1140

Quod recuperet, 11, 1167

Replication, 11, 1166

Setting out proceedings, 11, 1141

Foreign judgments, 11, 1142

Inferior courts, 11, 1142

In general, 11, 1141

Omission of allegation, 11, 1143

Summarizing proceedings, 11, 1142

Splitting demand, 11, 1168

Stay of execution, 11, 1106

Summarizing proceedings, 11, 1142

Void judgments, 11, 1107

Appearance will confer jurisdiction, 11, 1108

Erroneous judgments, 11, 1110

In general, 11, 1107

Judgments against common right, 11, 1109

One or more joint defendants not served, 11, 1109

Personal service out of state, 11, 1108

Service of process, 11, 1108

What law governs, 11, 1107

When action lies, 11, 108

Ad damnum clause:

Actions on judgments, 11, 1146

Additional allowances of costs, 1, 213

JUDGMENTS, *cont'd.*

Admiralty:
Summary judgment and execution, I, 278

Admissions:
Judgment upon part of claim admitted, II, 1040, 1041

Affidavit and statement:
Confession of judgment without action brought, II, 975

Affidavits (see *infra*, Confession of judgment):
Confession of judgment, II, 997

Judgments by confession, II, 1022

Warrant of attorney:
Affidavit of no collusion where judgment is taken under warrant of attorney, II, 995

Affidavit showing the execution of a warrant of attorney, II, 993

Proof of authority, II, 992

Affidavits of merits or defense (see AFFIDAVITS OF MERITS OR DEFENSE):

Actions on judgments, I, 347; II, 1158

Judgment for want of sufficient affidavit of defense, II, 1042

Examples, II, 1042, 1044

In general, II, 1042

Test of sufficiency, II, 1043

Affirmance, see *infra*, Judgments on appeal.

Agreed case, I, 387, 391

Agreements, see *infra*, Consent judgments.

Alternative judgments, II, 963

Amending, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Amount of judgment:

Actions on judgments:

Averment of amount in declaration, II, 1127

Declaration, II, 1127

Declaration for costs, II, 1127

Declaration for damages omitting costs, II, 1127

Description of judgment in declaration, II, 1126

Amount of recovery, II, 899

Amendment of *ad damnum* clause, II, 902

Confession of judgment, see CONFESSION OF JUDGMENT.

Conformity to pleadings, II, 900

Conformity to process, II, 899

Conformity to proof, II, 903

JUDGMENTS, *cont'd.*

Amount of recovery, *cont'd.*

Conformity to verdict or findings, II, 910

Excessive verdict, II, 911

Increasing damages *super visum vulneris*, II, 911

In general, II, 910

Small variance, II, 911

Default, II, 900

Designation of amount, II, 935

Certainty, II, 936

Costs, II, 939

Figures, II, 939

Form of provision, II, 936

Judgments held uncertain as to amount, II, 936

Necessity, II, 935

Signs, II, 939

Specifying denomination, II, 938

Specifying medium of payment, II, 940

Words, II, 939

Excessive judgment, II, 903

Remedies for excessive judgment, II, 904

Remittitur, II, 904

Specifying medium of payment, II, 940

Absence of contract, II, 941

Coin, II, 941

Conformity to pleadings and verdict, II, 946

Contracts for coin or equivalent currency, II, 946

Contracts to pay in coin, II, 943

Costs, II, 947

Currency, II, 941

Domestic money, II, 940

Effect of unauthorized judgment for coin, II, 947

Foreign money, II, 940

Judgments for duties and taxes, II, 943

Loss or conversion of coin, II, 942

Specific contract acts, II, 945

Statutory allowance as to costs, II, 903

Where a bill of particulars is filed, II, 902

Where defendant answers, II, 900

Where defendant has appeared and answered, II, 903

Another suit pending, I, 773

Answers (see *infra*, Actions on judgments):

Frivolous answers, II, 1037

Judgment for defendant who fails to answer, II, 884

JUDGMENTS, *cont'd.***Answers, *cont'd.***

Judgment for failure to answer
or reply, 11, 1034

Judgment on answer, 11, 1031

Judgment on insufficient plead-
ings, 11, 1031

Answers in code pleading, 1, 820

Nul tiel record, 1, 820

What is put in issue by general
denial, 1, 820

Appeal bonds and undertakings:

Final interlocutory judgment, 1,
1013, 1014

Appeals (see **APPEALS**; and see *infra*,
Judgments on appeal):

Actions on judgments, 11, 1104

*Award of damages for delay where
appeal is affirmed or dismissed*,
see *infra*, Judgments on ap-
peal.

Effect of pending appeal upon
actions on judgments, 11, 1104

Judgment by confession, 11, 1018

Number of judges, 2, 12

Rendering final judgment on ap-
peal, 11, 1076

Appearances:

General appearance as to entry
of judgment, 2, 655

Motion to set aside judgment,
2, 657

Setting aside default, 2, 653

Setting aside judgment, 2, 653

Special appearance to vacate
judgment, 2, 653

Validating void judgments by
subsequent appearance, 2, 653

What is special appearance to set
aside judgment, 2, 654

When special appearance to set
aside judgment becomes gen-
eral, 2, 654

Arbitration and award, see *infra*,
Judgments on awards.

Arrest in civil cases, see **EXECUTIONS
AGAINST THE BODY AND ARREST IN
CIVIL CASES**.

Arrest of judgment, see **ARREST OF
JUDGMENT**.

Assault and battery, 2, 861

Assignment for benefit of creditors:

Necessity of creditor obtaining
judgment before he can bring
suit to set aside assignment, 2,
805

Return of judgment unsatisfied,
2, 908

Assignment of errors, 2, 954

Judgment for wrong party, 2,
903

Assignments, 11, 835

Actions on judgments, 11, 1117

JUDGMENTS, *cont'd.***Assignments, *cont'd.***

Leave to sue upon judgment, 11,
1096

Parties to action, 11, 1117

Assumpsit (see *infra*, Form of ac-
tion), 2, 990, 1034

Actions on judgments, 11, 1114

Attachment:

Actions upon judgments in at-
tachment, 11, 1103

Effect of final judgment, 3, 91

Validity of judgment, 3, 4

Attorney's fees.

Attorney's fees stipulated in
warrant of attorney, 11, 1013

Confession of judgment, 11, 1013

Striking out excessive attorney's
fee on appeal, 11, 1070

Attorneys' liens, see **LIENS**.

Audita querela (see **AUDITA QUERELA**),
3, 124

Award of damages, see *infra*, Judg-
ments on awards.

Awards, see *infra*, Judgments on
awards.

Bastardy (see **BASTARDY**), 3, 281

Sufficiency of adjudication, 3, 281

Bills in equity, see *infra*, Equitable
relief against judgments.

Bills of exceptions:

Where bill is not required, 3, 407

Bills to enforce decrees, see **BILLS TO
ENFORCE DECREES**.

Bills to impeach decrees and judgments,
see **BILLS TO IMPEACH DECREES AND
JUDGMENTS**.

Bonds, 3, 670

Form of judgment, 3, 670

In general, 3, 670

Scire facias, 3, 671

Under the code, 3, 670

Capiatur pro fine, 11, 836

Causes of action, see *infra*, Judg-
ments as causes of action.

Certainty, 11, 820, 933

Certainty on the whole record,
11, 934

Confession of judgment, 11, 981

Designation of amount, 11, 936

Form of entry held sufficiently
certain, 11, 934

General rule, 11, 933

Statement upon which a judg-
ment by confession is en-
tered, 11, 999

Balance due, 11, 1004

Goods sold, 11, 1003

In general, 11, 999

Money lent, 11, 1004

Precise degree of certainty,
11, 1000

Promissory notes, 11, 1002

JUDGMENTS, *cont'd.*Certainty, *cont'd.*Statement upon which a judgment by confession is entered, *cont'd.*

Statements held insufficient, II, 1003

Sufficiency, II, 1001

Certiorari (see CERTIORARI):

Vacating judgments, 4, 83

Chambers and vacation (see CHAMBERS AND VACATION):

Confession of judgment, II, 1010

Rendition of judgment at unauthorized time or place, II, 812

Rendition of judgment in vacation, II, 814

Trial at chambers by consent, II, 812

Classification and terminology, II, 836

Classification with reference to state of pleadings, II, 837

Default and *nil dicit* distinguished, II, 839

In general, II, 836

Judgment on abandonment of suit by plaintiff, II, 839

Judgment on issue of fact, II, 838

Judgment on issues of law, II, 837

Judgment where pleading raises no issue, II, 839

Nolle prosequi, II, 839*Non pros.*, II, 839

Clerical errors:

Correction on appeal, II, 1069

Clerk of court:

Entry of judgment by confession, II, 1016

Manner of entry upon statement, II, 1017

Necessity and nature of entry, II, 1016

Time of entry, II, 1016

Entry of judgment on award, II, 1054

Signing by clerk, II, 963

Whether clerk can render judgment, II, 810

Cognovit (see COGNOVIT), 4, 564

Against copartners, 4, 565

Cognovit actionem, II, 973

Death of party, 4, 565

Sufficiency of cognovit, II, 974

When and how entered, 4, 564

Coin, see *infra*, Payments.

Collateral attack (see JURISDICTION):

Judgment for or against a deceased party, II, 846

Judgment upon issues not made, II, 880

JUDGMENTS, *cont'd.**Publication*, see PUBLICATION.*Commitments*, see COMMITMENTS.*Complaint*, see *infra*, Declaration and complaint.

Conditional judgments, II, 964

Confession of judgment (see COGNOVIT; OFFER OF JUDGMENT), II, 973

Affidavit and statement, II, 997

Allegation of amount of debt, II, 1005

Allegation that debt is justly due, II, 1005

Amendment, II, 1008

Amendment of defects in statement, II, 1009

Balance due, II, 1004

By confession after action brought, II, 975

Certainty, II, 999

Effect of omission, II, 997

Essential allegations in affidavit, II, 997

Filing affidavit, II, 998

Goods sold, II, 1003

How judgment affected by defective statement, II, 1008

"Justly due," II, 1005

Money lent, II, 1004

Necessity of affidavit, II, 997

Necessity of statement, II, 998

Promissory notes, II, 1002

Requisites of statement, II, 999

Signature, II, 1006

Statements held insufficient, II, 1003

Sufficiently certain, II, 1001

Verification, II, 1007

Amount for which judgment is

to be entered, II, 1012

Amount fixed by court, II, 1014

Attorney's fees, II, 1013

Entry on warrant by clerk, II, 1015

For attorney's fees stipulated in warrant, II, 1013

For sum confessed, II, 1012

When judgment may be entered generally, II, 1015

When liquidated by the court, II, 1015

By confession after action brought, II, 973

Affidavit and statement unnecessary, II, 975

By *cognovit actionem*, II, 973

JUDGMENTS, *cont'd.*Confession of judgment, *cont'd.*By confession after action brought, *cont'd.*By confession *relicta verificatione*, 11, 974

Confession by process, 11, 974

Kinds, 11, 973

Waiver of acceptance of service, 11, 974

By confession without action, 11, 975

Consent of creditor, 11, 981

Declaration or service of process unnecessary, 11, 976

For what may be confessed, 11, 977

In general, 11, 975

Jurisdiction, presumption thereof, and waiver of objection, 11, 982

Manner of confession, 11, 985

Who may confess judgment, 11, 976

Classification, 11, 973

Confession to secure against contingent liability, 11, 980

Consent judgments distinguished from judgments by confession, 11, 1028

Consent of creditor, 11, 981

Declaration, 11, 976

Decrees, see DECREES.

Defaults (see DEFAULTS):

Judgment *nil dicit*, 6, 124

Definition, 11, 973

Entry by clerk, 11, 1016

Manner of entry upon statement, 11, 1017

Necessity and nature of entry, 11, 1016

Time of entry, 11, 1016

Error, writ of, 7, 870

Executors and administrators, 8, 689

Future advances, 11, 980

Guardians *ad litem*, 10, 727

Infants, 10, 727

Jurisdiction, 11, 982

Entry upon warrant in another jurisdiction, 11, 984

Jurisdictional amount, 11, 983

Jurisdiction of court essential, 11, 982

Presumptions as to jurisdiction, 11, 984

Presumption thereof, 11, 982

Waiver of objection, 11, 982

JUDGMENTS, *cont'd.*Confession of judgment, *cont'd.*Jurisdiction, *cont'd.*

Waiver of objection to jurisdiction, 11, 984

When record must show jurisdiction, 11, 983

Justices of the peace, 12, 742

In general, 12, 742

In what cases rendered, 12, 743

Oral confession, 12, 744

What docket must show, 12, 745

Manner of confession, 11, 985

Married women, 11, 977

Maturity of debt, 11, 978

Nunc pro tunc entry, 18, 465*Offer of judgment*, see OFFER OF JUDGMENT.

Officers of corporation, 11, 976

Opening, amending, and vacating judgments, 15, 233

Opening judgment on behalf of defendant, 11, 1019

Affidavit, 11, 1022

As to one of two defendants, 11, 1020

Defense to the merits, 11, 1021

Discretion of court, as to granting, 11, 1024

Form of application, 11, 1022

Grounds for vacation on application of creditors, 11, 1025

Laches of defendant, 11, 1022

Manner of application for vacation, 11, 1026

Power to open, 11, 1019

Power to vacate on application of creditors, 11, 1024

Proceedings upon application, 11, 1023, 1026

Time of application for vacation, 11, 1025

Vacation on application of creditors, 11, 1024

When proper, 11, 1020

Who may make application, 11, 1022

Who may move for application, 11, 1025

Partnership, 11, 976; 15, 963

Amendment of judgment on suggestion, 15, 963

Confession of judgment by one partner, 15, 964

Confession of judgment by one partner after dissolution of partnership, 15, 967

JUDGMENTS, *cont'd.*Confession of judgment, *cont'd.*Partnership, *cont'd.*

Confession of judgment by one partner before action brought, 15, 964

Confession of judgment by one partner pending action, 15, 966

Confession of judgment by one partner upon partnership property, 15, 965

Form of judgment against partners, 15, 963

Merger, 15, 967

Setting out names of partners, 15, 963

Power of attorney, 11, 979

Process, necessity of, 11, 974

Service of process after action brought, 11, 974

Stay of execution, 20, 1270

Sum certain, 11, 981

Supersedeas and stay of proceedings, 20, 1270

Time of confession, 11, 1010

After death of defendant, 11, 1012

After death of parties, 11, 1012

After death of plaintiff, 11, 1012

In vacation, 11, 1010

Upon warrant of attorney after death of parties, 11, 1012

What constitutes vacation, 11, 1011

Torts, 11, 978

Warrant of attorney, 11, 985

Affidavit of no collusion, 11, 995

Affidavit showing execution of a warrant, 11, 993

Attorney's fees stipulated in warrant, 11, 1013

Authority conferred to be strictly pursued, 11, 988

Authority must be expressly granted, 11, 988

Construction of warrant, 11, 987

Death of plaintiff, 11, 1012

Designation of person to exercise power, 11, 989

Effect of alteration, 11, 991

Effect on lost warrant, 11, 991

Effect on void warrant, 11, 991

Entry of amount by clerk, 11, 1015

JUDGMENTS, *cont'd.*Confession of judgment, *cont'd.*Warrant of attorney, *cont'd.*

Entry of one judgment on several powers of attorney, 11, 986

Entry on warrant by clerk, 11, 1015

Essentials of warrant, 11, 988

Filing of warrant, 11, 991

Form, 11, 989

Generally, 11, 985

Nature of judgment, 11, 986

Negotiability of warrant, 11, 986

Power contained in a note or other obligation, 11, 990

Proof of authority, 11, 992

Revocation of warrant, 11, 996

Seal, 11, 991

Second confession under same power, 11, 986

Unfilled blanks in warrant, 11, 989

Warrant executed more than a year and a day, 11, 994

Who may confess judgment, 11, 976

Conflict of laws, 11, 840, 925

Sufficiency, 11, 925

Conformity to pleadings and proof, 11, 868

Amending pleadings to conform to proof, 11, 872

Amendment, 11, 886

Amount of recovery, 11, 899

Applications of rules, 11, 883

Basing on grounds of liability or defense alleged, 11, 888

Allegations of complaint, 11, 889

Complaint framed solely for equitable relief, 11, 897

Ground of liability, 11, 872

Judgment for defendant, 11, 894

Judgment on demurrer, 11, 894

Legal or equitable grounds, 11, 896

Material variance, 11, 892

Negligence not counted on, 11, 892

Recovery on cause of action alleged, 11, 890

Relief must be within case made by declaration, 11, 890

Statement of rule, 11, 888

Theory of liability, 11, 893

Tort or contract, 11, 894

JUDGMENTS, *cont'd.*

- Conformity to pleadings and proof, *cont'd.*
 - Basing on grounds of liability or defense alleged, *cont'd.*
 - Under the code, 11, 896
 - Variance and failure of proof, 11, 891
 - Conformity to pleadings, 11, 868
 - Conformity to proof, 11, 870
 - Counterclaim as a defense, 11, 884
 - Executors and administrators, 11, 885
 - Extent of rule, 11, 872
 - Facts not alleged, 11, 869
 - Facts proved but not pleaded, 11, 869
 - Failure of proof, 11, 870
 - Form of action, 11, 886
 - General and special assumpsit, 11, 887
 - Illustrations of judgments supported by pleadings, 11, 883
 - Judgment affecting the title to property not described, 11, 884
 - Judgment against weight of evidence, 11, 870
 - Judgment for a defendant who fails to answer, 11, 884
 - Judgment inconsistent with admissions in pleadings, 11, 869
 - Limitation and conformity to issues raised, 11, 878
 - Collateral attack, 11, 880
 - Effect of judgment beyond issues, 11, 878
 - Issues broadened by consent, 11, 882
 - Issues not raised, 11, 878
 - Judgment beyond issues void, 11, 879
 - Res judicata*, 11, 881
 - Statement of rule, 11, 878
- Limiting relief to that sought by pleadings, 11, 873
 - Affirmative relief to defendant, 11, 877
 - Code, 11, 876
 - Correction on motion in trial court, 11, 876
 - Equity, 11, 876
 - On default, 11, 874
 - On demurrer, 11, 875
 - Recovery may be less than demand, 11, 873
 - Rule in absence of statute, 11, 873
 - Statutory changes, 11, 874
 - Where answer is filed, 11, 874
- Medium of payment, 11, 946
- Nonsuit, 11, 870

JUDGMENTS, *cont'd.*

- Conformity to pleadings and proof, *cont'd.*
 - Parties, 11, 885
 - Plaintiffs entitled to all or nothing, 11, 883
 - Pleadings and proofs, 11, 871
 - Reply undisputed, 11, 884
 - Secundum allegata ei probata*, 11, 868
 - Several good pleas in bar, 11, 884
 - Summary statement of rules, 11, 868
- Conformity to process, 11, 867
 - Amount of recovery, 11, 899
- Conformity to verdict or findings, 11, 904
 - Amount, 11, 910
 - Correcting error in computation of amount, 11, 908
 - Evidence in aid of verdict, 11, 909
 - Exceptions, 11, 907
 - Excessive verdict, 11, 911
 - Increasing damages *super visum vulneris*, 11, 911
 - In general, 11, 904
 - In whose power, 11, 909
 - Joint verdict, 11, 907
 - Judgment going beyond verdict, 11, 904
 - Medium of payment, 11, 946
 - Non obstante verdicto*, 11, 912
 - Bill of exceptions, 11, 921
 - Confession essential, 11, 913
 - Definition of judgment, 11, 912
 - Discretion of court, 11, 920
 - Equity, 11, 916
 - For whom rendered, 11, 913
 - In general, 11, 912
 - Judgment on verdict or point reserved, 11, 921
 - Motion for judgment, 11, 920
 - Nature of questions reserved, 11, 922
 - Never rendered for defendant, 11, 914
 - On evidence, 11, 917
 - On record, 11, 917
 - On special findings, 11, 924
 - On special findings against general verdict, 11, 924
 - Point reserved, 11, 921
 - Relaxation of rule, 11, 914
 - Rendered only for plaintiff, 11, 913
 - Repleader distinguished, 11, 918
 - Statutes, 11, 916
 - Sufficiency of reservation, 11, 923

JUDGMENTS, *cont'd.*

Conformity to verdict or findings,
cont'd.

Non obstante veredicto, cont'd.

Time of motion for judgment, 11, 920

When and to whom rendered, 11, 912

When rendered for defendant, 11, 915

When rendered for plaintiff, 11, 915

Where contributory negligence is pleaded, 11, 916

Pleadings considered in connection with verdict, 11, 908

Qualifications, 11, 907

Real and substantial finding, 11, 907

Several verdict, 11, 907

Small variance in amount, 11, 911

Statement of rule, 11, 904

Surplusage, 11, 908

Consent judgments, 11, 1027

Alteration by court without consent of parties, 11, 1029

Appeals, 2, 99

Complaint unnecessary, 11, 1029

Conclusiveness, 11, 1028

Conformity to agreement, 11, 1029

Distinguished from judgments by confession, 11, 1028

Effect as waiver of error, 11, 1030

Filing, 11, 1030

For what rendered, 11, 1029

In general, 11, 1027

Requisites of agreement, 11, 1030

Vacating, 11, 1030

Validity, 11, 1027

Verification, 11, 1028

Who may agree or consent, 11, 1029

Writing, 11, 1030

Consent of creditor:

Confession of judgment, 11, 981

Consolidation of actions, 4, 705

Conspiracy, 4, 736

Civil actions, 4, 740

Constitutional law:

Impairing obligation of contracts, 11, 834

Judgments as contracts, 11, 833

Contempt:

Enforcing judgments, 11, 1084

Contest of wills, see PROBATE AND CONTEST OF WILLS.

Contingent liability:

Confession of judgment, 11, 981

JUDGMENTS, *cont'd.*

Contracts:

Judgments as contracts, 11, 831

In general, 11, 831

Legal fiction, 11, 832

Specialty, 11, 831

Judgments as part of contracts.

Action on judgment, 11, 832

Assignment of choses in action *ex delicto*, 11, 834

Constitutional provisions, 11, 833

Contracts express or implied, 11, 835

Execution against the body, 11, 835

Impairing obligation of contract, 11, 834

Joinder of actions, 11, 835

Joinder of parties, 11, 835

Provisional remedies, 11, 832

Set-off and counterclaim, 11, 834

Statute of limitations, 11, 834

Statute requiring real party in interest to sue, 11, 834

Statutes conferring or limiting jurisdiction, 11, 834

Statutory liability of officers and stockholders, 11, 835

Statutory provisions, 11, 833

Conveyances, 11, 835

Coram nobis and *coram vobis*, 5, 37

Costs (see COSTS; FINES AND COSTS IN CRIMINAL CASES):

Actions on judgments, 11, 1167

Correcting error in taxation of costs on appeal, 11, 1069

Costs arising after judgment, 5, 225

Description of judgment in declaration and complaint in actions on judgments, 11, 1127

Medium of payment, 11, 947

Relation of costs to judgment, 5, 109

Whether part of judgment, 11, 939

Counties:

Method of enforcing judgment, 5, 299

Courts (see *infra*, Judgments on awards; and see RENDITION AND ENTRY OF JUDGMENTS):

Leave to sue, see *infra*, Actions on judgments.

Court's control over judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Creditors:

Consent of creditor to confession of judgment, 11, 981

Creditors' bills, see CREDITORS' BILLS

JUDGMENTS, *cont'd.*

- Criminal procedure (see SENTENCE):
 - Equitable relief against criminal prosecutions, 11, 1208
- Damages, see *infra*, Judgments on appeal.
- Date, 11, 956
 - Declaration and complaint in actions on judgments, 11, 1126
 - In general, 11, 956
 - Omission of date, 11, 956
 - Presumption as to date, 11, 956
- Death:
 - Confession of judgment, 11, 1010
 - Death before final judgment, 5, 797
 - Death of defendant after final judgment, 5, 822
 - Death of defendant before final judgment, 5, 821
 - Death of plaintiff after final judgment, 5, 800
 - Judgment for or against a deceased party, 11, 843
 - Collateral attack, 11, 846
 - Erroneous and voidable, 11, 845
 - How error corrected, 11, 847
 - In general, 11, 843
 - Valid until reversed, 11, 846
 - Whether void, 11, 843, 844
 - Judgment or decree after death, 5, 846
 - Judgments on appeal, 11, 1058
 - Judgments on awards, 11, 1052
- Debt (see *infra*, Form of action):
 - Actions on judgments, 11, 1113
- Debt, action of, 5, 904
 - After appeal, 5, 906
 - Awards, 5, 906
 - Foreign judgments, 5, 905
 - Invalid judgments, 5, 905
 - Of courts not of record, 5, 905
 - Of courts of record, 5, 904
- Decedents' estates:
 - Appeal, 11, 1070
- Decisions (see DECISIONS), 11, 809
 - Decisions distinguished from judgments, 11, 828
- Declaration and complaint (see *infra*, Actions on judgments), 11, 861
 - Confession of judgment, 11, 976
 - Necessity, 11, 861
 - Sufficiency, 11, 862
 - Waiver of loss of right to object, 11, 862
 - What record must show on appeal, 11, 863
 - Where the complaint contained several counts, 11, 863
- Decrees (see DECREES):
 - Equitable relief against judgments, 11, 1216

JUDGMENTS, *cont'd.*

- Decrees in equity, see DECREES.
- De facto* judges:
 - Rendition of judgment, 11, 817
- De facto* officers:
 - Rendition of judgment by *de facto* judges, 11, 817
- Default and *nil dicit* distinguished, 11, 839
- Defaults, see DEFAULTS; and see *infra*, Judgments on pleadings.
- Defenses, see *infra*, Equitable relief against judgments.
- Definiteness (see *infra*, Certainty), 11, 820
- Definitions (see CLASSIFICATION AND TERMINOLOGY), 11, 808
 - Broadest sense, 11, 808
 - Codes, 11, 809
 - Decision of any court a judgment, 11, 809
 - Narrow sense, 11, 810
 - Statutory definitions, 11, 809
- Delivery bonds see FORTHCOMING AND DELIVERY BONDS.
- Demand (see *infra*, Maturity of demand):
 - Declaration and complaint on judgments, 11, 1124
- Demurrers (see DEMURRERS):
 - Decision on demurrer is an order, 11, 830
 - Demurrer in answer, 11, 875
 - Demurrer to actions on judgments where leave to sue has not been shown, 11, 1098
 - Judgment on demurrer too large, 6, 304
 - Profer of record in actions on judgments, 11, 1141
 - Rendition before disposal of demurrers, 11, 867
- Demurrers to evidence, 6, 455
- Description of property, 11, 954
 - Description of land held sufficient or insufficient, 11, 955
 - In general, 11, 954
 - Reference to pleadings or report, 11, 955
 - When description sufficient, 11, 955
- Descriptio personae*, 11, 952
- Designation of amount*, see *infra*, Amount of recovery.
- Designation of parties*, see *infra*, Parties to action.
- Determination of all issues, 11, 865
- Determination of a proceeding, 11, 825
- Determining provisions in advance, 11, 932
- Detinue, 6, 661
 - Amending judgment, 6, 663

JUDGMENTS, *cont'd.***Detinue, *cont'd.***

- Effect of judgment, 6, 663
- Executors and administrators, 6, 663
- Failure to assess separate values, 6, 661
- Form of judgment, 6, 662
- In general, 6, 661
- Voluntary nonsuit, 6, 662

Directing verdict, see DIRECTING VERDICT.

- Disbarment and suspension of attorneys, 6, 717
- Collateral attack, 6, 718
- Effect, 6, 717
- Form, 6, 717

Discharge of judgments, see SATISFACTION AND DISCHARGE OF JUDGMENTS.**Dismissal, discontinuance, and nonsuit:**

- Failure of proof, 11, 870
- Disorderly houses, 7, 19
- Distress, 7, 26
- Distringas, writ of, 7, 36
- Dower, 7, 167
 - Against whom, 7, 168
 - In general, 7, 167
 - Judgment for seizin and damages distinct, 7, 168
- Ejectment, 7, 344, 349
 - Equitable relief against judgments, 11, 1175
 - Form, 7, 350
 - Individual findings, 7, 349
 - Informal judgment, 7, 349
 - In general, 7, 344, 349
 - Judgment for entire premises, 7, 349
 - Where verdict is for the defendant, 7, 350
 - Where verdict is for the plaintiff, 7, 350
- Election of remedies, 11, 1089
 - Action and execution concurrent and cumulative, 11, 1089
 - Action lies though execution might issue, 11, 1089
 - Action not necessary, 11, 1091
 - Actions upon judgments not favored, 11, 1091
 - Execution a cumulative remedy, 11, 1090
 - Necessity of action caused by plaintiff's default, 11, 1093
 - When necessity of a separate action exists, 11, 1092
- Eminent domain, 7, 619
 - Amendment, 7, 623
 - Certainty as to description of property, 7, 621
 - Conclusiveness, 7, 622
 - Duty of court to enter, 7, 619

JUDGMENTS, *cont'd.***Eminent domain, *cont'd.***

- Effect to pass title, 7, 623
- Finality, 7, 622
- Form, 7, 619
- Ownership of property, 7, 621
- Relief in equity, 7, 623
- Requisites, 7, 619
- Special judgment, 7, 620
- What provisions are proper, 7, 620

Enforcement of judgment (see *infra*, Provisions as to enforcement), 11, 1082

- Collateral and auxiliary remedies, 11, 1083
- Contempt proceedings, 11, 1084
- Enforcement against property in forum, 11, 1085
- Enforcement by execution, 11, 1082
- Equitable remedies, 11, 1084
- In general, 11, 1082
- Inherent power of court, 11, 1082
- Mandamus, 11, 1083

Entirety of judgment, 11, 826

- joint parties, 11, 828
- judgment against joint defendants, 11, 858
- In general, 11, 858
- Reversal as an entirety, 11, 859

Separable and inseparable error, 11, 827**Statement of rule, 11, 826****Entry of judgments, see RENDITION AND ENTRY OF JUDGMENTS.****Equitable defenses, see *infra*, Equitable relief against judgments.****Equitable relief against judgments (see JUDGMENTS), 11, 1168****Bills for injunction only, 11, 1204****Bills for new trial, 11, 1170****Bills for new trial and injunction, 11, 1174****Equitable defenses, 11, 1174**

- Accident, 11, 1180, 1184
- Accord and satisfaction, 11, 1179

Accounts and accounting, 11, 1175**Actions for specific performance or rescission of contract, 11, 1175****Action to have deed delivered up and cancelled, 11, 1175****Acts and representations of creditor or his attorney, 11, 1181****Available either at law or in equity, 11, 1178**

JUDGMENTS, *cont'd.*Equitable relief against judgments,
*cont'd.*Bills for new trial and injunction, *cont'd.*Equitable defenses, *cont'd.*Breach of agreements,
II, 1182Doubtful or inadequate
remedy at law, II,
1176

Ejectment, II, 1175

Failure of consideration,
II, 1179

Fraud, II, 1180

Judgment on false re-
turn of service, II,
1177Judgment on unau-
thorized appearance
of attorney, II, 1178Marshaling assets, II,
1175Mistake, II, 1180,
1184Not available at law, II,
1174Payments after the day,
II, 1179

Perjury, II, 1183

Surety released by acts
of judgment creditor,
II, 1179

Surprise, II, 1184

Trusts, II, 1175

Usury, II, 1179, 1180

Legal defenses, II, 1186

Allegations, II, 1186,
1187Evidence obtainable by
bill of discovery, II,
1200Failure to defend, II,
1193Failure to make direct
attack on judgment,
II, 1197Ignorance in the con-
duct of suit, II, 1194Inconsistent averments,
II, 1188

In general, II, 1186

Laches, II, 1186

Matters of excuse, II,
1193Newly discovered evi-
dence, II, 1198Newly discovered par-
ties, II, 1199No adequate remedy at
law, II, 1190Relief against part only
of judgment, II, 1189**JUDGMENTS, *cont'd.***Equitable relief against judgments,
*cont'd.*Bills for new trial and injunc-
tion, *cont'd.*Legal defenses, *cont'd.*Remedy by motion for
new trial, appeal, or
writ of error, II, 1197Remedy by motion or
action to set aside, va-
cate, and the like, II,
1198Rule applied and relief
denied, II, 1191Setting out proceedings
at law, II, 1188Sickness of complain-
ant, II, 1196Statements by officers of
court, II, 1195Sufficiency of averment,
II, 1188

Usury, II, 1190

Void judgments, II,
1200Dissolution of the injunction,
I, 1219Equitable defenses at law, II,
1171

Final decree, II, 1215

General limitations, II, 1172

Hearing, II, 1215

History of the remedy, II, 1168

Injunction bonds, II, 1217

Parties, II, 1172

Joinder of parties, II, 1173

Judges and officers of court,
II, 1174Judgment debtor or privies,
II, 1172Participants in fraud, II,
1174

Parties defendant, II, 1173

Parties plaintiff, II, 1172

Receiver or assignee, II,
1173

Taxpayer, II, 1173

Release of errors, II, 1218

Relief, II, 1205

Awards, II, 1209

Criminal prosecutions and
sentences, II, 1208Decree against complain-
ant, II, 1213Decreeing repayment of
amount collected, II, 1213Discharge in bankruptcy,
II, 1205

Extent, II, 1212

Foreign judgments, II, 1207

Judgments standing as se-
curity, II, 1214

JUDGMENTS, *cont'd.*

Equitable relief against judgments, *cont'd.*

Relief, *cont'd.*

Nature of relief, 11, 1205

Pendency of writ of error, 11, 1207

Proceedings in disregard of injunction, 11, 1207

Relief against portion inequitable, 11, 1213

State and federal court judgments, 11, 1208

Statutory changes, 11, 1209

Void judgments, 11, 1200

Distinction between void and voidable judgments, 11, 1200

Judgments on illegal contracts, 11, 1203

Legal conclusions, 11, 1204

Limitations of actions, 11, 1203

Proper cases for relief, 11, 1203

When equity will prevent enforcement of judgment, 11, 1172

Error, writ of (see ERROR, WRIT OF):

Effect on judgment, 7, 825

Escape, 7, 938

Essential elements, 11, 810

Application of principles, 11, 823

Definiteness, 11, 820

Formal proceedings, 11, 819

Parties, 11, 818

Rendition by duly constituted court, see RENDITION AND ENTRY OF JUDGMENTS.

Evidence, see *infra*. Conformity to pleadings and proof.

Exceptions and objections (see EXCEPTIONS AND OBJECTIONS), 959

Judgments on awards, 11, 1053

Manner of raising objection, 11, 904

Waiver of objection, 11, 904

Want of leave to sue on judgment, 11, 1098

Excessive judgments (see REMITTITUR):

Remedies for excessive judgment, 11, 904

Void or voidable, 11, 903

Executions (see EXECUTIONS):

Effect of issuance of execution and proceedings thereon in actions on judgments, 11, 1111

Arrest of debtor, 11, 1112

Effect of discharge, 11, 1112

In foreign judgments, 11, 1113

JUDGMENTS, *cont'd.*

Executions, *cont'd.*

Effect of issuance of execution and proceedings thereon in actions on judgments, *con.*

Issuance of execution, 11, 1111

Levy of execution, 11, 1111

Where a levy of real estate is not regarded as a satisfaction, 11, 1112

Election of remedies, 11, 1089

Action and execution concurrent and cumulative, 11, 1089

Action lies though execution might issue, 11, 1089

Action not necessary, 11, 1091

Actions upon judgments not favored, 11, 1091

Execution a cumulative remedy, 11, 1090

Necessity of action caused by plaintiff's default, 11, 1093

When necessity of a separate action exists, 11, 1092

Enforcement of judgments, 11, 1082

In general, 11, 1082

Inherent power of court, 11, 1082

Order for an execution, 11, 822

Executions against the body and arrest in civil cases, see EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES.

Executors and administrators, 11, 950, 952

Actions against executor *de son tort*, 8, 680

Actions against executors and administrators, 8, 687

Amendment of judgment, 8, 692

Confession, 8, 689

Confession of assets, 8, 692

De bonis propriis, 8, 688

De bonis testatoris or *intestati*, 8, 687

Default, 8, 689

Enforcing judgments *de bonis testatoris* or *intestati*, 8, 693

General requisites, 8, 687

Payable in due course of administration, 8, 689

Quando acciderint, 8, 691

Actions at law against executors and administrators, 8, 678

Actions on judgments, 11, 1116, 1121

JUDGMENTS, *cont'd.***Executors and administrators, *cont'd.***

- Administration bonds, 8, 725
- Declaration and complaint in actions on judgments, 11, 1123
- Decree in equity, 8, 697
- Leave to sue upon judgment, 11, 1096
- Parties to action on judgments, 11, 1116, 1121

Exhibits:

- Actions on judgments, 11, 1143
- Assignment to plaintiff, 11, 1145
- Authentication of exhibit, 11, 1144
- Exhibit as part of pleadings, 11, 1144
- Note sued on originally, 11, 1144
- Record of judgment, 11, 1143
- Whether judgment is a written instrument, 11, 1143

Figures, 11, 939**Findings (see *infra*, Conformity to verdict or findings), 11, 864****Finding of same effect as verdict, 11, 865****Findings distinguished from judgments, 11, 828****Findings necessary, 11, 864****In general, 11, 864*****Fines and costs in criminal cases*, see FINES AND COSTS IN CRIMINAL CASES.*****Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.****Foreign and sister state judgments:**

- Actions on, 11, 1098
 - Alternative judgment, 11, 1099
 - Distinction between foreign and domestic judgments, 11, 1100
 - Exclusive remedy, 11, 1100
 - Judgments in penal actions, 11, 1101
 - Statement of rule, 11, 1098
- Actions upon interlocutory judgments, 11, 1104
- Affidavit of merits or defense, 11, 1158
- Alimony:
 - Enforcing decree in another state, 1, 416
- Averment of jurisdiction in actions on judgments, 11, 1131, 1136, 1140
- Declaration and complaint in actions on judgments, 11, 1125
- Effect of pending appeal upon actions on judgments, 11, 1105

JUDGMENTS, *cont'd.***Foreign and sister state judgments, *cont'd.***

- Form of action, 11, 1114
 - Assumpsit, 11, 1114, 1115
 - Case, 11, 1115
 - Debt, 11, 1114, 1115
- Impeachment for want of jurisdiction, 12, 216
- Leave to sue upon, 11, 1096
- Nil debet*, 11, 1155, 1158
- Nul tiel* record, 11, 1150
- Setting out proceedings in actions on judgments, 11, 1142

Foreign judgments:**Appearances:**

- Authority of attorney, 2, 684
- Creditors' bills, 5, 490
- Debt, 5, 905

Defaults:

- Collateral attack, 6, 148
- Res adjudicata*, 6, 142
- Service of process, 6, 26
- Former adjudication, 9, 614, 627
- Impeachment for want of jurisdiction, 12, 216

Formal proceedings, 11, 819***Former adjudication*, see FORMER ADJUDICATION.****Form of action (see *infra*, Actions on judgments), 11, 886****Declaration in debt, judgment, and assumpsit, 11, 886****General and special assumpsit, 11, 887****Judgment for damages in action of debt, 11, 887****Judgment in debt where declaration is in assumpsit or in case, 11, 886****Judgment must be warranted by form of action, 11, 886****Form of judgment, 11, 925****Sufficiency in general, 11, 925****Form of entries held sufficient, 11, 931****Language of judgment, 11, 926****Necessity of writing, 11, 925****Summary statement of rule, 11, 930****What entry must show, 11, 926****What law governs, 11, 925****When record is sufficient, 11, 931*****Forthcoming and delivery bonds*, see FORTHCOMING AND DELIVERY BONDS.****Fraud, 9, 682****Equitable relief against judgments, 11, 1180****Acts and representations of creditor, 11, 1181**

JUDGMENTS, *cont'd.***Fraud, *cont'd.***

Equitable relief against judgments, *cont'd.*

Breach of agreements, 11, 1182

General allegations, 11, 1180

In general, 11, 1180

Perjury, 11, 1183

Sufficiency of averments, 11, 1181

Plea of fraud in actions on judgments, 11, 1166

Frivolous pleadings, see *infra*, Judgments on pleadings; and see SHAM AND FRIVOLOUS PLEADINGS.

Full faith and credit:

Impeachment for want of jurisdiction, 12, 216

Future advances:

Confession of judgment, 11, 980

Garnishment (see GARNISHMENT):

Actions on judgments, 11, 1114

General nature, 11, 825

Guaranty, 16, 951

Guardians, see GUARDIANS.

Guardians ad litem, see GUARDIANS AD LITEM.

Heirs and devisees:

Actions at law against heirs and devisees on statutory liabilities, 10, 43

Common-law actions against heirs and devisees, 10, 35

Quando acciderint, 10, 36

Scire facias on judgments against ancestor or personal representative, 10, 45

Husband and wife, see HUSBAND AND WIFE.

Impairing obligation of contracts, 11, 834

Impeachment, see BILLS TO IMPEACH DECREES AND JUDGMENTS.

Infants, see INFANTS.

Injunction bonds, 11, 1217

Injunctions, see *infra*, Equitable relief against judgments.

In personam, 11, 966

In rem, 11, 966

Instalments, 11, 841

Insurance, 11, 434

Amount of recovery, 11, 434

Attorneys' fees, 11, 434

Recovery in excess of proofs of loss, 11, 434

Interest, 11, 970

Alternative forms of judgment, 11, 972

Certainty, 11, 973

Default, 11, 973

Harmless error, 11, 973

In general, 11, 970

JUDGMENTS, *cont'd.***Interest, *cont'd.***

Interest on demand, 11, 971

Interest on judgment, 11, 972

Judgment on awards, 11, 1054

Judgment on note, 11, 972

Provisions in judgment for interest, 11, 971

Right to interest as affected by pleadings, 11, 970

Right to interest as affected by verdict, 11, 970

Specifying rate, 11, 972

When recoverable, 11, 970

Interlocutory judgments, 11, 822, 964, 965

Introductory, 11, 807

In utramque, 11, 966

Irrigation, 11, 596

Issues, 11, 861, 864

Determination of all issues, 11, 865

Immaterial issue, 11, 864

Issues to the jury (see ISSUES TO THE JURY), 11, 693

Equitable relief against judgments, 11, 1216

Joinder of actions, 11, 1168

Judgments as contracts, 11, 835

Joinder of counts and causes, 1, 193; 11, 1168

Joinder of parties, 11, 847

Against joint defendants, 11, 847

At common law where several defendants are sued jointly in an action *ex contractu*, 11, 847

Confession by one joint defendant after action brought, 11, 849

Declaration against two charging a joint liability and a joint plea, 11, 848

Default by some, successful defense by others, 11, 851

Equitable relief against judgments, 11, 1173

Exceptions to the general rule, 11, 850

Judgment as an entirety, 11, 858

Judgments as contracts, 11, 835

Relief between codefendants, 11, 860

Reversal as an entirety, 11, 859

Statutes, 11, 853

Test as to whether several judgment is proper, 11, 856

Torts, 11, 852

When judgment joint, 11, 856

When judgment several, 11, 857

Joint or several, 11, 856, 857

Judges:

Rendition of judgment by *de facto* judges, 11, 817

JUDGMENTS, *cont'd.*

- Judges, *cont'd.*
 - Rendition of judgment by disqualified judge, 11, 816
 - Signing by judge, 11, 960
- Judgment on motion, 15, 179
- Judgment roll*, see RENDITION AND ENTRY OF JUDGMENT.
- Judgments as causes of action, 11, 1085
 - Action postponed by statute, 11, 1088
- Affirmance on appeal, 11, 1088
- Common-law right to sue upon judgments, 11, 1086
- Decree in admiralty, 11, 1087
- Decree in equity, 11, 1088
- Domestic judgments, 11, 1085
- Execution, remedy by, 11, 1089
 - Action and execution concurrent and cumulative, 11, 1089
 - Action lies though execution might issue, 11, 1089
 - Action not necessary, 11, 1091
 - Actions upon judgments not favored, 11, 1091
 - Execution as cumulative remedy, 11, 1090
 - Necessity of action caused by plaintiff's default, 11, 1093
 - When necessity of a separate action exists, 11, 1092
- Foreign and sister state judgments, 11, 1098
 - Alternative judgment, 11, 1099
 - Distinction between foreign and domestic judgments, 11, 1100
 - Exclusive remedy, 11, 1100
 - Judgments in penal actions, 11, 1101
 - Statement of rule, 11, 1098
- Judgment in criminal action, 11, 1086
- Judgment *nisi*, 11, 1086
- Judgment on appeal, 11, 1086
- Justices of the peace, 11, 102
- Leave of court to sue, 11, 1093
 - Application for order, 11, 1097
 - Assigned judgments, 11, 1096
 - Cases not within the rule, 11, 1095
 - Demurrer, 11, 1098
 - Designating place of suit, 11, 1095
 - Discretion of court, 11, 1094

JUDGMENTS, *cont'd.*

- Judgments as causes of action, *cont'd.*
 - Leave of court to sue, *cont'd.*
 - Distinction between granting and refusing leave as to conclusiveness, 11, 1094
 - Executors and administrators, 11, 1096
 - Federal courts, 11, 1096
 - Judgments of foreign and sister states, 11, 1096
 - Justices' judgments, 11, 1096
 - Leave to sue is jurisdictional, 11, 1094
 - Notice of action for leave to sue, 11, 1097
 - Nunc pro tunc*, 11, 1094
 - Objections to want of leave, 11, 1098
 - Purpose of statutes, 11, 1095
 - Retroactive operation, 11, 1094
 - Review on appeal, 11, 1095
 - Statement of rule, 11, 1093
- Payment of judgment, 11, 1088
- Satisfied judgment, 11, 1088
- Scire facias and debt concurrent remedies, 11, 1088
- Whether more than one action lies on the original judgment, 11, 1087
- Judgments by agreement or consent*, see *infra*, Consent judgments.
- Judgments by confession*, see *infra*, Confession of judgment.
- Judgments *in rem*, 11, 966
 - Illustrations, 11, 968
 - In general, 11, 966
 - In personam*, 11, 966
 - In rem*, 11, 966
 - In utramque*, 11, 966, 968
 - Judgments *in rem* and *in personam* distinguished, 11, 967
 - Jurisdiction, 11, 969
 - Rendition and entry, 11, 969
- Judgments *in rem* and *in personam*
 - Actions upon, 11, 1103
- Judgments on appeal, 11, 1055
 - Affirmance, 11, 1065
 - Consent to affirmance, 11, 1067
 - Directing further proceedings, 11, 1067
 - Error not shown, 11, 1065
 - Failure to prosecute or perfect appeal, 11, 1065
 - Form, 11, 1061
 - Judgment absolute pursuant to stipulation, 11, 1067
 - Reversal ineffectual, 11, 1066
 - Reversal not beneficial, 11, 1066
 - Without prejudice to subsequent proceedings, 11, 1067

JUDGMENTS, *cont'd.*Judgments on appeal, *cont'd.*

Amendment, 11, 1064
 Power to amend, 11, 1064
 Time of amendment, 11, 1065

Appeal with stipulation for judgment absolute, 11, 1070

Change in law or state of facts, 11, 1057

Clerical errors, 11, 1069

Clerical mistakes, 11, 1069

Damages, award of, 11, 1077

Amount of damages, 11, 1081

Appeal taken for delay, 11, 1079

Delay in recovery caused by appeal, 11, 1077

Discretion of court, 11, 1078

Dismissal of appeal, 11, 1080

Enforcement of award, 11, 1082

Express authorization, 11, 1078

Failure to file record, 11, 1081

Failure to prosecute appeal, 11, 1081

Frivolous appeal, 11, 1079

In general, 11, 1077

Money judgments, 11, 1078

Payment of judgment, 11, 1079

Recovery suspended by appeal, 11, 1079

Death of party after submission, 11, 1058

Decision, 11, 1056

Delivery of written opinion, 11, 1056

Dismissal, 11, 1070

Distinction between judgment and opinion, 11, 1056

Entry of judgment, 11, 1061

Error apparent of record, 11, 1069

Error in mathematical computation, 11, 1069

Error in taxation of costs, 11, 1069

Final judgment, 11, 1058, 1076

Final judgment on exceptions, 11, 1059

Form of judgment, 11, 1061

Conclusions and findings of facts, 11, 1063

Entry of new judgment, 11, 1061

Explanation of judgment, 11, 1061

Inclusion of judgment of lower court, 11, 1062

Index Pl. & Pr. — 37

JUDGMENTS, *cont'd.*Judgments on appeal, *cont'd.*Form of judgment, *cont'd.*

Judgment of inferior courts, 11, 1062

On affirmance, 11, 1061

On modification, 11, 1062

On reversal, 11, 1062

Grant of affirmative relief to appellee, 11, 1060

In general, 11, 1060

On appeals in chancery, 11, 1060

Increasing amount of recovery, 11, 1070

In general, 11, 1055

Judgment in excess of jurisdiction of lower court, 11, 1058

Judgments affecting decedent's estates, 11, 1070

Leave to apply to trial court for relief, 11, 1059

Modification, 11, 1068

Appeal with stipulation for judgment absolute, 11, 1070

Clerical errors or mistakes, 11, 1069

Erroneous disallowance of credit, 11, 1070

Error apparent of record, 11, 1069

Error in mathematical computation, 11, 1069

Error in taxation of costs, 11, 1069

Form, 11, 1062

Increasing amount of recovery, 11, 1070

Judgment of nonsuit or dismissal, 11, 1070

Judgments affecting decedent's estate, 11, 1070

Particular modifications, 11, 1069

Power to modify, 11, 1068

Record must contain data, 11, 1070

Rendering judgment which lower court should have rendered, 11, 1071

Striking out excessive attorney's fee, 11, 1070

Striking out party, 11, 1070

Necessity of decision, 11, 1055

Necessity of written opinion, 11, 1056

Nonsuit, 11, 1070

Payment of tax, 11, 1055

Relief between co-appellees, 11, 1060

Remand without decision, 11, 1056

JUDGMENTS, *cont'd.*Judgments on appeal, *cont'd.*

Rendering final judgment, II, 1058, 1076

Rendering judgment which lower court should have rendered, II, 1071

Reversal, II, 1072

Appeal by one party, II, 1074

Court without jurisdiction, II, 1072

Directing judgment to be rendered in trial court, II, 1075

Disposition of case on reversal, II, 1075

Effect of reversal, II, 1076

Error as to grounds of decision, II, 1072

Form, II, 1062

Judgment in admiralty, II, 1074

New trial, II, 1075

Rendering final judgment, II, 1076

Reversal as to one party, II, 1073

Reversal of part of judgment, II, 1073

Trivial or technical defects or errors, II, 1072

Satisfaction of judgment, II, 1055

Settlement pending appeal, II, 1055

Striking out excessive attorney's fee, II, 1070

Striking out party, II, 1070

Judgments on awards, II, 1048

Allowance of interest, II, 1054

Amendment or correction of award, II, 1054

Awards on which judgment may be entered, II, 1049

Award under submission *in pais*, II, 1049

Award under submission in pending suit, II, 1049

Conditions precedent to entry of judgment, II, 1048

Courts in which judgment may be entered, II, 1050

Courts must have jurisdiction, II, 1050

Courts of other county, II, 1051

Courts of record, II, 1050

Designation of court in agreement, II, 1050

Justices of the peace, II, 1050

Statutory provisions, II, 1050

JUDGMENTS, *cont'd.*Judgments on awards, *cont'd.*

Death of party, II, 1052

Enforcement of judgment, II, 1055

Entry by arbitrator's minutes of record, II, 1054

Entry by clerk, II, 1054

Entry of submission, II, 1048

Exceptions to entry of award on minutes, II, 1053

Interest, II, 1054

Loss of award, II, 1054

Manner of entering judgment, II, 1053

Notice of motion or rule, II, 1052

Objections to motion, II, 1053

Presence of parties, II, 1052

Procedure on entry of judgment, II, 1052

Service of copy of award, II, 1048

Substantial compliance with statute, II, 1048

Sufficiency of objections, II, 1053

Time of entry of judgment, II, 1051

Consent of parties, II, 1051

Delay in entry, II, 1052

Statutory provisions, II, 1051

Judgments on pleadings, II, 1030

Admitted claim, II, 1039

Answers held to raise material issues, II, 1032

Denial of unnecessary averment, II, 1033

Failure to answer or reply, II, 1034

Finding of facts unnecessary, II, 1032

Frivolous pleadings, II, 1036

Answer, II, 1036

Answer assumed to be true, II, 1038

Denial of fact not alleged, II, 1037

Effect of former decision, II, 1038

Form of judgment on frivolous pleading, II, 1048

Frivolousness must be manifest, II, 1039

Frivolous only in part, II, 1038

In general, II, 1036

Test of frivolous pleading, II, 1036

Where complaint is insufficient, II, 1036

Inconsistent defense, II, 1033

Insufficient pleadings, II, 1031

Insufficient pleadings of plaintiff, II, 1033

JUDGMENTS, *cont'd.*

- Judgments on pleadings, *cont'd.*
 - Judgment for want of sufficient affidavit of defense, 11, 1042
 - Examples, 11, 1042, 1044
 - In general, 11, 1042
 - Test of sufficiency, 11, 1043
 - Judgment on part of claim admitted, 11, 1039
 - Motion for judgment on pleadings, 11, 1044
 - Amendment of pleading on motion for judgment, 11, 1047
 - Construction of pleadings on motion, 11, 1047
 - Effect of motion, 11, 1046
 - Motion must be specific, 11, 1046
 - Necessity for, 11, 1044
 - Proper test of affidavit of defense, 11, 1044
 - Time for motion, 11, 1046
 - Waiver of right by failure to move, 11, 1045
 - Where motion not proper remedy, 11, 1044
 - Notwithstanding evidence, 11, 1030
 - On answer, 11, 1031
 - Pleadings insufficient to sustain a different judgment, 11, 1030
 - When proper, 11, 1030
- Jurisdiction (see JURISDICTION), 11, 842
 - Actions on judgments, 11, 1113
 - Averment of jurisdiction in actions on judgments, 11, 1130
 - Application to courts of record, 11, 1139
 - At common law in suits on foreign judgments, 11, 1132
 - Averment that court was one of general jurisdiction, 11, 1132
 - Averment that judgment was duly given, 11, 1137
 - Courts of general jurisdiction, 11, 1130
 - Courts of general jurisdiction of foreign and sister states, 11, 1131
 - Courts of inferior jurisdiction, 11, 1134
 - Cured by verdict, 11, 1136
 - Domestic court of general jurisdiction, 11, 1130
 - Foreign inferior courts, 11, 1140

JUDGMENTS, *cont'd.*

- Jurisdiction, *cont'd.*
 - Averment of jurisdiction in actions on judgments, *cont'd.*
 - Inferior courts of sister state, 11, 1136
 - Judicial notice of character of court, 11, 1133
 - Jurisdiction of subject-matter, 11, 1135
 - Mere general averment of jurisdiction, 11, 1135
 - Necessity of using the term duly, 11, 1138
 - Statutory regulation, 11, 1137
 - Sufficiency of declaration under statute, 11, 1138
 - Unauthorized jurisdiction of person, 11, 1135
 - Various forms of declarations, 11, 1133
 - Confession of judgment, 11, 982
 - Entry upon warrant in another jurisdiction, 11, 984
 - Jurisdictional amount, 11, 983
 - Jurisdiction of court essential, 11, 982
 - Presumption as to jurisdiction, 11, 984
 - Presumption thereof, 11, 982
 - Waiver of objection, 11, 982
 - Waiver of objection to jurisdiction, 11, 984
 - What record must show jurisdiction, 11, 983
- Error in exercise of jurisdiction, 11, 842
- Judgments as contracts in a statute conferring or limiting jurisdiction, 11, 834
- Judgments *in rem*, 11, 969
- Judgments on awards, 11, 1050
- Necessity of jurisdiction, 11, 842
- Plea of want of jurisdiction in actions on judgments, 11, 1159
 - "Duly given or made," 11, 1164
 - Duplicity in plea, 11, 1162
 - General denial or general issue, 11, 1163
 - How pleaded, 11, 1159
 - Plea need not state a defense, 11, 1163
 - Right to plead, 11, 1159
 - Special plea, 11, 1159
 - Strictness required in pleadings, 11, 1160
 - Strong *prima facie* defenses, 11, 1161
 - Sufficiency of plea of want of jurisdiction of the person, 11, 1162

JUDGMENTS, *cont'd.*Jurisdiction, *cont'd.*

- Plea of want of jurisdiction in actions on judgments, *con.*
- Sufficiency of plea to jurisdiction of subject-matter, 11, 1162
- What plea must negative, 11, 1160

Statement of rule, 11, 842

Jury, see ISSUES TO THE JURY.

Justices of the peace (see JUSTICES OF THE PEACE), 12, 729

- Actions on judgments of justices of the peace, 11, 1102
- Amendment and correction, 12, 738

Certainty in matters of substance, 12, 737

Confession, 12, 742

Defaults, 12, 739

Form, 12, 735

Formality not required, 12, 735

In general, 12, 729

Judgments on awards, 11, 1050

Leave to sue upon justices' judgments, 11, 1096

Nol tuel record, 11, 1150

Opening and vacating, 12, 738

Rendition and entry, 12, 729

Justly due:

Confession of judgment, 11, 1005

Laches:

Equitable relief against judgments, 11, 1186

Leave to sue, see *infra*, Actions on judgments.

Legal conclusions:

Equitable relief against judgments, 11, 1204

Legal defenses, see *infra*, Equitable relief against judgments.

Legatees and distributees, 13, 9

Liens:

Actions to enforce liens, 13, 126

Attachment, 13, 133

United States courts, 22, 307

Limitations:

Equitable relief against judgments, 11, 1203

Judgments as contracts, 11, 834

Plea on opening and vacating judgments, 13, 197

Limited partnerships, 15, 1119

Logs and lumber:

Suit to enforce lien, 13, 345

Lost instruments and records:

Restoration of judgments, 13, 378

Defense to remedy of judgment, 13, 379

In general, 13, 378

Remedy by action or judgment, 13, 379

JUDGMENTS, *cont'd.*

Malicious prosecution, 13, 476

Defects cured by verdict or judgment, 13, 457

Mandamus:

Enforcing judgment against a municipality, 11, 1083

Entering and signing judgments and orders, 13, 562

Before refusal to enter judgment, 13, 563

In general, 13, 562

On verdict, 13, 564

Order must be authorized, 13, 563

Sufficiency of verdict, 13, 564

To enter particular judgment, 13, 563

Vacating and altering judgments and orders, 13, 565

Refusal to vacate proper, 13, 566

Revision of discretion, 13, 566

To modify judgment after entry, 13, 568

To reverse order vacating judgment or decree, 13, 567

To vacate and set aside judgments and decrees, 13, 565

Where the respondent has no power, 13, 567

Mandate, see MANDATE.

Marriage (annulment), 13, 877

Marshaling assets:

Equitable relief against judgments, 11, 1175

Maturity of debt:

Confession of judgment, 11, 978

Maturity of demand, 11, 840

Attachment on an unmatured demand, 11, 840

Demands due in instalments, 11, 841

Foreclosing lien for undue instalments of purchase money, 11, 841

Statement of rule, 11, 840

Mechanics' liens, see MECHANICS' LIENS.

Medium of payment, see *infra*, Payments.

Mills and milldams, see MILLS AND MILLDAMS.

Misnomer, see *infra*, Names.

Mistakes:

Equitable relief against judgments, 11, 1180, 1184

Modification, see *infra*, Judgments on appeal.

Motion for judgment on pleadings, see *infra*, Judgments on pleadings.

JUDGMENTS, *cont'd.*

Motions, see MOTIONS; SUMMARY PROCEEDINGS.

Municipal corporations, see MUNICIPAL CORPORATIONS.

Municipal securities:

Enforcement by mandamus, 14, 261

Enforcement of judgment by mandamus, 14, 267

Names:

Christian name or initials, 11, 953

Declaration and complaint in actions on judgments, 11, 1126

Descriptio personæ, 11, 952

Designation of parties, 11, 948

Failure to plead misnomer, 11, 954

Necessity of designating party by name, 11, 950

Naturalization, see NATURALIZATION.

Nature of judgment, 11, 925

Nature of relief awarded, 11, 831

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Newly discovered evidence:

Equitable relief against judgments, 11, 1198

New trial (*see infra*, Equitable relief against judgments):

On reversal on appeal, 11, 1075

Suspension of judgment, 14, 899

Next friend, see NEXT FRIEND.

Nil debet, see infra, Actions on judgments.

Nil dicit distinguished from default, 11, 839

Nolle prosequi, 11, 839

Non obstante veredicto, 11, 912

Bill of exceptions, 11, 921

Confession essential, 11, 913

Definition of judgment, 11, 912

Discretion of court, 11, 920

Equity, 11, 916

For whom rendered, 11, 913

In general, 11, 912

Judgment on verdict or point reserved, 11, 921

Motion for judgment, 11, 920

Nature of question reserved, 11, 922

Never rendered for defendant, 11, 914

On evidence, 11, 917

On record, 11, 917

On special findings, 11, 924

On special findings against general verdict, 11, 924

Point reserved, 11, 921

Relaxation of rule, 11, 914

Rendered only for plaintiff, 11, 913

JUDGMENTS, *cont'd.*

Non obstante veredicto, cont'd.

Repleader distinguished, 11, 918

Statutes, 11, 916

Sufficiency of reservation, 11, 923

Time of motion for judgment, 11, 920

When and for whom rendered, 11, 912

When rendered for defendant, 11, 915

When rendered for plaintiff, 11, 915

Where contributory negligence is pleaded, 11, 916

Non pros., 11, 839

Notice:

Motion for leave to sue upon judgment, 11, 1099

Notice of motion or rule for judgments on awards, 11, 1052

Nul tiel record, see infra, Actions on judgments.

Number of judgments, 11, 932

But one judgment should be rendered, 11, 932

In general, 11, 932

Two judgments, 11, 932

Objections, see infra, Exceptions and objections.

Objections to jurisdiction, 12, 179

Effect of want of jurisdiction, 12, 179

Judgments absolutely void, 12, 179

Offer of judgment, see OFFER OF JUDGMENT.

Offers in pleadings, see OFFERS IN PLEADINGS.

Officers of private corporations:

Necessity for judgment against corporation, 15, 67

Opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS; and *see infra*, Equitable relief against judgments.

Orders, see ORDERS.

Ordinances, 15, 437

Parties to action, 11, 842

Actions on judgments, 11, 1115

Assignees, 11, 1117

Enforcement of lien, 11, 1119

Executors and administrators, 11, 1116

Executors and administrators as defendants, 11, 1121

Foreign executors and administrators as defendants, 11, 1122

Identity of defendant, 11, 1119

JUDGMENTS, *cont'd.*Parties to action, *cont'd.*Actions on judgments, *cont'd.*

Joint defendants, 11, 1119

Joint obligation made joint
and several by statute, 11,
1120

Legal owner, 11, 1119

Next friend, 11, 1116

Original plaintiff a nominal
party, 11, 1117

Parties defendant, 11, 1119

Parties plaintiff, 11, 1115

Statutes as to assignees, 11,
1118Conformity to pleadings and
proof, 11, 885

Death of party, 11, 843

Designation of parties, 11, 948

Against whom, 11, 951

Christian name or initials,
11, 953

Clerical error, 11, 951

Descendants, 11, 950

Descriptio personæ, 11, 952

Heirs, 11, 950

In general, 11, 948

In whose favor, 11, 949

Judgment against defend-
ants, 11, 952, 953

Legatees, 11, 950

Miscellaneous cases, 11, 954

Necessity of designating
party by name, 11, 950Nominal and beneficial
plaintiffs, 11, 951

Representatives, 11, 950, 952

Transposition of the words
plaintiff and defendant,
11, 949

Variance, 11, 948

Where party is sued by
wrong name, 11, 954Disposition of case as to all
parties, 11, 842Entirety of judgment where
rendered for or against joint
parties, 11, 828Equitable relief against judg-
ments, 11, 1172

Joinder of parties, 11, 1173

Judges and officers of court,
11, 1174Judgment debtor or privies,
11, 1172Participants in fraud, 11,
1174

Parties defendant, 11, 1173

Parties plaintiff, 11, 1172

Receiver or assignee, 11, 1173

Taxpayer, 11, 1173

Executors and administrators,
11, 885**JUDGMENTS, *cont'd.***Parties to action, *cont'd.*

In general, 11, 842

Joinder of parties, 11, 847

Judgment against a deceased
party, 11, 843Judgment against one not a
party, 11, 842Judgment for a deceased party,
11, 843Judgment in favor of one not a
party, 11, 843

Necessity of parties, 11, 818

Partition:

Common-law partition, 15, 773

Partnership, see PARTNERSHIP.*Patents*, see PATENTS.Payments (see SATISFACTION OF JUDG-
MENTS), 16, 221Specifying medium of payment,
11, 940

Absence of contract, 11, 941

Coin, 11, 941

Conformity to pleadings
and verdict, 11, 946Contracts for coin or equiva-
lent currency, 11, 946Contracts to pay in coin, 11,
943

Costs, 11, 947

Currency, 11, 941

Domestic money, 11, 940

Effect of unauthorized judg-
ment for coin, 11, 947

Foreign money, 11, 940

Judgments for duties and
taxes, 11, 943Loss or conversion of coin,
11, 942Specific contract acts, 11,
945Penal and *qui tam* actions:Actions upon foreign and sister
state judgments, 11, 1101

Penalties and penal actions, 16, 399

Actions against property, 16,
300

Amount found due, 16, 300

Form, 16, 299

Remittitur, 16, 301

Where the whole penalty does
not go to the plaintiff, 16, 299

Perjury:

Equitable relief against judg-
ments, 11, 1183*Personal judgment*, see PUBLICATION;
SERVICE OF PROCESS.*Personam*, 11, 966*Petition*, see *infra*, Declaration and
complaint.

Place:

Rendition at unauthorized place,
11, 812

JUDGMENTS, *cont'd.*

Pleadings (see *infra*, Conformity to pleadings and proof; Judgments on pleadings), 11, 861

Amending pleadings to conform to proof, 11, 872

Amendment of pleading on motion for judgment, 11, 1047

Plea or answer, see *infra*, Actions on judgments.

Power of attorney, see *infra*, Confession of judgment.

Private international law, 11, 840

Probate, see *infra*, Surrogate.

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.

Process (see PROCESS):

Confession of judgment, 11, 974

Conformity to process, 11, 867

Profert and oyer:

Profert of record in actions on judgments, 11, 1140

Proof, see *infra*, Conformity to pleadings and proof.

Property, see *infra*, Description of property.

Provisions as to enforcement, 11, 957

General judgment limiting its collection to certain property, 11, 958

Lien of judgment need not be declared, 11, 959

Limitation to certain funds, 11, 959

Stay of execution, 11, 959

Validity of provisions as to enforcement, 11, 958

Whether judgment should order execution or other process, 11, 957

Publication, see PUBLICATION.

Publication of notice, see PUBLICATION.

Public officers, 17, 200

Judgments by administrative officers, 11, 811

Puis darrein continuance, 17, 267, 272

Quieting title, see QUIETING TITLE.

Quod recuperet, 11, 1167

Quod sit in misericordia, 11, 835

Quo warranto, see QUO WARRANTO.

Railroads, see RAILROADS.

Reasons for judgment, 11, 825

Receivers, see RECEIVERS.

Receiving stolen goods, 17, 898

Records, see RECORDS; RENDITION AND ENTRY OF JUDGMENTS; and see *infra*, Form of judgment.

Recovery, see *infra*, Amount of recovery.

References, see REFERENCES.

Rehearing, see REHEARING.

Rem, 11, 966

JUDGMENTS, *cont'd.*

Remedy at law:

Equitable relief against judgments, 11, 1190

Remittitur, see REMITTITUR.

Removal of causes, see REMOVAL OF CAUSES.

Rendition, see RENDITION AND ENTRY OF JUDGMENTS.

Repleader, 18, 492

Judgment *non obstante veredicto* distinguished, 11, 918

Replevin, see REPLEVIN.

Replications and replies:

Actions on judgments, 11, 1166

Judgment for failure to answer or reply, 11, 1034

Representatives, 11, 950, 952

Requisites of a valid judgment, 11, 840

Res judicata:

Judgment upon issues not made, 11, 881

Reversal, see *infra*, Judgments on appeal.

Review, see REVIEW.

Revival, see REVIVAL OF JUDGMENTS; SCIRE FACIAS AND REVIVAL.

Roll, see RENDITION AND ENTRY OF JUDGMENTS.

Rules of court:

Rules distinguished from judgments, 11, 828

Sales:

Action for price, 16, 59

Satisfaction and discharge of judgments, see SATISFACTION AND DISCHARGE OF JUDGMENTS.

Saving clauses, 11, 959

Schools, see SCHOOLS.

Scire facias and revival, see SCIRE FACIAS AND REVIVAL.

Scope of article, 11, 807

Sentence distinguished from, 19, 432

Sentence of law not of court, 11, 825

Sentences (see SENTENCES):

Equitable relief against judgments, 11, 1208

Separable and inseparable error, 11, 827

Separate trials, 19, 531

Service of process, see SERVICE OF PROCESS.

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

Several, 11, 857

Sham and frivolous pleadings, see SHAM AND FRIVOLOUS PLEADINGS.

Sheriffs and constables, 20, 159

Signing, 11, 960

By clerk, 11, 963

By judge, 11, 960

JUDGMENTS, *cont'd.***Signing, *cont'd.***

Statement upon confession of judgment, II, 1006

Signs, II, 939

Sister state judgments, see *infra*, Foreign and sister state judgments.

Special issues, see ISSUES TO THE JURY.

Specific performance:

Actions for specific performance on judgments, II, 1114

Equitable relief against judgments, II, 1175

Splitting causes of action, I, 156

Splitting demand:

Actions on judgments, II, 1168

Statement, see *infra*, Confession of judgment.

Stating facts of case, II, 957

Stipulations, see STIPULATIONS.

Stock and stockholders, see STOCK AND STOCKHOLDERS.

Street railways, see STREET RAILWAYS.

Streets and highways, 20, 975

Striking out excessive attorney's fee on appeal, II, 1070

Striking out party on appeal, II, 1070

Submission, see *infra*, Judgments on awards.

Sufficiency, see *infra*, Form of judgment.

Sufficiency of verdict to support judgment, see VERDICT.

Summary proceedings, see SUMMARY PROCEEDINGS.

Supersedes and stay of proceedings, see SUPERSEDEAS AND STAY OF PROCEEDINGS.

Supplemental pleadings:

Judgment or decree after supplemental pleading has been filed, 21, 83

Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.

Suretyship:

Action for contribution, 16, 961

Equitable relief against judgments, II, 1179

Surplusage, II, 960

Conformity to verdict or findings, II, 908

Surprise:

Equitable relief against judgments, II, 1184

Surrogate:

Probate orders and judgments, II, 824

Suspension of judgments, see SUPERSEDEAS AND STAY OF PROCEEDINGS.

Taxation, see TAXATION.

JUDGMENTS, *cont'd.*

Telegraphs and telephones, see TELEGRAPHS AND TELEPHONES.

Tender, see TENDER.

Terminology, see *infra*, Classification and terminology.

Terms of court:

Rendition of judgment after expiration of term, II, 813

Time:

After expiration of time, II, 813

Rendition at unauthorized time, II, 812

Vacation, II, 814

Time of confession, see *infra*, Confession of judgment.

Torts:

Confession of judgment, II, 978

Joinder of defendants, II, 852

Trespass to try title, see TRESPASS TO TRY TITLE.

Trial of the right of property, see RIGHT OF PROPERTY, TRIAL OF.

Trover and conversion, see TROVER AND CONVERSION.

Trustee process:

Actions on judgments, II, 1114

Trusts and trustees, see TRUSTS AND TRUSTEES.

Turnpikes and tollroads, see TURNPIKES AND TOLLROADS.

Unincorporated societies, see UNINCORPORATED SOCIETIES.

United States courts, 22, 307

Leave to sue upon judgment, II, 1006

Usury, see USURY.

Utramque, II, 966

Vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Vacation, see *infra*, Chambers and vacation.

Vacation of judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Validity of judgment:

Appeals, 2, 324, 325

Variance (see *infra*, Conformity to pleadings and proof):

Description of judgment in declaration and complaint in actions on judgments, II, 1128

Designation of parties, II, 948

Variance between process and declaration, II, 867

Vendor and purchaser, see VENDOR AND PURCHASER.

Verdict (see *infra*, Conformity to verdict or findings), II, 864

Sufficiency of judgment to support verdict, see VERDICT.

JUDGMENTS, *cont'd.*

Verification:

Confession of judgment, 11, 1007

Consent judgments, 11, 1028

Statement upon confession of judgment, 11, 1007

Void judgments, see *infra*, Actions on judgments.

Equitable relief against judgments, 11, 1200

Warrant of attorney, see *infra*, Confession of judgment.

Waters and watercourses, 22, 1165

When action lies:

Foreign and sister state judgments, 11, 1098

Alternative judgment, 11, 1099

Distinction between foreign and domestic judgments, 11, 1100

Exclusive remedy, 11, 1100

Judgments in penal actions, 11, 1101

Statement of rule, 11, 1098

Wills, see PROBATE AND CONTEST OF WILLS.

Words, 11, 939

Writing:

Consent judgments, 11, 1030

Necessity of, 11, 925

JUDGMENTS OF SISTER STATES:

Appearances:

Contradicting record as to jurisdictional facts, 2, 684

Contradicting the record, 2, 600

JUDICIAL ACTS, see MANDAMUS.**JUDICIAL NOTICE**, 12, 1

Abbreviations, 1, 43

Construction of Christian names, 1, 43

Initials, 1, 43

Officials, 1, 43

Prefix, 1, 46

Proper names, 1, 43

Suffix, 1, 46

Time, 1, 47

Bills in equity, 3, 356

Contempt, 4, 776

Continuances, 4, 863

Corporations:

Corporate existence, 5, 73

Defaults:

Expiration of time to plead, 6, 77

Indictments, 10, 476

Municipal corporations:

Charter, 14, 223

Patents, 16, 138

Rules of court, 18, 1260

Statutes, 20, 594, 597

Sundays and holidays, 20, 1192

Terms and sessions of court, 21, 604

JUDICIAL NOTICE, *cont'd.*

Treaties, 21, 779

Usages and customs, 22, 406

JUDICIAL SALES, 12, 2

See SHERIFFS' SALES.

Acknowledgment, 12, 106

Action to enforce bid, 12, 66

Adjournments, 12, 47

Discretion of officer, 12, 47

In general, 12, 47

Notice of adjournment, 12, 26

When sale may be adjourned, 12, 47

Administration sales, see SETTLEMENT OF DECEDENTS' ESTATES.

Admiralty (see ADMIRALTY), 12, 8

Amendments:

Return, 12, 22

Appeals:

Appeal by purchaser at judicial sale, 2, 166

Order of sale, 2, 367

Orders setting aside judicial sales, 2, 110

Appraisement, 12, 12

Appraisers, 12, 15

Appointment by debtor, 12, 17

Appointment by one of two judgment debtors, 12, 17

Appointment ministerial, 12, 15

Appointment where debtor is disqualified, 12, 17

Attacking valuation, 12, 15

Different items, 12, 20

Duties, 12, 18

Exceptions, 12, 16

Incumbrances, 12, 19

In general, 12, 15

Interest, 12, 16

Joint debtors, 12, 19

Liens, 12, 19

Necessity of concurrence, 12, 20

Number, 12, 17

Oath, 12, 18

Oath administered by whom, 12, 18

Qualifications, 12, 15

Railroad, 12, 20

Relatives, 12, 16

Second appraisement, 12, 20

Technical error in administering oath, 12, 18

View of premises, 12, 18

Collateral attack, 12, 23

Irregularities, 12, 22

Material mistake, 12, 22

Necessity of appraisement, 12, 12

Effect of failure to appraise, 12, 15

Examples, 12, 12, 13

JUDICIAL SALES, *cont'd.*Appraisement, *cont'd.*Necessity of appraisement, *con.*

In general, 12, 12

Statutes, 12, 12, 13

Waiver, 12, 14

Objections and irregularities, 12, 22

Presumptions, 12, 12

Return, 12, 20

Amendment, 12, 22

Contents, 12, 20

Time of filing, 12, 22

Waiver, 12, 14

Attachment:

Enforcement of bid, 12, 67

Sale in attachment proceedings, 12, 8

Auctioneer, 12, 49

As purchaser, 12, 59

Auctions, see *infra*, Bidding.

Bankruptcy, assignee, 12, 8

Bidding, 12, 62

Assigning bid, 12, 64

Attachment, 12, 67

Bidder relieved, 12, 68

By letter, 12, 62

Chilling bidding, see *infra*, Chilling bidding.

Compliance with statute of frauds, 12, 62

Custodia legis, 12, 68

Enforcing bid, 12, 65

Execution, 12, 67

Manner of bid, 12, 62

Notice of resale, 12, 66

Officer bidding, 12, 63

Opening bidding, 12, 65

Puffing bidding, see *infra*, Puffing bidding.

Rejecting bid, 12, 64

Resale, 12, 65, 66, 67

Sale on credit, 12, 68

Scarcity of bidders, 12, 90

Withdrawing bid, 12, 64

Bills of review:

Effect of reversal on purchaser, 3, 597

Bonds:

Officer conducting sale, 12, 51

Canceling:

Deed, 12, 112

Chilling bidding, 12, 69

Collusion, 12, 69

Fraudulent or false representations, 12, 71

In general, 12, 69

Preventing competition, 12, 70

Whether sale is void or voidable, 12, 71

Commissioners, 12, 48

Competition, see *infra*, Chilling bidding; Puffing bidding.**JUDICIAL SALES, *cont'd.***

Computation of time.

Publication of notice, 12, 35

Conditions, see *infra*, Terms and conditions.Conduct of sale (see *infra*, Bidding; Who may conduct; Who may not purchase), 12, 39Adjournments, see *infra*, Adjournments.

Conditions, 12, 57

Equity of redemption, 12, 56

Inverse orders, 12, 56

Manner of sale, 12, 51

Marshaling, 12, 56

Personal property, 12, 55

Place of sale, see *infra*, Place of sale.Sale *en masse*, 12, 54Sale in parcels, see *infra*, Sale in parcels.

Several liability, 12, 56

Sufficient to satisfy debt, 12, 56

Terms, 12, 57

Time of sale, see *infra*, Time of sale.

Who may conduct, 12, 48

Who may not purchase, 12, 58

Who may purchase, 12, 61

Confirmation, 12, 76

Collateral attack, 12, 80

Cures irregularities, 12, 80

Discretion, 12, 79

Effect of confirmation, 12, 80

Matters concluded by confirmation, 12, 80, 81

Motion, 12, 78

Necessity of confirmation, 12, 76

Notice, 12, 78

Objections to confirmation, 12, 81

Presumptions, 12, 78

Relation, 12, 81

Who may and who may not confirm, 12, 79

County, 12, 39

Court-house, 12, 40

Courts, see *infra*, Who may conduct.

Death:

Effect of death of defendant on sales of personality, 12, 46

Effect of death of defendant on sales of realty, 12, 45

Effect of death of plaintiff, 12, 46

Death of parties, 12, 98

Decrees, see *infra*, Objections and setting aside.

Deeds, 12, 101

Acknowledgment, 12, 106

Apt words of grant, 12, 105

Authority of maker, 12, 105

By whom executed, 12, 102

Canceling, 12, 112

Compelling execution, 12, 105

JUDICIAL SALES, *cont'd.***Deeds, *cont'd.***

- Construction of statutes, 12, 108
- Contents, 12, 105
- Deputy, 12, 102
- Description, 12, 109
- Designating parties, 12, 109
- Directory provision, 12, 108
- Errors and omissions, 12, 110
- Evidence *aliunde*, 12, 111
- Irregularities, 12, 110
- Lapse of time, 12, 103, 111
- Mandatory force of statute, 12, 108
- Necessity of deed, 12, 101
- Presumptions, 12, 111
- Recital of proceeding, 12, 106
- Redemption period, 12, 104
- Reforming deed, 12, 111
- Time of execution, 12, 103
- To whom executed, 12, 104
- When deed takes effect, 12, 105
- When executed, 12, 103
- Definition (see *infra*, What are judicial sales; What are not judicial sales), 12, 6
- Demand, 12, 66
- Deputies, 12, 49
- En masse* sale, 12, 54
- Equities of redemption, 12, 56
- Estoppel, 12, 99
 - Defects and irregularities in proceedings, 12, 99
 - Laches, 12, 99
 - Waiver of errors and irregularities, 12, 100
- Exceptions (see *infra*, Objections and setting aside), 8, 30
- Execution sales, 12, 9
 - Execution sales distinguished from judicial sales, 12, 9
- Executions:
 - Enforcement of bid, 12, 67
 - Time of issuance of writ, 8, 363
 - Title of purchaser where writ is irregular, 8, 363
 - Variance in amount between writ and judgment, 8, 430
- Executors and administrators (see SETTLEMENT OF DECEDENTS' ESTATES), 12, 7
 - As purchasers, 12, 59
- Foreclosure of mortgages (see FORECLOSURE OF MORTGAGES), 12, 7
- Good faith*, see *infra*, Who may not purchase.
- Guardians, 12, 8
- Hand-bills:
 - Notice of sale, 12, 29
- Holidays, 12, 47
- Hour of sale, 12, 47
- Inadequacy of price, 12, 93

JUDICIAL SALES, *cont'd.***Incumbrances:**

- Appraisalment, 12, 19
- Infants*, see INFANTS.
- Insane persons*, see INSANE PERSONS.
- Insolvency:
 - Assignee in bankruptcy, 12, 8
- Inverse order, 12, 56
- Irregularities (see *infra*, Objections and setting aside):
 - Confirmation, 12, 80
- Judgment*, see *infra*, Objections and setting aside.
- Jurisdiction:
 - Order of sale, 12, 12
- Laches, 12, 99
- Levy, 12, 12
- Liens:
 - Appraisalment, 12, 19
- Mandamus, 13, 591
 - In matters pertaining to judicial sales, 13, 591
 - Restitution of money to purchaser, 13, 592
 - Reversal of order of sale, 13, 591
 - To make a judicial sale, 13, 591
- Manner of sale, 12, 51
- Marshaling assets, 12, 56
- Master in chancery, 12, 48
- Mistake, 12, 89
- Nature, 12, 6
- Newspaper*, see *infra*, Publication.
- Notice:
 - Proceedings to vacate sale, 12, 84
- Notice of resale, 12, 66
- Notice of sale, 12, 23, 78
 - Handbills, 12, 29
 - Necessity of notice, 12, 23
 - Defective notice, 12, 25
 - Effect of defective notice, 12, 25
 - Effect of failure of notice, 12, 24
 - Failure of notice, 12, 24
 - In general, 12, 23
 - Notice of adjournment, 12, 26
 - Personal notice, 12, 24
 - Remedy against officer, 12, 24
 - Waiver, 12, 24
- Personal notice, 12, 24, 26
 - Effect of failure to give, 12, 28
 - Manner in which such notice shall be served, 12, 27
 - When required, 12, 27
 - Where debtor cannot be found, 12, 27
- Place of sale, 12, 39
- Posting, 12, 28
- Publication*, see *infra*, Publication.
- Time of sale, 12, 42

JUDICIAL SALES, *cont'd.*

Oaths:

- Appraisers, 12, 18
 - By whom administered, 12, 18
 - In general, 12, 18
 - Technical error, 12, 18
- Officer conducting sale, 12, 51
- Objections and setting aside, 12, 82
- Assailing decree, 12, 93
- Cancellation and notice of priority, 12, 101
- Death of parties, 12, 98
- Departure from decree, 12, 91
- Departure from statute, 12, 91
- Estoppel, 12, 99
- Fraud in general, 12, 88
- Fraud of officer, 12, 88
- Fraud of plaintiff, 12, 88
- Fraud of purchaser, 12, 89
- Inadequacy of price, 12, 93, 98
- Inoperative decree or judgment, 12, 90
- Irregularities in general, 12, 85
- Irregularities in process, 12, 86
- Irregularities of officer, 12, 86
- Laches, 12, 99
- Legislative curative acts, 12, 101
- Mistake, 12, 89
- Mistake of defendant, 12, 89
- Mistake of officer, 12, 89
- Mistake of purchaser, 12, 89
- Notice, 12, 84
- Objections in general, 12, 84
- Petition in equity, 12, 84
- Proceedings to vacate, 12, 83
- Protection of infants, 12, 90
- Reversal of decree, 12, 91
- Sale for less than two-thirds of the appraised value, 12, 93
- Satisfied decree or judgment, 12, 91
- Scarcity of bidders, 12, 90
- Surprise, 12, 89
- Vacation appointments, 12, 101
- Void judgment or decree, 12, 90
- Waiver, 12, 100
- Who may not object, 12, 83
- Who may object, 12, 82

Officers, see infra, Public officers;
Who may conduct.

Opening bidding, 12, 65

Order of sale, 12, 11

Contents of order, 12, 12

In general, 12, 11

Jurisdiction to render order, 12, 12

Necessity of order, 12, 11

Parcels, see infra, Sale in parcels.

Partition, see PARTITION.

Personal property:

Sale in parcels, 12, 55

JUDICIAL SALES, *cont'd.*

Place of sale, 12, 39

Conformity to notice, 12, 39

County in which the premises are situated, 12, 39

Court-house, 12, 40

Exposure of personalty, 12, 41

Personalty, 12, 41

Presence of bidders, 12, 41, 42

Void or voidable sales of personalty, 12, 42

Void sales of realty, 12, 41

Posting:

Notice of sale, 12, 28

Presumptions:

Appraisement, 12, 12

Private sales, 12, 11

Probate and administration, 12, 7, 8

Publication, 12, 30

Character of newspaper, 12, 36

Computation of time, 12, 35

Conformity to decree, 12, 30

Contents of notice, 12, 30

Description, 12, 31

Designating place, 12, 33

Designating time, 12, 34

Duration of notice, 12, 34

Error in description, 12, 32

Exceptions, 12, 37

Improvements, 12, 33

In general, 12, 30

Name of defendant, 12, 31

Newspaper devoted to legal news, 12, 37

Premature publication, 12, 36

Prescribed number of days, 12, 35

Prescribed period, 12, 36

Proof of notice, 12, 38

Publication for the time prescribed, 12, 34

Religious newspapers, 12, 38

Signature, 12, 31

Successive weeks, 12, 35

Sufficiency of description in general, 12, 31

Title and amount, 12, 31

Weekly publications, 12, 36

Public officers (*see infra*, Who may conduct; Who may not purchase):

Officer bidding, 12, 63

Public sales, 12, 11

Puffing bidding, 12, 72

In general, 12, 72

Valid agreement for bidding, 12, 73

Purchasers, see infra, Who may not purchase.

Receivers, see RECEIVERS.

Redemption:

Purchaser at execution sale, 17, 956

JUDICIAL SALES, *cont'd.*

Reformation of instruments, 12, 111

Relation:

Confirmation, 12, 81

Resale, 12, 65, 67

Return, 12, 74

Appraisalment, 12, 20

Amendment, 12, 22

Contents, 12, 20

Time of filing, 12, 22

By whom, 12, 75

Conclusiveness, 12, 76

Contents, 12, 75

Definition, 12, 74

Necessity, 12, 74

Sale *en masse*, 12, 54

Sale in parcels, 12, 51

Discretion of officer, 12, 53

Distinct parcels, 12, 51

Option of debtor, 12, 54

Personal property, 12, 55

Statutory provisions, 12, 52

Susceptible of division, 12, 53

Satisfaction and discharge of judgments, see SATISFACTION AND DISCHARGE OF JUDGMENTS.

Satisfaction of debt, 12, 56

Setting aside, see *infra*, Objections and setting aside.*Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.

Several liability, 12, 56

Sheriffs and constables, 12, 49

Sheriffs' sales, 12, 9

Sheriffs' sales distinguished from judicial sales, 12, 9

Sheriffs' sales distinguished from, 20, 184

Specific performance, 19, 917

Statutes:

Deed, 12, 108

Sufficient to satisfy debt, 12, 56

Sunday, 12, 47

Surplus money, see SURPLUS MONEY.

Surprise, 12, 89

Tender, 12, 66

Terms and conditions, 12, 57

Cash or credit, 12, 57

Deposit, 12, 57

In general, 12, 57

Time of sale, 12, 42

Conformity to notice, 12, 43

Death of defendant, 12, 45

Effect of death of defendant on sales of personalty, 12, 45

Effect of death of defendant on sales of realty, 12, 45

Effect of death of plaintiff, 12, 46

Holidays, 12, 47

Hour of sale, 12, 47

Limitations, 12, 44

Personal property after return day, 12, 44

JUDICIAL SALES, *cont'd.*Time of sale, *cont'd.*

Real property after return day, 12, 43

Special days, 12, 47

Sunday, 12, 47

Under statutes, 12, 42

Trusts and trustees:

Trustee as purchaser, 12, 59

Trustees' sales, 12, 9

Vacating sale, see *infra*, Objections and setting aside.

Vendor's liens, 22, 750

Venue, see *infra*, Place of sale.

Void sales of personalty, 12, 41

Improper place, 12, 41

Presence of bidders, 12, 41, 42

Void sales of realty, 12, 41

Improper place, 12, 41

Presence of bidders, 12, 41, 42

Waiver:

Notice of sale, 12, 24

Waiver of appraisalment, 12, 14

Waiver of errors and irregularities, 12, 100

What are judicial sales, 12, 7

Admiralty, 12, 8

Assignee in bankruptcy, 12, 8

Attachment proceedings, 12, 8

Commissioners in insanity, 12, 9

Decree of foreclosure, 12, 7

Execution sales, 12, 9

Executors and administrators, 12, 7

Guardians' sales, 12, 8

Orphans' court and probate sales, 12, 8

Partition, 12, 8

Receivers, 12, 8

Sheriffs' sales, 12, 9

Trustees' sales, 12, 9

What are not judicial sales, 12, 9

Execution distinguished from judicial sales, 12, 9

Execution or sheriffs' sales, 12, 9

Private sales judicial, 12, 11

Who may conduct, 12, 48

After term of office expires, 12, 50

Auctioneer, 12, 49

Authority of court to designate, 12, 48

Bond, 12, 51

Deputy, 12, 49

In general, 12, 48

Master of commissioners, 12, 48

Oath, 12, 51

Party in interest, 12, 50

Personalty after term of office expires, 12, 50

Realty after term of office expires, 12, 50

Sheriff, 12, 48

JUDICIAL SALES, *cont'd.*

- Who may not purchase, 12, 58
 - Auctioneer, appraiser, or judge, 12, 59
 - Deputy, 12, 59
 - Executors and administrators, 12, 59
 - Guardian, 12, 60
 - In general, 12, 58
 - Officer conducting sale, 12, 58
 - Public official at his tax sale, 12, 61
 - Receiver, 12, 60
 - State, county, or town, 12, 61
 - Tenant, 12, 60
 - Trustees, 12, 59
 - Who may purchase, 12, 61
- Who may purchase, 12, 61

JUNIOR, see NAMES.

JURAT:

- Affidavits, 1, 316, 337
 - "Before me," 1, 316
 - In general, 1, 316
 - Service of copy, 1, 317
 - Surplusage, 1, 317
 - Sworn or affirmed, 1, 317
 - "Then personally appeared," 1, 317
- Affidavits of merits or defense, 1, 374
- Answers in equity pleading, 1, 869
 - Oath, 1, 867
- Exceptions and objections, 8, 206
- Indictments:
 - Complaint, 10, 464
- Informations, 10, 454
- Returns, 18, 911

JURISDICTION, 12, 114

See **BILLS OF REVIEW; VENUE.**

As to pleas to the jurisdiction, see **ABATEMENT IN PLEADING.**

Accounts and accounting, see **ACCOUNTS AND ACCOUNTING.**

Admiralty, see **ADMIRALTY.**

Adoption, 10, 846

Conformity with statute, 10, 846

Consent as prerequisite, 10, 846

Courts exercising jurisdiction, 10, 846

Agreed case, see **AGREED CASE.**

Alimony, see **ALIMONY.**

Amendments, see **AMENDMENTS.**

Amount in controversy (see **AMOUNT IN CONTROVERSY), 12, 132**

In general, 12, 132

Inherent jurisdiction of court of chancery, 12, 132

Another suit pending, see **ANOTHER SUIT PENDING.**

Answers in equity pleading:

Want of jurisdiction, 1, 883

Appeal bonds and undertakings:

Effect of lack of jurisdiction, 1, 990

JURISDICTION, *cont'd.*

Appeals (see **APPEALS):**

Abstracts, 2, 315

Dismissal of appeal, 2, 345

Presumption of jurisdiction, 2, 21

Transference of jurisdiction by appeal, 2, 327

Amendment of record, 2, 331

Collateral proceedings, 2, 330

In general, 2, 327

Property in controversy, 2, 331

Release of lien, 2, 331

Subsequent proceedings, 2, 328

Appearances (see **APPEARANCES):**

Waiver of defects of jurisdiction, 2, 660

Appellate jurisdiction, see **APPEALS.**

Apprenticeship, 10, 850

Arrest of judgment, 2, 808

No jurisdiction over person, 2, 808

No jurisdiction over subject-matter, 2, 808

Assault and battery, 2, 837

Criminal procedure, 2, 837

Assignment for benefit of creditors:

Action to enforce assignment, 2, 883

Action to set aside assignment, 2, 894

Removal of assignee and appointment of receiver, 2, 914

Attachment, 3, 53

Awards:

Actions to set aside award, 3, 154

Specific performance, 3, 150

Bail and recognizance, 3, 196

Bastardy, see **BASTARDY.**

Bigamy, 3, 322

Bills to impeach decrees and judgments (see **BILLS TO IMPEACH DECREES AND JUDGMENTS), 3, 617**

Boundaries and fences, 3, 672

Bribery, 3, 695

Burglary, 3, 739

Carrying weapons, 3, 874

Certiorari, see **CERTIORARI.**

Change of venue, see **CHANGE OF VENUE.**

Collateral impeachment of judgments, 12, 196

Courts of limited and inferior jurisdiction, 12, 201

Errors of judgment or irregularity, 12, 197

Fraud, 12, 203

General rule, 12, 196

Strangers, 12, 202

JURISDICTION, *cont'd.*

- Collusion of parties, 12, 166
- Fictitious action, 12, 166
- Sham and frivolous pleadings*, see FICTITIOUS ACTIONS.
- Commitments, 4, 577
- Habeas corpus, 4, 581
- Complete relief*, see *infra*, Retention of jurisdiction for complete relief.
- Conclusiveness of presumption of jurisdiction, 12, 204
- Court of inferior or limited jurisdiction, 12, 212
- Direct attack, 12, 215
- Domestic judgments of courts of general jurisdiction, 12, 205
- Finding of jurisdictional facts, 12, 211
- Inferior courts, 12, 204
- In general, 12, 204
- Jurisdictional and quasi-jurisdictional facts, 12, 211
- Silence of the record, 12, 209
- Concurrent and exclusive jurisdiction, 12, 150
- Construction of grant, 12, 150
- Exclusive right of court first acquiring jurisdiction, 12, 151
- Foreign courts, 12, 154
- In general, 12, 150
- Interference, 12, 153
- State and federal courts*, see UNITED STATES COURTS.
- Conflict of laws (see *infra*, Territorial jurisdiction), 12, 139
- Action of tort founded upon an injury to personal property, 12, 139
- Concurrent and exclusive jurisdiction, 12, 150
- Enforcement of right by comity, 12, 140
- Limitations to the doctrine of comity, 12, 142
- Right in derogation of the common law, 12, 139
- Rights enforceable independently of concurrent statutes, 12, 141
- Special remedies, 12, 141
- Consent, 12, 125
- Agreement to submit outside issues, 12, 132
- Effect of agreement, 12, 126
- In general, 12, 125
- Jurisdiction of the person, 12, 126
- Jurisdiction of the subject-matter, 12, 126
- Particular matter in subject of general jurisdiction, 12, 129
- Rule against jurisdiction by consent, 12, 125
- Statute authorizing consent, 12, 128

JURISDICTION, *cont'd.*

- Consolidation of actions:
 - Ouster of jurisdiction, 4, 678
- Contempt:
 - Appeal and writ of error, 4, 811, 813
 - Fictitious issues, 12, 167
 - Habeas corpus, 4, 815, 818
- Copyright, 5, 16
- At law and in equity, 5, 16
- Federal and state jurisdiction, 5, 17
- Form of action, 5, 17
- Penalties and forfeitures, 5, 17
- Coram nobis* and *coram vobis*, 5, 33
- Coroner's inquests:
 - Charge from the coroner, 5, 46
- Corporations:
 - Winding up corporations*, see WINDING UP CORPORATIONS.
- Costs (see COSTS):
 - Jurisdiction as affecting costs, 5, 164
 - Amount in controversy, 5, 164
 - Exclusive jurisdiction of upper court, 5, 164
 - Jurisdiction determined by amount of recovery, 5, 165
 - Partial costs, 5, 167
 - Recovery of less than fixed amount, 5, 166
 - Unfounded demand for large sum, 5, 167
 - When jurisdiction concurrent, 5, 165
 - Within jurisdiction of the justice of the peace, 5, 165
- Counterfeiting, 5, 267
- Court of record, 12, 161
- Creditors' bills*, see CREDITORS' BILLS.
- Crimes, 12, 134
- Cross-bills:
 - Whether defect of jurisdiction under original bill is cured by cross-bill, 5, 657
- Cross-complaints:
 - Whether defect of jurisdiction on original complaint cured by cross-complaint, 5, 683
- Damages, 5, 702
- Death by wrongful act, 5, 860
- Decrees, 5, 955
- Defaults*, see DEFAULTS.
- Definiteness and certainty in pleadings:
 - Jurisdictional facts, 6, 254
- Definition, 12, 116
- Construction of phrases, 12, 118
- Demurrers:
 - Jurisdiction of person, 6, 323
 - Jurisdiction over subject-matter, 6, 323
 - Waiver of defects, 6, 374

JURISDICTION, *cont'd.*

- Detinue, 6, 645
- Dismissal, discontinuance, and nonsuit*, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
- Disorderly conduct, 7, 1
- Distinction between error of judgment and want of jurisdiction, 12, 119
- Distinction between power and jurisdiction, 12, 119
- Disturbing meetings, 7, 38
- Divestiture of jurisdiction, 12, 170
 - Change of conditions, 12, 171
 - Division of county, 12, 172
 - Effect of subsequent events, 12, 171
 - Implication, 12, 170
 - Nonresidence of personal representative, 12, 172
 - Repeal of statute, 12, 172
- Division of opinion, 7, 48
- Dower*, see DOWER.
- Drainage (see DRAINAGE), 7, 211
- Election of remedies (see ELECTION OF REMEDIES):
 - Want of jurisdiction, 7, 365
- Elections, 7, 378
- Elements and acquisition of jurisdiction, 12, 120
 - After-acquired jurisdiction, 12, 125
 - Constitutional creation, 12, 122
 - Effect of pleadings, 12, 129
 - Elements of jurisdiction, 12, 121
 - Enlargement of jurisdiction by indentment, 12, 124
 - In general, 12, 120
 - Jurisdiction by consent, 12, 125
 - Jurisdiction dependent upon amount in controversy, 12, 132
 - Matters not in issue, 12, 131
 - Partial jurisdiction, 12, 124
 - Person, 12, 121
 - Pleadings, 12, 129
 - Statutory creation, 12, 122
 - Subject-matter, 12, 121
- Eminent domain*, see EMINENT DOMAIN.
- Equity (see EQUITY):
 - Pleas in equity*, see PLEAS IN EQUITY.
- Error, writ of, 7, 822
 - Dismissal for want of jurisdiction, 7, 903
 - Effect on jurisdiction of person or subject-matter, 7, 900
- Exceptions and objections*, see *infra*, Objections in the action or suit; Objections to jurisdiction.
- Exclusive jurisdiction*, see *infra*, Concurrent and exclusive jurisdiction.
- False imprisonment, 8, 842

JURISDICTION, *cont'd.*

- False pretenses, 8, 858
- Fictitious issues, 12, 166
- Forcible entry and detainer, 9, 77
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Foreign corporations, 12, 147
 - In general, 12, 147
 - Subject-matter in residence of plaintiff, 21, 149
- Foreign judgments*, see *infra*, Judgments of sister states and foreign judgments.
- Forgery, 9, 547
- Former adjudication, 9, 626
- Former conviction or acquittal, 9, 635
- Fraud (see FRAUD):
 - Collateral attack, 12, 203
- Fraudulently acquired, 12, 166
 - Collusion of parties, 12, 166
 - Fictitious issues, 12, 166
 - Fraudulent statement of cause of action, 12, 168
 - Fraudulent use of process, 12, 169
- Gaming, 9, 766
 - Courts of general jurisdiction, 9, 767
 - In general, 9, 766
 - Municipal courts, 9, 766
- Garnishment*, see GARNISHMENT.
- General, limited, and inferior jurisdiction (see *infra*, Collateral impeachment of judgments; Presumptions), 12, 155
 - Construction, 12, 155
 - Construing grant of power to courts of general jurisdiction, 12, 156
 - Construing grant of power to inferior courts, 12, 155
 - Court of record, 12, 161
 - Distinction between courts of general and of inferior jurisdiction, 12, 157
 - Grant of power to inferior courts, 12, 155
 - Inferior courts, 12, 159
 - Judgments subject to review, 12, 159
 - Limited jurisdiction, 12, 159
 - No definite distinction between courts of general and of inferior jurisdiction, 12, 157
 - Superior court, 12, 158
- Guardians*, see GUARDIANS.
- Habeas corpus*, see HABEAS CORPUS.
- Heirs and devisees*, see HEIRS AND DEVISEES.
- Homicide*, see HOMICIDE.
- Husband and wife*, see HUSBAND AND WIFE.
- Indians, 10, 341

JURISDICTION, *cont'd.**Infants*, see INFANTS.*Inferior jurisdiction*, see *infra*, General, limited, and inferior jurisdiction.

Inherent power, 12, 120

Injunctions, see INJUNCTIONS.*Insane persons*, see INSANE PERSONS.

Insolvency, 11, 3

Creditor's application, 11, 7

Debtor's application, 11, 7

Equity jurisdiction, 11, 5

Extent of jurisdiction, 11, 4

How application made, 11, 6

How jurisdiction acquired, 11, 7

Original jurisdiction, 11, 3

Supervisory jurisdiction in supreme court, 11, 5

What courts have, 11, 3

Insurance, see INSURANCE.

Interstate commerce:

Actions to enforce orders of commission, 11, 491

Actions to recover damages, 11, 492

Jurisdiction of the commission, 11, 483

Intervention, 11, 495

Irregularities:

Collateral attack, 12, 197

Issue, matters not in issue, 12, 131

Issues to the jury, 11, 653

Judgments (see *infra*, Collateral impeachment of judgments), 11, 842

Actions on judgments, 11, 1113

Averment of jurisdiction in actions on judgments, 11, 1130

Application to courts of record, 11, 1139

At common law in suits on foreign judgments, 11, 1132

Averment that court was one of general jurisdiction, 11, 1132

Averment that judgment was duly given, 11, 1137

Courts of general jurisdiction, 11, 1130

Courts of general jurisdiction of foreign and sister states, 11, 1131

Courts of inferior jurisdiction, 11, 1134

Cured by verdict, 11, 1136

Domestic court of general jurisdiction, 11, 1130

Foreign inferior courts, 11, 1140

Inferior courts of sister state, 11, 1136

Index Pl. & Pr. — 38

JURISDICTION, *cont'd.*Judgments, *cont'd.*Averment of jurisdiction in actions on judgments, *cont'd.*

Judicial notice of character of court, 11, 1133

Mere general averment of jurisdiction, 11, 1135

Necessity of using the term duly, 11, 1138

Statutory regulation, 11, 1137

Sufficiency of declaration under statute, 11, 1138

Unauthorized jurisdiction of person, 11, 1135

Various forms of declarations, 11, 1133

Confession of judgment, 11, 982

Entry upon warrant in other jurisdiction, 11, 984

Jurisdictional amount, 11, 983

Jurisdiction of court essential, 11, 982

Presumption as to jurisdiction, 11, 984

Presumption thereof, 11, 982

Waiver of objection, 11, 982

What record must show jurisdiction, 11, 983

Error in exercise of jurisdiction, 11, 842

Judgments as contracts in a statute conferring or limiting jurisdiction, 11, 834

Judgments *in rem*, 11, 969

Judgments on awards, 11, 1050

Necessity of jurisdiction, 11, 843

Plea of want of jurisdiction in actions on judgments, 11, 1159

"Duly given or made," 11, 1164

Duplicity in plea, 11, 1162

General denial or general issue, 11, 1163

How pleaded, 11, 1159

Plea need not state a defense, 11, 1163

Right to plead, 11, 1159

Special plea, 11, 1159

Strictness required in pleadings, 11, 1160

Strong *prima facie* defenses, 11, 1161

Sufficiency of plea of want of jurisdiction of the person, 11, 1162

Sufficiency of plea to jurisdiction of subject-matter, 11, 1162

What plea must negative, 11, 1160

JURISDICTION, *cont'd.*Judgments, *cont'd.*

Retention of jurisdiction for complete relief, 12, 162

Statement of rule, 11, 842

Judgments of sister states and foreign judgments:

Impeachment for want of jurisdiction, 12, 216

Conclusiveness upon matters litigated, 12, 220

Inferior courts, 12, 220

In general, 12, 216

Jurisdictional facts, 12, 221

Prima facie evidence, 12, 218

Judicial sales:

Order of sale, 12, 12

Justices of the peace (see JUSTICES OF THE PEACE), 12, 728

Kidnapping, 12, 825

Landlord and tenant:

Summary proceedings under statutes, 12, 876

Larceny, see LARCENY.

Libel and slander, 13, 28

Limited jurisdiction, see *infra*, General, limited, and inferior jurisdiction.*Local and transitory actions*, see VENUE.*Local improvements*, see LOCAL IMPROVEMENTS.

Logs and lumber:

Attachment to enforce lien, 13, 338

Lost instruments and records, see LOST INSTRUMENTS AND RECORDS.

Lotteries, 13, 386

Mandamus, see MANDAMUS.*Mandate*, see MANDATE.

Marshaling assets, 13, 888

Master and servant, see MASTER AND SERVANT.

Mechanics' liens, 13, 943

As affected by amount, 13, 943

Bankruptcy proceedings, 13, 944

In general, 13, 943

Residence of parties, 13, 943

Where the question of title is incidentally put in issue, 13, 944

Mills and milldams, 14, 6

Mines and mining, see MINES AND MINING.*Mistake*, see MISTAKE.*Municipal corporations*, see MUNICIPAL CORPORATIONS.*Murder*, see HOMICIDE.*Naturalization*, see NATURALIZATION.*Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.

New trial, 13, 858

Nonresidents:

Appearance after publication, 12, 144

JURISDICTION, *cont'd.*Nonresidents, *cont'd.*

Nonresidence of one or both parties, 12, 137

Person or property within jurisdiction, 12, 143

Property within the jurisdiction, 12, 145

Service by publication, 12, 144

Notice, 12, 146

Necessity of personal service, 12, 144

Nuisances, see NUISANCES.

Objections in the action or suit, 12, 180

Action by court of its own motion, 12, 190

Averments, 12, 182

Chancery jurisdiction, 12, 193

Demurrer, 12, 182

Effect of failure to raise objection, 12, 188

Equity upon face of bill, 12, 193

Form of proceeding, 12, 191

Jurisdiction of court of general jurisdiction in particular case, 12, 187

Jurisdiction of the person, 12, 182

Jurisdiction of the subject-matter, 12, 186

Manner of raising objection, 12, 182

Manner of raising objection to jurisdiction of the subject-matter, 12, 186

Matters beneath the dignity of the court, 12, 196

Motion to set aside judgment, 12, 188

Nature of plea, 12, 181

Original duty to decide, 12, 180

Raising objection in answer, 12, 184

Waiver, 12, 185

Objections to jurisdiction (see *infra*,

Collateral impeachment of judgments; Conclusiveness of presumption of jurisdiction; Judgments of sister states and foreign judgments), 8, 169; 12, 179

Adequate remedy at law, 8, 175

How objection made, 8, 177

Not raised on trial, 8, 175

Reason for rule, 8, 176

Rule applicable in cases of concurrent jurisdiction only, 8, 177

Time of objecting, 8, 176

Authority of trial judge, 8, 178

Cause heard at chambers, 8, 179

Effect of want of jurisdiction, 12, 179

JURISDICTION, *cont'd.*

Objections to jurisdiction, *cont'd.*

For want of jurisdiction of parties, 8, 169

Necessity for objections, 8, 169

Time and manner of making objection, 8, 171

For want of jurisdiction of subject-matter, 8, 171

Appeal to intermediate court, 8, 175

At what time the objection may be raised, 8, 171

Defective complaint, 8, 174

Duty of court to take notice of want of jurisdiction, 8, 173

In general, 8, 171

Noncompliance with requirements of perfecting appeal, 8, 174

On appeal from justice courts, 8, 173

Original jurisdiction of appellate court, 8, 175

Raised at any stage of trial, 8, 173

Raised for the first time on appeal, 8, 171

Judgments absolutely void, 12, 179

Objections not taken below, 8, 162

That the cause is of equitable cognizance, 8, 177

That the venue is wrong, 8, 178

To organization of court, 8, 178

Unauthorized term of court, 8, 179

Wrong division of court, 8, 178

Obscenity, see OBSCENITY.

Official bonds, 15, 87

Opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Orders:

Errors and irregularities, 15, 328

Void orders, 15, 327

Want of jurisdiction, 15, 328

Ordinances, see ORDINANCES.

Parties to actions:

Fraud on jurisdiction, 15, 471

Partition, see PARTITION.

Patents, see PATENTS.

Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.

Perjury, see PERJURY.

Person, 12, 121

Consent, 12, 126

Personal injuries, 16, 373

Pleadings, effect of, 12, 129

Pleas in equity, see PLEAS IN EQUITY.

JURISDICTION, *cont'd.*

Pledges, see PLEDGES.

Poor and poor laws, see POOR AND POOR LAWS.

Poor debtor acts, see POOR DEBTOR ACTS.

Post offices:

Actions against postmasters for negligence, misconduct, etc., 16, 767

Preliminary examination, see PRELIMINARY EXAMINATION.

Presumptions, 12, 173

Conclusiveness of presumption of jurisdiction (see *infra*, Conclusiveness of presumption of jurisdiction), 12, 204

Courts of general jurisdiction, 12, 173

Courts of general jurisdiction exercising special power, 12, 176

Courts of inferior jurisdiction, 12, 176

Jurisdiction of the person, 12, 174

Pleading jurisdictional facts, 12, 177

Presumption of notice, 12, 174

Publication, 12, 174

Restriction to silent record, 12, 174

Private international law, 12, 139

Action of tort founded upon an injury to personal property, 12, 139

Concurrent and exclusive jurisdiction, 12, 150

Enforcement of right by comity, 12, 140

Limitations to the doctrine of comity, 12, 142

Right in derogation of the common law, 12, 139

Rights enforceable independently of concurrent statutes, 12, 141

Special remedies, 12, 141

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS; SURREGATE.

Proceedings in rem, 12, 145

Necessity of seizure, 12, 146

Notice, 12, 146

Property within territorial limits, 12, 145

Prohibition, see PROHIBITION.

Public officers, see PUBLIC OFFICERS.

Quieting title, see QUIETING TITLE.

Qui tam actions, see PENALTIES AND PENAL ACTIONS.

Quo warranto, see QUO WARRANTO.

Real actions, 17, 670

Real property, 12, 135

JURISDICTION, *cont'd.*

Receivers, see RECEIVERS.

Redemption, 17, 946

Relief, see *infra*, Retention of jurisdiction for complete relief.

Rem, see *infra*, Proceedings in *rem*.

Removal of causes, see REMOVAL OF CAUSES.

Removal of cloud, see QUIETING TITLE.

Replevin, see REPLEVIN.

Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.

Residents, see *infra*, Nonresidents.

Retention of jurisdiction for complete relief, 12, 162

Effect of character of subject to be adjudicated, 12, 164

Failure of equities, 12, 165

Giving effect to decree, 12, 163

Legal remedy, 12, 164

Multiplicity of suits, 12, 163

Necessity for equitable grounds, 12, 164

Statement of the rule, 12, 162

Review (see REVIEW), 18, 996

Revival of judgments, 18, 1063

Rules of court, 18, 1241

Satisfaction and discharge of judgments, see SATISFACTION AND DISCHARGE OF JUDGMENTS.

Sentence, see SENTENCE.

Service of process, see SERVICE OF PROCESS.

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Shipping, see SHIPPING.

Streets and highways, see STREETS AND HIGHWAYS.

Subject-matter, 12, 121

Consent, 12, 126

Summary proceedings, 20, 1078

Superior court, see *infra*, General, limited, and inferior jurisdiction.

Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.

Suretyship:

Action by surety against co-surety, 16, 958

Concurrent jurisdiction of equity and law, 16, 959

Whether in equity or at law, 16, 958

Action by surety against principal, 16, 951

At law, 16, 952

Discharge of undertaking, 16, 952

In equity, 16, 951

JURISDICTION, *cont'd.*

Suretyship, *cont'd.*

Action to enforce contract of suretyship, 16, 928, 938

Summary proceeding by surety against principal or cosurety, 16, 965

Taxation, 21, 397, 406

Telegraphs and telephones, 21, 506

Territorial jurisdiction, 12, 134

Foreign corporations, 12, 147

Local and transitory actions, see VENUE.

Nonresident, 12, 143

Nonresident personally within the jurisdiction, 12, 145

Proceedings in rem, see *infra*,

Proceedings in *rem*.

Restriction of sovereign power, 12, 134

Territories, see TERRITORIES.

Trade-marks and trade names, 21, 753

Transitory actions, see VENUE.

Trespass, see TRESPASS.

Trespassing, vicious, and diseased animals, 21, 888

Trespass on the case, 21, 903

Trespass to try title, 21, 927

Trover and conversion, see TROVER AND CONVERSION.

United States courts, see UNITED STATES COURTS.

Venditioni exponas, 22, 643

Vendor and purchaser, see VENDOR AND PURCHASER.

Vendor's liens, see VENDOR'S LIENS.

Venue, see VENUE.

Waters and watercourses, 22, 1146, 1158

Wills, see PROBATE AND CONTEST OF WILLS; WILLS.

Winding up corporations, see WINDING UP CORPORATIONS.

Witnesses, see WITNESSES.

JURISDICTION CLAUSE:

Bills in equity, 3, 343

JURY, 12, 223

See GRAND JURIES.

Additional jurors, see *infra*, Talesmen and additional jurors.

Affirmation, 12, 516

Aliens:

Challenges for cause, 12, 433

Discharge of jury, 12, 650

Excusing jurors, 12, 285

Amendments:

List of veniremen, 12, 370

Return of venire, 12, 354

Venire facias, 12, 345

Appeal and review:

Challenge for cause, 2, 541

Discharge of jury, 12, 641

Discretion of trial court, 2, 414

JURY, *cont'd.*

- Appeal and review, *cont'd.*
 - Error in summoning and impaneling juries, 2, 540
- Formation of trial jury, 12, 526
 - Conflicting evidence, 12, 533
 - Discretion of trial judge, 12, 534
 - Evidence on examination of jurors, 12, 530
 - Exceptions and objections, 12, 530
 - Form and sufficiency of record, 12, 528
 - Necessity of preserving exceptions, 12, 527
 - Prejudicial error, 12, 533
 - Preserving exceptions, 12, 527
 - Presumptions, 12, 535
 - Reasonable intentment in favor of legality of action, 12, 532
 - Record, 12, 528
 - Review generally, 12, 531
 - Right to review, 12, 526
 - Sufficiency of exception, 12, 528
 - What may be reviewed, 12, 526
- Harmless error, 2, 540
- Misconduct of jurors, 2, 541
- Presumption in favor of lawful jury, 2, 459
- Procuring attendance of jurors at trial court, 12, 355
- Return as part of record, 12, 356
- Separation of jury, 2, 542
- Venire as part of record, 12, 355
- Appearances:
 - Nonappearance as waiver of right to jury trial, 12, 259
- Argument of counsel:
 - Sending jury out during argument on instructions or evidence, 12, 547
- Array, *see infra*, Challenges to the array.
- Arrest of judgment:
 - Competency of a juror, 2, 807
 - Irregularities in impaneling jury, 2, 806
 - Irregularities in summoning jury, 2, 806
 - Juror legally disqualified, 2, 806
 - Jury illegally constituted, 2, 805
 - Misconduct on part of jury, 2, 807
 - Objections to the jury, 2, 805
 - Relationship, 2, 807
- Bailiff, *see infra*, Officer in charge.
- Bankruptcy:
 - Jury trial, 22, 357

JURY, *cont'd.*

- Betting on result, 12, 564
- Bias, 12, 563
 - Betting on result, 12, 564
 - Bias appearing during trial, 12, 659
 - Challenges for cause, 12, 431
 - Circumstances showing bias, 12, 563
 - Discharge of jury, 12, 659
 - Officer, 12, 421
 - Officer executing venire, 12, 336, 340
 - Officers for selection of jurors, 12, 285
 - Remarks of jurors, 12, 563
 - When not ground for new trial, 12, 563
- Books and papers in jury room, 12, 556, 590
 - Blank forms of verdict, 12, 598
 - Books, 12, 600, 602
 - Comparison of handwriting, 12, 593
 - Depositions, when in evidence, 12, 594
 - Depositions, when not in evidence, 12, 595
 - Discretion of court, 12, 593
 - Effect of papers improperly in jury room, 12, 602
 - Judge's minutes, 12, 597
 - Jurors' notes, 12, 597
 - Legal books, 12, 600
 - Map, 12, 602
 - Meaning of papers in evidence, 12, 592
 - Modern rule, 12, 591
 - Old rule, 12, 590
 - Papers attached to deposition, 12, 595
 - Papers given by prevailing party, 12, 605
 - Papers in evidence, 12, 590
 - Papers not in evidence, 12, 596
 - Papers not read, 12, 604
 - Papers partly in evidence, 12, 597
 - Pleadings, 12, 598
 - Prejudice not resulting, 12, 603
 - Prejudice resulting, 12, 602
 - Statute books, 12, 601
 - Written instructions, 12, 599
- Bribery (*see* BRIBERY), 12, 616
- Bystanders, 12, 403, 411
- Cause, *see infra*, Challenges for cause.
- Certificate, 12, 311
 - Correction, 12, 313
 - Form, 12, 312
 - In general, 12, 311
 - List, 12, 311
 - Necessity, 12, 311
 - Sufficiency, 12, 312

JURY, *cont'd.*

Challenges, see infra, Challenges for cause; Challenges to the array; Examination — trial of challenges; Peremptory challenges; Presentation of jurors.

Challenges for cause, 12, 428

Alienage, 12, 433
Before oath, 12, 438
Bias, 12, 431
Cause pending at term, 12, 435
Challenges to the favor, 12, 429
Challenges to the polls, 12, 429
Classification, 12, 429
Conscientious scruples, 12, 433
Discretion of court, 12, 440
Exemption, 12, 436
Form, 12, 442
Formation of opinion, 12, 430
Grounds at common law, 12, 429
Ignorance of disqualification, 12, 440
Ignorance of English language, 12, 433
Miscellaneous grounds, 12, 436
Number of challenges, 12, 444
Object, 12, 428
Opinion, 12, 430
Order of interposition, 12, 441
Partiality, 12, 431
Participation in former trial, 12, 432
Prior service as juror, 12, 434
Province of trial judge, 12, 444
Relationship, 12, 431
Right of challenge, 12, 428
Specification of grounds, 12, 442
Standing aside, 12, 413
Statutory causes, 12, 435
Sufficiency, 12, 442
Time of interposition, 12, 437
Waiver of right of challenge, 12, 436
Withdrawal, 12, 444

Challenges to the array, 12, 418

Bias, partiality, etc., of summoning officer, 12, 421
Cause affecting part of panel, 12, 423
Definition, 12, 418
Departure from modes of selection and drawing, 12, 420
Effect of sustaining or overruling challenge, 12, 428
Form and sufficiency of challenge, 12, 426
Generally, 12, 418
Grounds at common law, 12, 419
Miscellaneous grounds, 12, 423
Specificness, 12, 426
Statutory prescription, 12, 422
Support of challenge, 12, 427
Time of interposition, 12, 424

JURY, *cont'd.***Challenges to the array, *cont'd.***

Waiver of right of challenge, 12, 426

Written challenge, 12, 426

Chance verdicts, see VERDICTS.

Colored persons, see infra, Race distinction.

Communications with outsiders, 12, 605

Bribery of a juror, 12, 516

Casual conversations or communications with outsiders, 12, 610

Casual conversation with witnesses, 12, 619

Communications by and with prevailing party, 12, 615

Communications by counsel for prevailing party, 12, 617

Communications by judge, 12, 619

Communications by partisans, 12, 618

Conversations and communications concerning the case on trial, 12, 612

Customary offices of civility, 12, 617

Delivery of letters to jurors, 12, 622

Harmless communications by counsel, 12, 617

Harmless conversation or communication, 12, 509

In general, 12, 605

Innocent communications with prevailing party, 12, 516

Mere business conversation, 12, 612

Misconduct of jurors, 12, 606

Misconduct of outsiders, 12, 606

Outsiders in jury room, 12, 620

Personal messages received and sent by jurors, 12, 609

Presumption of prejudice, 12, 606

Remarks and discussions in hearing of jury, 12, 613

Source of communication, 12, 609

When new trial granted, 12, 606

When new trial not granted, 12, 607

Where prejudice results, 12, 608

Composition of jury, 12, 237

Conduct, see infra, Custody and conduct.

Consent, see infra, Waiver of right to jury trial.

Constitutional law (see LEGISLATIVE POWER; and see *infra*, Waiver of right to jury trial):

Changes in number, 12, 238

Right to trial by jury, 12, 239

JURY, cont'd.

Contempt:

Right to trial by jury, 4, 789

Contest of wills, see PROBATE AND
CONTEST OF WILLS.*Conversation*, see *infra*, Communica-
tions with outsiders.

Coroner's inquests, 5, 42

Charge from the coroner, 5, 46

Fining delinquent juror, 5, 42

How obtained, 5, 42

In general, 5, 42

Oath, 5, 45

Qualification of the jury, 5, 45

Summoning, 5, 42

Venire facias, 12, 337

Costs:

Costs of former action, 5, 115

Power of jury to award, 5,
115County (see *infra*, Eligibility; Se-
lection and drawing):

Venire facias, 12, 331

Courts (see *infra*, Examination —
trial of challenges; Excusing
jurors; Talesmen and ad-
ditional jurors):Power of court to dispense with
jury, 12, 240Power of court to regulate de-
mand for jury, 12, 241Province of trial judge on chal-
lenges for cause, 12, 444

Creditors' bills:

Right to trial by jury, 5, 466

Criminal procedure, see *infra*, Con-
stitutional law; Waiver of right to
jury trial.

Custody and conduct, 12, 537

Bias, 12, 563

Books and papers in jury room, see
infra, Books and papers in
jury room.*Communications with outsiders*,
see *infra*, Communications
with outsiders.

Illness of juror, 12, 547

Misconduct of jurors, see *infra*,
Misconduct of jurors.*Officer in charge*, see *infra*, Offi-
cer in charge.

Reading newspapers, 12, 622

Receiving evidence out of court, see
infra, Receiving evidence out
of court.*Refreshments for jury*, see *infra*,
Refreshments for jury.Sending jury out during argu-
ment on instructions or evi-
dence, 12, 547*Separation*, see *infra*, Separation.

Deafness:

Excusing jurors, 12, 387

JURY, cont'd.

Death:

Discharge of jury, 12, 656

In juror's family, 12, 657

Of juror, 12, 656

De facto officers, 12, 287

Definition, 12, 237

Deliberation, see *infra*, Discharge of
jurors and of jury.

Demand for jury, 12, 241

Appeal, 12, 253

Application favored, 12, 242

Compliance with statute, 12, 247

Failure to claim jury as waiver
of right to jury trial, 12, 260Legal and equitable issues, 12,
248Mode and sufficiency of demand,
12, 246

Necessity, 12, 241

Payment of jury fees, 12, 249

Power of courts to regulate, 12,
241

Repetition of demand, 12, 252

Review, 12, 252

Right to jury absolute, 12, 241

Service of order or requisition
for jurors, 12, 299*Time of making demand*, see *infra*,
Time of making demand.Time of payment of jury fees,
12, 249

Waiver of demand, 12, 252

Depositions:

Giving deposition to jury, 6,
586

In jury room, 12, 594

When in evidence, 12, 594

When not in evidence, 12, 595

Directing verdict, see DIRECTING
VERDICT.*Disagreement*, see *infra*, Discharge of
jurors and of jury.Disbarment and suspension of attor-
neys, 6, 715Discharge of jurors and of jury, 12,
634

Alienage of juror, 12, 650

Bias appearing during trial, 12,
659Consent of accused to discharge,
12, 636Consent to discharge of indi-
vidual jurors, 12, 644

Death in juror's family, 12, 657

Death of juror, 12, 656

Disagreement, 12, 651

Discharge of individual jurors,
12, 643Discharge of jury when operat-
ing as discharge of accused,
12, 647

Discharge on Sunday, 12, 646

JURY, *cont'd.*Discharge of jurors and of jury, *con.*

Discretion of judge on disagreement, 12, 651

Discretion of trial court, 12, 640

Effect of discharge of individual jurors, 12, 644

Effect of discharging jury, 12, 647

Enactments authorizing the discharge of jurors, 12, 639

End of term, 12, 658

Grounds for discharge, 12, 648

Holidays, 12, 646

Illness of accused, 12, 658

Illness of court or counsel, 12, 658

Illness of juror, 12, 656

Inability to agree, 12, 650

Incompetency discovered after juror sworn, 12, 644

In whom power vested, 12, 637

Length of deliberation, 12, 654

Necessity appearing from record, 12, 639

Necessity for discharge, 12, 638

Necessity must be absolute, 12, 638

Power of court over jury after discharge, 12, 648

Power to discharge individual jurors, 12, 643

Power to discharge in general, 12, 634

Presence of accused, 12, 637

Questions of law and fact, 12, 654

Review of discretion, 12, 541

Separation as grounds for discharge, 12, 649

Several defendants, 12, 652

Statements of jurors, 12, 653

Sufficiency of consent, 12, 637

Sunday, 12, 646

Time for deliberation, 12, 652

To obtain evidence, 12, 660

Discussion, see infra, Communications with outsiders.

Dismissal, discontinuance, and nonsuit:

Arguments and decisions:

Motion for nonsuit for want of evidence in presence of jury, 6, 952

Disqualification (*see infra, Eligibility*):

Calling over the list or panel, 12, 377

Officers to select jurors, 12, 285

Divorce:

Trial by jury, 7, 118

Drawing, see infra, Selection and drawing.

Elections, 7, 393

JURY, *cont'd.*

Electors, 12, 294

Eligibility:

Equalization of jury duty, 12, 288

Jurisdictional limits of court, 12, 290

Procurement of names, 12, 291

Electors, 12, 294

In general, 12, 291

Length of residence, 12, 293

Race distinction, 12, 295

Selection from prescribed class, 12, 293

Taxpayers, 12, 293

Selection from part of county, 12, 298

Selection from whole county, 12, 298

Serving disqualified persons with venire, 12, 344

Talesmen, 12, 404

Territorial authority, 12, 289

Venire, 12, 326

Elisors, 12, 338, 539

Embracery, 12, 661

Allegation as to attempt, 12, 662

Indictment, 12, 661

In general, 12, 661

Summoning and impaneling of juror, 12, 663

Eminent domain (*see* VERDICT):

Certiorari, 7, 662

Fees, 7, 672

Functions and powers of officers presiding over jury, 7, 571

Misconduct of jurors, 7, 592

Oath, 7, 566

Form, 7, 566

Necessity, 7, 566

Sufficiency, 7, 566

What the record must show, 7, 567

Questions to be considered by jury, see infra, Questions of law and fact.

Right to swear witnesses and hear evidence, 7, 577

Right to trial by jury, 7, 545

Affinity, 7, 553

Appearance as waiver, 7, 548

Application for jury, 7, 548

Bias, 7, 552

Challenges, 7, 553

Citizens, 7, 552

Common-law jury, 7, 546

Consanguinity, 7, 553

Disqualification of interest or bias, 7, 552

Drawing jury, 7, 551

Freeholders, 7, 551

Grounds of challenge, 7, 553

Householders, 7, 551

JURY, *cont'd.*Eminent domain, *cont'd.*Right to trial by jury, *cont'd.*

How application for jury determined, 7, 549

Impanelling jury, 7, 551

In general, 7, 545

Interest, 7, 552

Jurors in former proceedings, 7, 553

Jury of county, 7, 546

Jury on appeal after trial without jury, 7, 547

Number of jury, 7, 551

Number to be summoned, 7, 550

Peremptory challenges, 7, 554

Qualifications, 7, 551

Stockholders, 7, 553

Summoning jury, 7, 549

Taxpayers, 7, 552

Territory within which to obtain jurors, 7, 550

Time to apply for jury, 7, 549

Waiver of challenges, 7, 554

Waiver of jury, 7, 548

Warrant for jury, 7, 550

Submission of similar issue to same jury, 7, 569

English language:

Challenges for cause, 12, 433

Ignorance of, 12, 385

Equalization of jury duty, 12, 288

Estoppel:

Waiver of right to jury trial, 12, 267

Evidence (see *infra*, Books and papers in jury room; Examination—trial of challenges; Misconduct of jurors):

Discharge of jury to obtain evidence, 12, 660

Misconduct of jurors, 12, 552

Reading pleadings to jury, 8, 32

Receiving evidence out of court, see infra, Receiving evidence out of court.

Sending jury out during argument on instructions or evidence, 12, 547

Examination—trial of challenges, 12, 446

Appointment of triers, 12, 465

Challenges before or after examination, 12, 449

Conclusiveness of findings by the court, 12, 470

Conclusiveness of findings by triers, 12, 472

Latitude of inquiry, 12, 454

Legislative authority, 12, 450

JURY, *cont'd.*Examination—trial of challenges, *cont'd.*

Limitation of inquiry, 12, 454

Nonobservance of statute, 12, 452

Oath, 12, 449

Oath of triers, 12, 466

Presence of party, 12, 450

Proof, 12, 461, 468

Province of court, 12, 467

Province of judge, 12, 451, 457

Public trial, 12, 466

Questioning, 12, 455

Re-examination, 12, 477

Reliance on statements of juror, 12, 456

Right to examine, 12, 446

Scope of examination, 12, 454

Statutory provisions, 12, 450

Statutory questions, 12, 452

Trial of challenges for principal cause, 12, 462

Trial of challenges to the array, 12, 461

Trial of challenges to the favor, 12, 462

Trial of challenges to the polls, 12, 462

Triers, 12, 464

Unwarranted action of judge, 12, 458

Waiver of irregularities on part of court, 12, 460

Waiver of right, 12, 447

Who may try challenges to the array, 12, 461

Exceptions and objections, 8, 183

Appeal, 8, 186

Disqualification of juror, 8, 184

Exception to refusal necessary, 8, 188

Failure to administer oath, 8, 187

Informality, 8, 186

Instances, 8, 183

Irregularity in drawing jury, 8, 184

Issues submitted to jury, 8, 272

Misconduct of juror, 8, 185; 12, 553

Oath, 8, 186

Objections to the modes of impanelling jury, 12, 527, 530

Rejection of juror, 8, 185

Time when objection should be made, 8, 186

To drawing, summoning, and impanelling jury, 8, 183

Trial without jury, 8, 187

Excusing jurors, 12, 379

Alienage, 12, 385

Before completion of panel, 12, 384

JURY, *cont'd.***Excusing jurors, *cont'd.***

Before completion of panel and after administration of oath, 12, 384

Deafness, 12, 387

Defeating regular panel, 12, 383

Duty of court, 12, 382

Error without prejudice, 12, 381

Exemptions, 12, 388

Grounds for excusing jurors, 12, 385

Ignorance of English language, 12, 385

Illness, 12, 386

Intoxication, 12, 387

Lack of intelligence, 12, 385

Miscellaneous grounds, 12, 388

Power to excuse, 12, 379

Presumption, 12, 383

Public officers, 12, 387

Relationship, 12, 386

Time of exercising power, 12, 384

Time of preventing excuses, 12, 390

Unwillingness to convict, 12, 385

Execution of process, see *infra*, Venire.

Exemptions, 12, 388

Experiments, 12, 590

Favor, see *infra*, Challenges for cause.

Fees, 12, 249

Filing, see *infra*, Recording.

Findings of court, see FINDINGS OF COURT.

Food, see *infra*, Refreshments for jury.

Forcible entry and detainer, 9, 69

Foreclosure of mortgages:

Right to jury trial, 9, 396

Directing verdict, 9, 398

In general, 9, 396

Questions of law and fact, 9, 398

Formation of trial jury (see *infra*, Challenges for cause; Chal-

lenges to the array; Examina-

tion — trial of challenges; Excusing jurors; Mode of im-

paneling; Nonattendance of

veniremen; Oath; Peremptory

challenges; Presentation of

jurors; Standing aside; Tales-

men and additional jurors):

Appeal and review, see *infra*, Ap-

peal and review.

Mandatory and directory stat-

utes, 12, 525

Oath, see *infra*, Oath.

Objections after verdict, 12, 525

Standing aside, see *infra*, Stand-

ing aside.

Fraud:

Selection and drawing, 12, 314

JURY, *cont'd.*

Grand juries, see GRAND JURIES.

Handwriting, 12, 593

Holidays:

Discharge of jury, 12, 646

Homicide:

Polling the jury, 10, 186

Illness:

Accused, 12, 658

Court or counsel, 12, 658

Discharge of jury, 12, 656

Excusing jurors, 12, 386

In juror's family, 12, 657

Of juror, 12, 547, 656

Impaneling (see *infra*, Mode of im-

paneling):

Talesmen, 12, 410

Impeachment, 17, 211

Inquests and inquiries, see INQUESTS

AND INQUIRIES.

Insane persons:

Insanity as a defense, 10, 1220,

1221, 1222

Matters pertaining to jury, 10,

1190

Necessity of inquisition or jury

trial, 10, 1180

Number of jurors, 10, 1190

Qualifications and conduct of

jurors, 10, 1191

Instructions (see INSTRUCTIONS):

Written instructions in jury

room, 12, 599

Interest:

Officers for selection of jurors,

12, 286

Intervention:

Right of intervener to jury trial,

11, 509

Intoxicating liquors, see *infra*, Re-

freshments for jury.

Intoxication:

Excusing jurors, 12, 387

Irregularities in selection and draw-

ing, 12, 313

Issues to the jury, see ISSUES TO THE

JURY.

Judge (see *infra*, Courts):

Communications by judge, 12, 619

Justices of the peace, 12, 726

Appeal to jury, 12, 727

In general, 12, 726

Power of justice to instruct jury,

12, 728

Waiver of jury trial, 12, 726

Landlord and tenant:

Summary proceedings, 12, 890

Law books, 12, 600

Legislative power (see *infra*, Consti-

tutional law):

Examination and trial of chal-

lenges, 12, 450

Peremptory challenges, 12, 478

JURY, *cont'd.*

Letters:

Delivery of letters to jurors, 12, 622

Libel and slander:

Juries as judges of the law, 13, 107

List (see *infra*, Selection and drawing; Service of jury list or panel), 12, 309

Caption, 12, 362

Certificate, 12, 311

Compelling return, 12, 311

Correction, 12, 311

Designation of offense, 12, 364

Erasure of names, 12, 366

Filing, 12, 310

Form, 12, 361

Generally, 12, 309

Misnomer of veniremen, 12, 364

Number of veniremen, 12, 363

Object of list, 12, 358

Occupation of veniremen, 12, 363

Qualifications, 12, 363

Recording, 12, 310

Residence of veniremen, 12, 363

Revision of list, 12, 308

Right to list, 12, 358

Sufficiency, 12, 361

Talesmen, 12, 406

Locality:

Selection, 12, 289

Venire facias, 12, 333

Mandamus, 13, 554

To compel trial by judge, 13, 555

To compel trial by jury, 13, 554

To secure discharge from jury service, 13, 555

Mandate:

Reading decision to jury, 13, 859

Mandatory and directory:

Jurors sleeping during trial, 12, 633

Marriage (annulment):

Trial by court or jury, 13, 882

Mechanics' liens:

Right to jury trial, 13, 1025

Medical attention, 12, 548

Misconduct of jurors (see *infra*,

Books and papers in jury room; Communications with outsiders; Separation), 12, 548

Acquiescence after knowledge of misconduct, 12, 554

Affidavit for new trial, 12, 558

Competency of witness to prove misconduct, 12, 559

Discretion of trial judge, 12, 561

Effect of prejudicial misconduct, 12, 549

Equitable relief, 12, 562

Evidence of misconduct, 12, 552

JURY, *cont'd.*Misconduct of jurors, *cont'd.*

Exercise of discretion in deciding questions of misconduct, 12, 561

General principles, 12, 548

Hearsay testimony, 12, 560

Ignorance of misconduct, 12, 558

Misconduct after agreement, 12, 551

Misconduct as ground for new trial, 12, 557

Necessity of full proof, 12, 559

Necessity of prejudice, 12, 550

New trial, 12, 557

Prejudicial misconduct, 12, 549

Presumption, 12, 552

Presumption of prejudice from proof of misconduct, 12, 553

Punishment for misconduct, 12, 550

Remaining silent after verdict, 12, 555

Sleeping during trial, 12, 633

Taking books and papers to jury room, 12, 556

Testimony to rebut impeaching affidavits, 12, 559

Waiver by failure to object promptly, 12, 553

When and how objections are made, 12, 553

Misconduct of officer, see *infra*, Officer in charge.

Misnomer, see *infra*, Names.

Mode of impaneling (see *infra*, Selection and drawing), 12, 373

Calling names in listed order, 12, 374

Drawing names, 12, 375

Ballots, 12, 375

Box, 12, 375

Disqualified persons, 12, 377

Number of names, 12, 376

Omission of names, 12, 376

Replacing names in box, 12, 378

Who may draw, 12, 378

In general, 12, 373

Statute, 12, 373

Names:

Designation of persons to be served with venire, 12, 326

List of veniremen serving on action, 12, 364

Procurement of names, 12, 291

Veniremen, 12, 352

Misnomer of veniremen, 12, 364

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Newspapers:

Jurors reading newspapers, 12, 622

JURY, *cont'd.*

New trial (see *infra*, Refreshments for jury):

Bias of jurors, 12, 563

Communications with outsiders
12, 606, 608

Jurors reading newspapers, 12,
622

Misconduct of jurors as ground
for new trial, 12, 557

Affidavit for new trial, 12,
558

Ignorance of misconduct, 12,
558

Information and belief, 12,
559

In general, 12, 557

Necessity of full proof, 12,
559

Specific objections, 12, 559

Showing misconduct of jury, see
NEW TRIAL.

Nonattendance of veniremen, 12,
371

Compelling attendance, 12, 371

Punishment, 12, 373

Notice of drawing, 12, 301

Number of jurors, 12, 237

At common law, 12, 237

Constitutional changes, 12, 238

Less than twelve, 12, 238

List of veniremen serving on
action, 12, 363

Number of jurors which a party
is entitled to have sum-
moned, 12, 326

Designation of number by
court, 12, 327

Directing return of exces-
sive number, 12, 328

Discretion of court as to
number, 12, 328

Failure of process to direct
statutory number, 12, 327

In general, 12, 326

Thirteen jurors, 12, 239

Twelve men, 12, 237

Waiver, 12, 255, 256

Number of peremptory challenges, see
infra, Peremptory challenges.

Number of tales jurors, 12, 408

Oath, 12, 515

Affirmation, 12, 516

Civil cases, 12, 516

Criminal cases, 12, 517

Examination of jurors, 12, 449

Form of oath, 12, 516

General rules as to necessity,
12, 515

Necessity, 12, 515

Oath for term or in each case,
12, 515

Officer in charge, 12, 540

JURY, *cont'd.*

Oath, *cont'd.*

Officers possessed with power to
select jurors, 12, 284

Officer summoning jurors, 12, 39

Record, 12, 521

Reswearing, 12, 520

Scope of oath, 12, 517

Substantial compliance with
legal form, 12, 518

Sufficiency of record entry, 12,
522

Time and order of swearing, 12,
519

Triers, 12, 466

Waiver of irregularity, 12, 519

Whether record must show that
jury was sworn, 12, 521

Objections:

Misnomer, 12, 353

Selection and drawing, 12, 315

In general, 12, 315

Time of making, 12, 315, 317

Occupation:

List of veniremen serving on ac-
tion, 12, 363

Venire facias, 12, 331

Officer in charge, 12, 537

Communicating with jury, 12,
543

Elisor, 12, 539

Furnishing liquors to jury, 12,
546

Jury must be in custody of offi-
cer, 12, 537

Misconduct of officer, 12, 542

Necessity for special oath, 12, 540

Objections to officer in charge,
12, 540

Officer to remain with jury, 12,
539

Prejudice resulting from com-
munications with jury, 12, 544

Presence of bailiff in jury room,
12, 542

Proof of misconduct, 12, 546

Punishment for misconduct, 12,
547

Separation in company with
bailiff, 12, 572

Sleeping with jury, 12, 545

Sufficiency of oath, 12, 542

Swearing the officer, 12, 540

Taking jury to private place, 12,
538

Verdict without leaving court
room, 12, 538

Who may have charge of jury,
12, 539

Officers (see *infra*, Selection and
drawing; Venire):

Furnishing list of veniremen, 12,
330

JURY, *cont'd.*

Official bonds:

Right to jury trial, 15, 156

Opinion:

Challenges for cause after formation and expression of opinion, 12, 430

Order of drawing, 12, 306

Ordinances:

Right to jury trial, 15, 435

Appeal, 15, 436

Criminal act, 15, 436

Jury not a matter of right, 15, 435

Outsiders, see *infra*, Communications with outsiders.*Panel*, see *infra*, Challenges to the array; Mode of impaneling; Service of jury list or panel; Talesmen and additional jurors.*Papers*, see *infra*, Books and papers in jury room.

Partiality:

Challenges for cause, 12, 431

Officer, 12, 421

Officers for selection of jurors, 12, 285

Penalties and penal actions:

Trial by jury, 16, 245

As in civil cases, 16, 245

Forfeiture of property, 16, 246

Violations considered as misdemeanors, 16, 246

Peremptory challenges, 12, 473

Challenges to full panel, 12, 498

Definition, 12, 473

Impairment of right to challenge peremptorily, 12, 477

Information as to rights, 12, 491

Legislative power, 12, 478

Nature, 12, 473

Number allowed, 12, 479

Additional challenges, 12, 483

Consolidation of actions, 12, 485

Effect of challenging in excess of number allowed, 12, 480

Generally, 12, 479

Joint parties in civil actions, 12, 483

Joint parties in criminal actions, 12, 485

Rights of defendants *inter se*, 12, 488

Rights of state, 12, 487

Several counts in indictment, 12, 488

United States courts, 12, 489

Order of challenging, 12, 499

Challenges unequal, 12, 500

JURY, *cont'd.*Peremptory challenges, *cont'd.*Order of challenging, *cont'd.*

Civil actions, 12, 501

Criminal proceedings, 12, 499

Discretion of court, 12, 501

Presence of accused, 12, 491

Right to challenge peremptorily, 12, 474

Right to reject, not to select, 12, 474

Standing aside, 12, 512

Substituted jurors, 12, 503

Time of interposition of challenge, 12, 491

Abridgment of time, 12, 497

Absolute right before administration of oath, 12, 495

After administration of oath, 12, 496

Before acceptance of juror, 12, 491

Before administration of oath, 12, 494

Extension of time, 12, 497

Inadvertent acceptance, 12, 493

To cure erroneous rulings, 12, 505

Challenges not exhausted, 12, 507

Exhaustion of challenges, 12, 506

In general, 12, 505

Withdrawal of challenge, 12, 504

Perjury:

Arrest of witness for perjury in presence of jury, 21, 998.

999

Place, see *infra*, Officer in charge.*Place of drawing*, 12, 302

Pleadings:

In jury room, 12, 597

Pleas, see *infra*, Receiving evidence out of court.*Polling the jury*, see VERDICT.*Polls*, see *infra*, Challenges for cause.

Power of legislature to make payment a prerequisite, 12, 249

Excessive sum, 12, 252

Jury on appeal, 12, 251

New or second trial, 12, 251

Refusal of judgment for non-payment, 12, 252

Time of payment, 12, 249

Prejudice (see *infra*, Bias; Partiality):

Officer executing venire, 12, 336, 340

Selection and drawing, 12, 314

JURY, *cont'd.*

Presence of accused (see *infra*, Presentation of jurors), 12, 407

Discharge of jury, 12, 637

Peremptory challenges, 12, 491

Presence of party:

Examination of jurors, 12, 450

Presentation of jurors, 12, 411

Calling names in order, 12, 418

Entire panel at one presentation, 12, 416

Full jury, 12, 413

Informalities, 12, 416

Information as to right of challenge, 12, 412

In general, 12, 411

Presenting jurors singly, 12, 417

Sufficiency of presentation, 12, 413

Where panel is depleted, 12, 414

Presumptions:

Communications with outsiders, 12, 606

Issuance of process for veniremen, 12, 322

Legally constituted jury, 12, 535

Misconduct of jurors, 12, 552

Regularity and legality, 12, 535, 536

Separation, 12, 568

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.

Process, see *infra*, Venire.

Procuring attendance of jurors at trial court (see *infra*, Talesmen and additional jurors; Venire), 12, 317

Process, see *infra*, Venire.

Public officers (see *infra*, Officer in charge; Selection and drawing; Venire):

Excusing jurors, 12, 387

Suspension and removal, 17, 211, 225

Qualifications (see *infra*, Eligibility):

List of veniremen serving on action, 12, 363

Officer executing venire, 12, 336

Return of incompetent and disqualified persons, 12, 349

Serving disqualified persons with venire, 12, 344

Statement giving return of process, 12, 347

Talesmen, 12, 404

Venire, 12, 329

Questioning, see *infra*, Examination—trial of challenges.

Questions of law and fact:

Discharge of jury, 12, 654

Quieting title:

Right to jury trial, 17, 358

Quotient verdicts, see VERDICT.

JURY, *cont'd.*

Quo warranto:

Right to trial by jury, 17, 479

Race distinction, 12, 295

Reading newspapers, 12, 622

Receivers:

Trial by jury, 17, 792

Receiving evidence out of court, 12, 584

Examination of demonstrative evidence, 12, 589

In general, 12, 584

Making experiments, 12, 590

Private examination of witnesses, 12, 588

Testimony of jurors, 12, 585

Unauthorized view of *locus in quo*, 12, 588

When new trial granted, 12, 585

When new trial not granted, 12, 587

Record:

Appeal and review, 12, 528

Discharge of jury, 12, 639

Evidence of examination of juror, 12, 530

Form and sufficiency, 12, 528

Oath, 12, 521

Return as part of record, 12, 356

Separation, 12, 584

Venire as part of record, 12, 355

Recording:

List, 12, 310

Names of jurors, 12, 307

Venire, 12, 323

References:

Waiver of right to jury trial, 12, 263, 264

Refreshments for jury, 12, 624

Early doctrine, 12, 524

Effect of taking refreshments, 12, 624

Food, 12, 624

Early doctrine, 12, 624

Effect of taking refreshments, 12, 624

Modern doctrine, 12, 625

Starving jury into agreement, 12, 626

Where not furnished by prevailing party, 12, 625

Furnished by prevailing party, 12, 630

Counsel of prevailing party, 12, 632

Furnished by partisans or prevailing party, 12, 632

Furnished by party himself, 12, 630

Other persons, 12, 633

Intoxicating liquors, 12, 626

Early doctrine, 12, 626

Ground for new trial, 12, 629

JURY, *cont'd.*

- Refreshments for jury, *cont'd.*
 - Intoxicating liquors, *cont'd.*
 - Medicinal purposes, 12, 629
 - Modern doctrine, 12, 627
 - Officer furnishing liquor to jury, 12, 546
 - Presumptions, 12, 627
 - When drinking not ground for new trial, 12, 627
 - Modern doctrine, 12, 525
 - Starving jury into agreement, 12, 626
 - Where not furnished by prevailing party, 12, 625
- Relationship:
 - Challenges for cause, 12, 431
 - Excusing jurors, 12, 386
 - Officers for selection of jurors, 12, 286
- Remarks, see *infra*, Communications with outsiders.
- Rendition and reception of verdict, see VERDICT.
- Replevin:
 - Right to jury trial, 18, 563
- Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
- Residence:
 - Length of residence, 12, 293
 - List of veniremen serving on action, 12, 303
 - Venire facias, 12, 331
- Return of process, see *infra*, Venire.
- Returns (see *infra*, List):
 - Venire facias, 12, 334
- Review, see *infra*, Appeal and review.
- Right of property, trial of:
 - Composition of jury, 18, 1183
 - Right to trial by jury, 18, 1182
 - Trial by jury, 18, 1182
- Right to trial by jury (see *infra*, Waiver of right to jury trial), 12, 239
 - In general, 12, 239
 - Power of court to dispense with jury, 12, 240
- Riot, 18, 1206
- Rules of court:
 - Right to trial by jury, 18, 1247
- Satisfaction and discharge of judgments, 19, 134
- Scire facias, 19, 287, 304
- Seal:
 - Venire, 12, 326
- Selection and drawing, 12, 273
 - Box, see *infra*, Wheel or box.
 - Certificate, 12, 311
 - Challenges to the array, 12, 424
 - Changes in existing laws, 12, 275

JURY, *cont'd.*

- Selection and drawing, *cont'd.*
 - Common-law practice, 12, 273
 - Conduct of drawing, 12, 304
 - County:
 - Jurisdictional limits of court, 12, 290
 - Selection from part of county, 12, 289
 - Selection from whole county, 12, 289
 - Drawing names, 12, 375
 - Ballots, 12, 375
 - Box, 12, 375
 - Disqualified persons, 12, 377
 - Number of names, 12, 376
 - Omission of names, 12, 376
 - Replacing names in box, 12, 378
 - Who may draw, 12, 378
 - Effect of changes, 12, 275
 - Eligibility, see *infra*, Eligibility.
 - Fraud, 12, 314
 - Grand and petit jurors, 12, 306
 - Irregularities, 12, 313
 - List and returns, see *infra*, List.
 - Modern practice, 12, 274
 - More than one panel, 12, 307
 - Notice of drawing, 12, 301
 - Number of names, 12, 305
 - Oath, see *infra*, Oath.
 - Objections, 12, 315
 - Officers, 12, 282
 - Bias, 12, 284
 - Challenges to the array for bias or partiality of summoning officer, 12, 421
 - Constitution of official bodies, 12, 282
 - De facto officers, 12, 287
 - Delegation of authority, 12, 288
 - Disqualification to act, 12, 285
 - Duration of office, 12, 286
 - Interchange of duties, 12, 303
 - Interest, 12, 286
 - Oath, 12, 284
 - Partiality, 12, 285
 - Participation by unauthorized persons, 12, 303
 - Performance of official duties, 12, 302
 - Power and authority, 12, 287
 - Qualification, 12, 283
 - Quorum, 12, 302
 - Relationship, 12, 286
 - Order of drawing, 12, 306
 - Order or requisition for jurors, 12, 299
 - Performance of official duties, 12, 302

JURY, *cont'd.*Selection and drawing, *cont'd.*

- Place of drawing, 12, 302
- Prejudice, 12, 314
- Presumptions, 12, 313
- Procedure in drawing, 12, 299
- Procurement of names, 12, 291
 - Electors, 12, 294
 - In general, 12, 291
 - Length of residence, 12, 293
 - Race distinction, 12, 295
 - Selection from prescribed class, 12, 293
 - Taxpayers, 12, 293
- Recording names, 12, 307
- Revision of list, 12, 308
- Service of order or requisition for jurors, 12, 299
- Special acts, 12, 276
- Standing aside*, see *infra*, *Standing aside*.
- Statutes, 12, 274
- Statutes directory, 12, 277
- Statutes mandatory, 12, 276
- Statutory modes exclusive, 12, 278
- Territorial courts, 12, 282
- Time of drawing, 12, 301
- United States courts, 12, 280
- Venire facias*, see *infra*, *Venire*.
- Wheel*, see *infra*, *Wheel or box*.

Sentence:

- Recitals concerning jury and verdict, 19, 478

Separation, 12, 564

- Absence of prejudice, 12, 570
- Admonition of, 12, 583
- Affidavit of a juror, 12, 571
- Ancient rule, 12, 564
- Capital and lesser felonies, 12, 566
- Cautious exercise of discretion, 12, 566
- Character of communication, 12, 570
- Civil cases, 12, 575
- Criminal cases, 12, 565
- Discharge, 12, 568
- Discharge of jury, 12, 649
- Effect of separation on future power of jury, 12, 582
- General rules of modern practice, 12, 565
- Hotel accommodations, 12, 573
- Mere momentary withdrawal, 12, 571
- Permissible separation, 12, 571
- Prejudicial separation, 12, 571
- Presumption and proof of prejudice, 12, 568
- Rebuttal of presumption, 12, 570
- Record, 12, 584

JURY, *cont'd.*Separation, *cont'd.*

- Relaxation of rule in misdemeanors and civil cases, 12, 565
- Separation after finding of verdict, 12, 580
- Separation after submission and deliberation, 12, 578
- Separation before completion of jury, 12, 576
- Separation by consent, 12, 577
- Separation for meals, 12, 573
- Separation for necessary purposes, 12, 574
- Separation in company with bailiff, 12, 572
- Separation to testify in another suit, 12, 579
- Separation without prejudice, 12, 567
- Walking or riding for exercise, 12, 573
- Service of jury list or panel, 12, 358
 - Amendments, 12, 370
 - Caption, 12, 362
 - Designation of offense, 12, 364
 - Erasure of names, 12, 366
 - Form, 12, 361
 - Misnomer of veniremen, 12, 364
 - Mode of service, 12, 366
 - Nature of right, 12, 360
 - Number of veniremen, 12, 363
 - Object, 12, 358
 - Occupation of veniremen, 12, 363
 - Presumptions, 12, 369
 - Proof of service, 12, 367
 - Qualifications, 12, 363
 - Residence of veniremen, 12, 363
 - Right in the United States, 12, 359
 - Right to list, 12, 358
 - Sufficiency of list, 12, 361
 - Talesmen or additional jurors, 12, 410
 - Time of service, 12, 367
 - Waiver of right, 12, 361
 - Who may serve, 12, 366
- Service of requisition for jury, 12, 299
- Settlement of decedents' estates:
 - Right to trial by jury where objections are taken on account of representative, 19, 1042
- Sheriff:
 - Venire facias*, 12, 334
- Sickness:
 - Accused, 12, 658
 - Court or counsel, 12, 658
 - Discharge of jury, 12, 656
 - In juror's family, 12, 657
 - Of juror, 12, 547, 656
 - Medical attention, 12, 548

JURY, *cont'd.*

Signature:

Return of process, 12, 347

Venire, 12, 325

Special interrogatories to juries, see SPECIAL INTERROGATORIES TO JURIES.*Special juries*, see SPECIAL AND STRUCK JURIES.

Standing aside, 12, 509

Effect of right to challenge peremptorily, 12, 512

In what trials right exists, 12, 512

Loss of right by challenging for cause, 12, 513

Number who may be set aside, 12, 513

Origin of the right, 12, 509

Practice in the United States, 12, 511

Recalling veniremen, 12, 514

Special veniremen, 12, 512

United States courts, 12, 511

Statutes (see *infra*, Selection and drawing):

Mandatory and directory statutes, 12, 525

Statute books in jury room, 12, 601

Statutes mandatory and directory, 12, 354

Stipulations:

Waiver of jury trial, 20, 631

Waiver of right to jury trial, 12, 261

Stock and stockholders, see STOCK AND STOCKHOLDERS.*Struck juries*, see SPECIAL AND STRUCK JURIES.

Summary proceedings:

Right to jury trial, 20, 1090

Summons, see *infra*, Talesmen and additional jurors.

Sundays and holidays:

Discharge of jury, 12, 646; 20, 1195

Instructing jury, 20, 1194

Receiving verdict, 20, 1194

Suretyship:

Trial by jury:

Action by jury for contribution, 16, 963

Summary proceeding by surety against principal or cosurety, 16, 966

Talesmen and additional jurors, 12, 391

Bystanders, 12, 403

Conditions authorizing, 12, 394

Deficient panel, 12, 395

Definition, 12, 391

Discharge of jurors, 12, 400

Eligibility, 12, 404

Index Pl. & Pr. — 39

JURY, *cont'd.*Talesmen and additional jurors, *con.*

Exhaustion of panel, 12, 397

Extent of authority, 12, 393

Form and sufficiency of order or direction, 12, 406

From body of county, 12, 403

From lists, boxes, etc., 12, 402

Generally, 12, 391

Impanelling, 12, 410

List to officer, 12, 406

Miscellaneous reasons, 12, 401

No regular panel in attendance, 12, 394

Number of tales jurors, 12, 408

Order or direction, 12, 406

Power to procure, 12, 392

Presence of accused, 12, 407

Presumption of existence of conditions, 12, 401

Probable exhaustion of panel, 12, 399

Quashal of venire, 12, 400

Resort to special venire, 12, 398

Service of list, 12, 410

Sources of procurement, 12, 402

Special or struck juries, 12, 394

Statutory enlargement of power, 12, 392

Summoning, 12, 408

To form new jury, 12, 394

United States courts, 12, 411

Venire, 12, 320, 406

Taxpayers, 12, 293

Territorial courts:

Venire facias, 12, 358

Territories:

Selection of jurors, 12, 282

Teste:

Venire, 12, 326

Time for deliberation, see *infra*, Discharge of jurors and of jury.

Time of drawing, 12, 301

Time of making demand, 12, 242

Before trial, 12, 245

Delay of trial by grant of demand, 12, 246

First day of term, 12, 244

In general, 12, 242

Joinder of issue, 12, 243

When cause set for trial, 12, 245

Time of return of venire, 12, 346

Trial of challenges, see *infra*, Examination — trial of challenges.Triers (see *infra*, Examination — trial of challenges), 12, 464

Conclusiveness of findings, 12, 472

Twelve men, see *infra*, Number of jurors.

United States courts:

Drawing and selection of jurors, 12, 280

JURY, *cont'd.*

- United States courts, *cont'd.*
 - Peremptory challenges, 12, 489
 - Procuring attendance of jurors at trial court, 12, 356
 - Talesmen, 12, 411
 - Venire facias, 12, 358
 - Waiver of right to jury trial, 12, 263
- Venire (see *infra*, Challenges for cause; Challenges to the array; Examination—trial of challenges; Excusing jurors; Mode of impaneling; Nonattendance of veniremen; Oath; Peremptory challenges; Presentation of jurors; Service of jury list or panel; Standing aside; Talesmen and additional jurors), 12, 317
 - Absence of party, 12, 321
 - Amendments, 12, 345
 - Appeal and review (see *infra*, Appeal and review), 12, 355
 - Application, 12, 320
 - As part of record, 12, 356
 - Authority to issue, 12, 320
 - Common law, 12, 317
 - Date of issuance, 12, 325
 - Date of receipt, 12, 325
 - Defective process, 12, 345
 - Designation of locality whence persons are to be taken, 12, 331
 - Designation of number by court, 12, 327
 - Designation of particular class, 12, 329
 - Designation of persons to be served, 12, 326
 - Directing return of excessive number, 12, 328
 - Direction to officer, 12, 325
 - Discretion of court as to number, 12, 328
 - Distinction between *venire facias de novo* and new trial, 12, 317
 - Entitling, 12, 325
 - Execution of process, 12, 340
 - Bias of officer, 12, 340
 - Duty of officer, 12, 340
 - Interference by strangers, 12, 344
 - Irregular summoning, 12, 343
 - Misconduct of officer, 12, 340
 - Mode of execution, 12, 342
 - Objections, 12, 342
 - Presumptions, 12, 341
 - Serving disqualified persons, 12, 344
 - Time of execution, 12, 343
- Form, 12, 324
- Furnishing lien to officer, 12, 330

JURY, *cont'd.*

- Venire, *cont'd.*
 - In general, 12, 317
 - Issuance, 12, 320
 - Issuance generally, 12, 321
 - Locality other than vicinity, 12, 333
 - Mandatory and directory statutes, 12, 525
 - Names of persons to be served, 12, 326
 - Necessity for process, 12, 318
 - Number of persons to be served, 12, 326
 - Objections after verdict, 12, 525
 - Objections for want of venire, 12, 319
 - Occupation, 12, 331
 - Officer, 12, 334
 - At common law, 12, 334
 - Bias or prejudice, 12, 340
 - Coroner, 12, 337
 - Duty in execution of process, 12, 340
 - Elisors, 12, 338
 - Misconduct, 12, 340
 - Mode of execution, 12, 342
 - Oath, 12, 339
 - Objections, 12, 339
 - Presumptions that duty is performed, 12, 341
 - Qualifications, 12, 336
 - Sheriff, 12, 334
 - Substitute for disqualified officer, 12, 337
 - Who should execute venire, 12, 334
 - Presumptions, 12, 322
 - Qualifications, 12, 329
 - Record of issuance, 12, 323
 - Residence of proposed jurors, 12, 331
 - Return of process, 12, 345
 - Amendments, 12, 354
 - Contents, 12, 347
 - Discrepancies, 12, 351
 - Errors, 12, 350
 - In general, 12, 345
 - Misnomer, 12, 351
 - Mistakes, 12, 351
 - Objections for misnomer, 12, 353
 - Omissions, 12, 350
 - Return as to number, 12, 347
 - Return of excessive number, 12, 349
 - Return of incompetent and disqualified persons, 12, 349
 - Return of insufficient number, 12, 347
 - Signature, 12, 347

JURY, *cont'd.*Venire, *cont'd.*Return of process, *cont'd.*

Statement of qualifications,

12, 347

Subscription, 12, 347

Time of return, 12, 346

Wrong person summoned,

12, 352

Return of process as part of
record, 12, 356

Seal, 12, 326

Signature, 12, 325

Statutes mandatory and direc-
tory, 12, 354

Sufficiency, 12, 324

Talesmen, 12, 320

Teste, 12, 326

Time of issuance, 12, 322

When returnable, 12, 334

Verdict (see VERDICT):

Illegal methods of arriving at
verdict, 12, 633

Vicinity:

Selection, 12, 289

Venire facias, 12, 333

View:

Unauthorized view of *locus in*
quo, 12, 588

View by jury, see VIEW BY JURY.

Waiver:

Challenges for cause, 12, 436

Challenges to the array, 12, 426

Irregularities of court in exam-
ination, 12, 460

Waiver of right to jury trial:

Appeal and review, 12, 272

By estoppel, 12, 267

Compulsory reference, 12, 264

Consent, 12, 261

Entry of record, 12, 262

In general, 12, 261

Open court, 12, 262

Stipulation in writing, 12,
261

United States courts, 12, 263

Defeating formation of jury, 12,
268

Effect of waiver, 12, 269

Effect as to subsequent trial
or term, 12, 270

In general, 12, 269

Power of court to disregard
waiver, 12, 269

Estoppel, 12, 267

Failure to claim jury, 12, 260

Implication, 12, 257

Improperly setting cause down,
12, 268Legal and equitable issues in
volved, 12, 264Demand of equitable relief,
12, 265**JURY, *cont'd.***Waiver of right to jury trial, *cont'd.*Legal and equitable issues in-
volved, *cont'd.*Interposition of equitable
defense, 12, 265Joinder of legal and equita-
ble issues, 12, 264Making up equitable issues,
12, 265Noticing cause for trial at
equity term, 12, 265Placing cause on equity
calendar by consent, 12,
266

Mode of waiver, 12, 257

Nonappearance at trial, 12, 259

Power to waive trial by jury, 12,
254Capital felonies and felonies
of the higher grades, 12,
255

Civil proceedings, 12, 254

Criminal proceedings, 12,
255Power to waive trial by legally
constituted jury, 12, 255

Civil proceedings, 12, 255

Criminal proceedings, 12,
256

Number of jurors, 12, 255

Preventing procurement of
jurors, 12, 267

Reference of cause, 12, 263

Statutory modes, 12, 258

Submission to court, 12, 260

Sufficiency of waiver, 12, 257

Withdrawal of waiver, 12, 270

Change in issues by amend-
ment, 12, 271

In general, 12, 270

Wheel or box, 12, 296

Custody, 12, 298

Drawing names, 12, 379

Generally, 12, 296

Keeping box filled, 12, 297

Locking, 12, 298

Replacing names in box, 12, 378

Sealing, 12, 298

Talesmen, 12, 402

Wills, see PROBATE AND CONTEST OF
WILLS.

Withdrawing juror, 21, 1002

Definition, 21, 1002

Effect of withdrawal, 21, 1005

Imposition of terms on granting
leave, 21, 1005Propriety in both civil and crimi-
nal cases, 21, 1004

Purpose, 21, 1002

Witnesses:

Competency of witnesses to
prove misconduct, 12, 559

JURY, *cont'd.*Witnesses, *cont'd.*

Private examination of witnesses, 12, 588

Written challenge, 12, 426

JUSTICE:

Obstructing justice, see **OBSTRUCTING JUSTICE**.

JUSTICES OF THE PEACE, 12, 664

Abatement, 12, 721

Actions, 12, 822

Civil actions against justices, 12, 822

Notice of suit, 12, 823

Adjournments, 1, 247

Dockets, 12, 752

Affidavit for appeal, see *infra*, **Appeals**.

Amendments, 1, 508; 12, 699

Appeal bond, 12, 779

At what stage allowable, 12, 700

Change of parties, 12, 700

Dockets, 12, 749

Judgments, 12, 738

Notice of appeal, 12, 768

Parties, 12, 783

Power to allow, 12, 699

Return of justice on appeal, 12, 792

Trial *de novo*, appellate court, 1, 611, 616

Amount in controversy (see **AMOUNT IN CONTROVERSY**):

Appeal, 12, 804

New trial upon the merits or mere review of error, 12, 811

Answers, see *infra*, **Plea or answer**.

Appeals, 2, 29; 12, 755

Affidavit for appeal, 12, 771

Before whom made, 12, 772

Necessity for, 12, 771

Signature and jurat of officer, 12, 774

Signature of affiant, 12, 773

Sufficiency in form, 12, 773

Sufficiency of affidavit, 12, 772

Allowance of appeal, 12, 780

Application of general rule referred to various steps, 12, 755

Bond or recognizance, 12, 774

Amendment, 12, 779

Amount of judgment, 12, 778

Approval of bond, 12, 776

Criminal prosecutions, 12, 775

Date, 12, 778

Description of justice, 12, 778

Failure of justice to file bond, 12, 779

Filing in appellate court, 12, 779

JUSTICES OF THE PEACE, *cont'd.***Appeals, *cont'd.***

Bond or recognizance, *cont'd.*

Insufficient number of sureties, 12, 780

Necessity in general, 12, 774

Parties, 12, 778

Power of justice after acceptance of appeal bond, 12, 777

Proceedings without amendment, 12, 780

Provisions for benefit of appellee, 12, 775

Rule for new bond, 12, 780

Sufficiency of bond, 12, 777

Time of filing, 12, 776

Character of judgment appealable, 12, 756

Compliance with statute in perfecting removal, 12, 755

Criminal cases, 12, 761

Default judgment, 12, 757

Dismissal, 12, 759

End of justice's jurisdiction, 12, 799

Final judgment, 12, 756

Finding without judgment, 12, 760

Form of judgment, 12, 759

Hearing on appeal:

Criminal cases, 12, 815

Trial *de novo*, 12, 806

Accrual of cause of action, 12, 808

Amount of judgment recoverable, 12, 809

Cause of action, 12, 807

Defenses on appeal, 12, 808

Errors and irregularities disregarded, 12, 806

Evidence on appeal, 12, 810

In general, 12, 806

Issues on appeal, 12, 807

Judgment of affirmance or reversal, 12, 806

Necessity of proving cause of action, 12, 807

Penalty of the appeal bond, 12, 809

Relation to case before justice, 12, 807

Trial *de novo* or review of error, 12, 811

Amount in controversy, 12, 811

Appeal upon questions of law or fact, 12, 812

Counterclaim, 12, 812

Errors and irregularities disregarded, 12, 814

JUSTICES OF THE PEACE, *cont'd.*

- Appeals, *cont'd.*
 - Hearing on appeal, *cont'd.*
 - Trial *de novo* or review of error, *cont'd.*
 - Power to render judgment on record or order a new trial, 12 813
 - Proceedings in error, 12, 811
 - Review of error on appeal, 12, 811
 - Review of evidence, 12, 812
 - Statement of grounds of appeal, 12, 814
- Joinder, 2, 196
- Jurisdiction, 12, 796
 - Criminal cases, 12, 798
 - Dependency upon jurisdiction of justice, 12, 796
 - In general, 12, 796
 - Jurisdiction beyond that of justice, 12, 798
 - Recovery within justice's jurisdiction, 12, 798
- Nonsuit, 12, 759
- Notice dependent on character of appeal, 12, 800
- Notice of appeal, 12, 765
 - Amendment, 12, 768
 - Effect of failure of compliance, 12, 766
 - Inaccuracy, 12, 767
 - In the absence of statute, 12, 765
 - Necessity of notice, 12, 765
 - Object of notice, 12, 767
 - Proof of service, 12, 770
 - Statute designating character of notice, 12, 767
 - Sufficiency of form, 12, 769
 - Sufficiency of notice, 12, 767
 - Sufficiency of service, 12, 769
 - Under statute, 12, 765
- Objections on appeal, 12, 816
 - Defects in *capias*, summons, or process, 12, 817
 - Distinction between dismissal of appeal and of action, 12, 819
 - Form and sufficiency of pleadings, 12, 818
 - Form of appeal, 12, 816
 - Irregularities, 12, 817
 - Jurisdiction acquired by appeal, 12, 818
 - Matters pleadable before a justice, 12, 816
 - Motion to dismiss action or appeal, 12, 818
 - Waiver of objections, 12, 816

JUSTICES OF THE PEACE, *cont'd.*

- Appeals, *cont'd.*
 - Parties, 12, 781
 - Amendment, 12, 783
 - Joint parties, 12, 782
 - New parties, 12, 783
 - Substitution changing cause of action, 12, 784
 - Pleadings on appeal, 12, 803
 - Amount in controversy, 12, 804
 - Appeal from judgment by default, 12, 804
 - Compelling filing of new pleadings, 12, 804
 - Formality in pleading, 12, 805
 - Form of action, 12, 805
 - In general, 12, 803
 - New pleadings on appeal, 12, 804
 - Preliminary payment of fees, 12, 761
 - Proceedings after appeal, 12, 799
 - Prosecutions on appeal, 12, 801
 - Return of justice and entry of appeal, 12, 784
 - Allowance of appeal, 12, 791
 - Amendment of return, 12, 792
 - Certification of return, 12, 794
 - Conclusive effect of return, 12, 791
 - Effect of failure to comply with statute, 12, 786
 - Entry of appeal and return of papers by appellant, 12, 788
 - Entry of appeal by appellee, 12, 789
 - Improper matter inserted in transcript, 12, 792
 - Jurisdiction of appellate court, 12, 790
 - Jurisdiction of justice, 12, 789
 - Laches of justice, 12, 787
 - Necessity of order of court for amendment, 12, 794
 - Necessity of return to perfect appeal, 12, 784
 - Right to appeal, 12, 791
 - Sufficiency of transcript, 12, 789
 - When return should be made, 12, 786
- Right to appeal in general, 12, 756
- Time for taking an appeal, 12, 762
 - Computation of time, 12, 764
 - Equitable relief, 12, 764

JUSTICES OF THE PEACE, *cont'd.*Appeals, *cont'd.*Time for taking an appeal, *con.*

In general, 12, 762

Remedy for excusable delay,
12, 763

Sufficiency of cause, 12, 764

Trial *de novo*, 1, 611; 12, 806Accrual of cause of action,
12, 808Amount of judgment re-
coverable, 12, 809

Cause of action, 12, 807

Defenses on appeal, 12, 808

Errors and irregularities dis-
regarded, 12, 806

Evidence on appeal, 12, 810

In general, 12, 806

Issues on appeal, 12, 807

Judgment of affirmance or
reversal, 12, 806Necessity of proving cause
of action, 12, 807Penalty of the appeal bond,
12, 809Relation to case before jus-
tice, 12, 807

Verdict without judgment, 12, 760

When appeal lies, 12, 756

When appellate court may pro-
ceed, 12, 799Withdrawal, dismissal, and non-
suit, 12, 802

Appearances, 2, 603

Appearance as waiver of juris-
diction of requirements, 2, 663

Change of venue, 2, 613

Presumption of appearance, 2,
597

Time to appear, 2, 607

Apprenticeship, 10, 851

Assault and battery, *see* ASSAULT AND
BATTERY.

Audita querela, 3, 117

Bail and recognizance, 3, 197

Bastardy (*see* BASTARDY), 3, 273

Bills of exceptions, 12, 693

Dockets, 12, 753

Bond or recognizance, *see infra*, Ap-
peals.Certification of return on appeal, 12,
794

Certiorari, 4, 28

Jurisdictional errors, 4, 96

Change of venue, 4, 388

Appearances, 2, 613

Costs, 4, 479

Chattel mortgages, 4, 508

Civil procedure, 12, 695

Declaration, complaint, or state-
ment of demand, *see infra*.Declaration, complaint, or
statement of demand.**JUSTICES OF THE PEACE, *cont'd.***Civil procedure, *cont'd.*

In general, 12, 695

Institution of suit, 12, 696

Judgments, *see infra*, Judgments.Jury trial, *see infra*, Jury.New trial, *see infra*, New trial.Pleadings, *see infra*, Pleadings.Plea or answer, *see infra*, Plea
or answer.Record and docket, *see infra*.

Record and docket.

Commitments, 4, 570

Complaint, *see infra*, Declaration,
complaint, or statement of demand.

Confession of judgment, 12, 742

In general, 12, 742

In what cases rendered, 12, 743

Oral confession, 12, 744

What docket must show, 12, 745

Consent:

Jurisdiction, 12, 673

Construction of pleadings, 4, 749;
12, 697

Continuances, 4, 892

Absence of justice, 4, 898

Absence of party, 4, 898

Adjournment by another justice,
4, 894Adjournment for further con-
sideration, 4, 895Adjournment without showing
cause, 4, 894

Consent of parties, 4, 893

Docket entry, 4, 895

Duty, 4, 895

Effect of unauthorized continu-
ance, 4, 896

Estoppel, 4, 898

Justice's own motion, 4, 893

Mandamus to proceed with trial,
4, 897Nonappearance on adjourned
day, 4, 898

Period of adjournment, 4, 894

Power and duty, 4, 892

Review for abuse, 4, 896

Specification of hour and place,
4, 895Subsequent proceedings void
where continuance is un-
authorized, 4, 896

Time for adjournment, 4, 893

Void or voidable, 4, 897

Waiver, 4, 898

Coroner's inquests, 5, 38

Costs:

Amount in controversy, 5, 165

Appeals from magistrates, 5, 205

Discretionary, 5, 205

General custom of appellate
court, 5, 206

In general, 5, 205

JUSTICES OF THE PEACE, *cont'd.*

- Costs, *cont'd.*
 - Appeals from magistrates, *cont'd.*
 - Unsuccessful party liable for costs, 5, 206
 - Whether reviewable, 5, 205
- Creditors' bills, 5, 435
 - Necessity of judgment at law, 5, 486
 - Requisites and sufficiency of execution, 5, 511
- Criminal procedure, 12, 690
 - Criminal prosecutions against justices, 12, 820
 - Examples, 12, 821, 828
 - In general, 12, 820
- Declaration, complaint, or statement of demand, 10, 353, 462; 12, 703
 - Actions on statutes, 12, 714
 - Actions on written instruments, 12, 704
 - Address, 10, 467
 - Affirmation, 10, 463
 - Allegations and proof, 12, 716
 - Appeal, 10, 469
 - Assigned note, 12, 705
 - Averring jurisdictional facts, 12, 712
 - By whom made, 10, 466
 - By whom oath administered, 10, 464
 - Complaint for recovery of penalty, 10, 467
 - Conclusion, 10, 468
 - Designation of office, 10, 465
 - Designation of parties, 12, 715
 - Indorsement of witnesses, 10, 469
 - Injury to animals, 12, 709
 - Insufficient statements, 12, 710
 - Joinder of causes, 12, 718
 - Jurat, 10, 464
 - Jurisdiction and procedure statutory, 10, 462
 - Matters of form, 10, 467
 - Must state cause of action, 12, 698, 712
 - Name and signature of complainant, 10, 468
 - Necessity for, 12, 703
 - Necessity of complaint, 10, 463
 - Oath, 10, 463
 - Objection to, 10, 577
 - Oral complaint, 10, 464
 - Parties, 12, 715
 - Sufficiency, 10, 501; 12, 707
 - Exceptions and provisos, 10, 504
 - Following the statute, 10, 503
 - In general, 10, 501
 - Knowledge or intent, 10, 502

JUSTICES OF THE PEACE, *cont'd.*

- Declaration, complaint, or statement of demand, *cont'd.*
 - Sufficiency, *cont'd.*
 - Prior conviction, 10, 502
 - Strictness required in indictments or informations, 10, 503
 - Sufficiency of oath, 10, 466
 - Sufficient bill of particulars, 12, 705
 - Sufficient statements, 12, 710, 711
 - Supplying lost complaint by copy, 10, 469
 - Tests of sufficiency, 12, 708
 - Time of filing, 12, 706
 - Title, 10, 467
 - Writing, 10, 463
- Defaults, 12, 739
 - Appeal in judgment by default, 12, 757
 - At what term default may be taken, 6, 69
 - General denial, 12, 804
 - Plaintiff must prove his case, 12, 739
 - Setting aside, 12, 742
 - Waiting for defendant's appearance, 12, 740
 - When default rendered, 12, 740
- Definiteness and certainty in pleadings:
 - Pleadings in justice courts, 6, 272
- Demurrers, 12, 694, 702
- Dismissal, discontinuance, and non-suit:
 - Appeal, 12, 759, 802
- Disorderly conduct*, see **DISORDERLY CONDUCT**.
- Docket, 12, 749; 18, 403
- Entry of appeal*, see *infra*, Appeals.
- Equitable defenses, 7, 802
- Exceptions and objections:
 - Appeals*, see *infra*, Appeals.
 - Objections to jurisdiction, 12, 692
 - Pleadings, 12, 701
 - Want of jurisdiction on appeal from justice courts, 8, 173
- Executions:
 - Date, 8, 401
 - Duties, 8, 382
 - Executions issued out of courts of record on justices' judgments, 8, 368
 - Collateral attack, 8, 370
 - Formality, 8, 368
 - In general, 8, 368
 - Recital as to issuance of writ by justice, 8, 371
 - Requisites and sufficiency of transcript, 8, 369
 - Statutes, 8, 368, 371

JUSTICES OF THE PEACE, *cont'd.***Executions, *cont'd.***

Executions issued out of courts of record on justices' judgments, *cont'd.*

Sufficiency of the execution issued by the justice and the return thereon, 8, 370

Transcript, 8, 368, 369

When justice cannot issue execution, 8, 371

Form and contents of writ, 8, 387

Return day, 8, 398

Validity of writ improperly dated, 8, 401

Final judgments, 12, 756

Findings:

Appeal where there is a finding without judgment, 12, 760

Forcible entry and detainer, 9, 46

Judgment, 9, 71

Former adjudication, 9, 619

Jurisdiction, 9, 626

Funds and deposits in court, 9, 731

General issue, see *infra*, Plea or answer.

Hearing on appeal (see *infra*, Appeals), 12, 806

Holidays, 12, 734

Indictments, 12, 820

Institution of suit, 12, 606

Issue, see *infra*, Jurisdiction of actions involving title to land.

Joinder of counts and causes, 12, 718

Judgments (see *infra*, Appeals), 12, 729

Actions on judgments of justices of the peace, 11, 1102

Amendment and correction, 12, 738

Certainty in matters of substance, 12, 737

Confession, 12, 742

Defaults, 12, 739

Form, 12, 735

Formality not required, 12, 735

In general, 12, 729

Judgments on awards, 11, 1050

Leave to sue upon justices' judgments, 11, 1006

Nul tici record, 11, 1150

Opening and vacating, 12, 738

Rendition and entry, 12, 729

Jurisdiction, 12, 669, 728

Appeals, 12, 789, 790, 796

Criminal cases, 12, 798

Dependency upon jurisdiction of justice, 12, 796

In general, 12, 796

Jurisdiction beyond that of justice, 12, 798

Recovery within justice's jurisdiction, 12, 798

JUSTICES OF THE PEACE, *cont'd.***Jurisdiction, *cont'd.***

Common law, 12, 669

Complaint before magistrate, 10, 462

Consent, 12, 673

Criminal matters, 12, 690

Dependent on amount, 12, 675

Dependent on locality, 12, 674

Dockets, 12, 754

Equitable matters, 12, 691

How objections raised, 12, 694

Limited, 12, 670

Must appear affirmatively, 12, 671

Objections to jurisdiction, 12, 692

Objections to jurisdiction of the person, 12, 692

Objections to jurisdiction of the subject-matter, 12, 694

Presumptions, 12, 672

Special, 12, 670

Statutory, 12, 669

Statutory nature, 10, 462

Sufficiency of transcript on appeal, 12, 789

Title to land, see *infra*, Jurisdiction of actions involving title to land.

Jurisdiction of actions involving title to land, 12, 675

Actions for rent, 12, 684

Breach of covenant of warranty, 12, 679

Defendant's pleading, 12, 686

Dispute as to title, 12, 679

Evidence of title admissible, 12, 681

How question raised, 12, 685

Incidentally in issue, 12, 680

In general, 12, 675

Landlord and tenant, 12, 684

Obstructing highway, 12, 679

Plaintiff's own showing, 12, 686

Pleadings in higher court, 12, 689

Possession, 12, 683

Proceedings in higher court, 12, 688

Proceedings to dispossess tenant, 12, 684

Proof that title is in issue, 12, 687

Recovery of possession, 12, 683

Right of way, 12, 678

Trespass on lands, 12, 681

What action justice must take, 12, 688

When title in issue, 12, 677

Where bond required, 12, 687

Jury, 12, 726

Appeal to jury, 12, 727

JUSTICES OF THE PEACE, *cont'd.***Jury, *cont'd.***

In general, 12, 726

Power of justice to instruct jury, 12, 728

Waiver of jury trial, 12, 726

Land, see *infra*, Jurisdiction of actions involving title to land.*Landlord and tenant* (see *infra*, Jurisdiction), 12, 684

Actions for rent, 12, 684

Proceedings to dispossess tenant, 12, 684

Summary proceedings under statutes, 12, 876

Limitations, 13, 271

Manner of raising defense, 13, 271

Sufficiency of plea, 13, 272

Trial *de novo* on appeal, 13, 272**Mandamus:**

Appeal, 13, 571

Mechanics' liens:

Practice in justices' courts, 13, 1023

New trial, 12, 746, 819

Application must be seasonable, 12, 747

Notice of motion, 12, 748

Power statutory, 12, 746

When allowed, 12, 747

Where trial by jury, 12, 747

Nonsuit, 12, 746*Notice of appeal*, see *infra*, Appeals.

Notice of suit, 12, 823

Nuisances, 14, 1106

Nul tiel record, 11, 1150*Objections*, see *infra*, Exceptions and objections.*Offer of judgment*, see OFFER OF JUDGMENT.

Oral pleadings, 12, 696

Ordinances, 15, 419

Parties (see *infra*, Appeals), 12, 715

Perjury, 16, 328

Pleadings, 12, 696

Amendments, 12, 699

Appeals, see *infra*, Appeals.

At what stage amendments allowable, 12, 700

Change of parties, 12, 700

Construction of pleadings, 12, 697

Declaration, complaint, or statement of demand, see *infra*, Declaration, complaint, or statement of demand.

Demurrer, 12, 702

Formality not required, 12, 697

General principles, 12, 696

Must state a cause of action, 12, 698

Objections, 12, 701

JUSTICES OF THE PEACE, *cont'd.***Pleadings, *cont'd.***

Oral or written, 12, 696

Plea or answer, see *infra*, Plea or answer.**Plea or answer, 12, 718**

Benefit of general issue without pleading, 12, 720

Necessity for, 12, 718

Pleas in abatement, 12, 721

Set-off, 12, 724

Sufficiency, 12, 721

Sufficiency of set-off, 12, 725

Time of filing, 12, 720

Verification, 12, 722

What admissible under general issue, 12, 723

Poor and poor laws:

Removal of pauper, 16, 665

Poor debtor acts, see POOR DEBTOR ACTS.

Possession, 12, 683

Preliminary examination, see PRELIMINARY EXAMINATION.**Presumptions:**

Jurisdiction, 12, 672

Prohibition, 16, 1103

Publication, 17, 30

Real property, see *infra*, Jurisdiction of actions involving title to land.*Recognizance*, see *infra*, Appeals.**Record and docket, 12, 749**

Adjournments, 12, 752

Amendment, 12, 749

Amount claimed, 12, 750

Bill of exceptions to preserve rulings, 12, 753

Directory nature of statutes, 12, 752

Evidence, 12, 754

Formality, 12, 749

In general, 12, 749

Jurisdiction, 12, 754

Process, 12, 751

Style and nature of action, 12, 750

Time of appearance, 12, 751

What entries should be made, 12, 750

Recordari, see RECORDARI.

Rehearing, 12, 819

Reinstatement, 12, 819

Removal of causes, 18, 164

Rendition and entry of judgment, 12, 729

Distinction between rendition and entry, 12, 730

Entry of ministerial act, 12, 730

Holidays, 12, 734

In general, 12, 729

Sundays, 12, 734

Trials by court, 12, 730

Trials by jury, 12, 732

JUSTICES OF THE PEACE, *cont'd.*

Replevin:

Amount in controversy, 18, 500

Replications and replies, 18, 697

Reply, 12, 725

Return of justice and entry of appeal,
see *infra*, Appeals.*Review*, see *infra*, Appeals.

Right of property, trial of, 18, 1169

Appeal from justice, 18, 1195

Right of way, 12, 678

Satisfaction and discharge of judgments, 19, 122, 140

Service of process, 19, 589, 596

Notice of appeal, 12, 769

Set-off, recoupment, and counterclaim, 12, 724

Judgment, 19, 809

Must be set up at trial, 12, 724

Must plead specially or give notice, 12, 724

New trial on appeal, 12, 812

Replications and replies, 19, 782

Sufficiency, 12, 725

Specific performance, 20, 405

Statement of demand, see *infra*, Declaration, complaint, or statement of demand.*Summons and process*, see SUMMONS AND PROCESS.

Sundays and holidays, 12, 734

Exercise of powers of magistrate in criminal action, 20, 1196

Tender, 21, 555

Time, computation of:

Time for taking an appeal, 12, 764

Title, ownership, and possession, 21, 841

Title to land, see *infra*, Jurisdiction of actions involving title to land.

Trespass:

Pleading title before justice, 21, 841

Trespass on lands, 12, 681

Trial de novo, see *infra*, Appeals.Trial *de novo* or review of error, 12, 811

Amount in controversy, 12, 811

Appeal upon questions of law and fact, 12, 812

Counterclaim, 12, 812

Errors and irregularities disregarded, 12, 814

Power to render judgment on record or order a new trial, 12, 813

Proceedings in error, 12, 811

Review of error on appeal, 12, 811

Review of evidence, 12, 812

Statement of grounds of appeal, 12, 814

JUSTICES OF THE PEACE, *cont'd.*

Trover and conversion, 21, 1036

Vagrancy, 22, 508

Verdict:

Appeal where there is a verdict without judgment, 12, 760

Verification:

Affidavit for appeal, see *infra*, Appeals.

Necessity for verification of plea or answer, 12, 722

Written pleadings, 12, 696

JUSTIFICATION, 12, 825

See CONFESSION AND AVOIDANCE; LIBEL AND SLANDER.

Answers in code pleading, 1, 834, 845

False imprisonment, 8, 850

Pleas at law, 16, 566

Trespass, see TRESPASS.**KIDNAPPING, 12, 825**

See ABDUCTION.

Indictments, 12, 825

Charging similar offense in separate counts, 12, 827

Common law, 12, 825

Essential averments, 12, 825

Statute, 12, 826

Jurisdiction, 12, 825

KNOWLEDGE (see ANSWERS IN CODE PLEADING; NOTICE):

Answers in equity pleading, 1, 946

Indictments, see INDICTMENTS.**LABOR, see WORK AND LABOR.****LABOR OFFENSES, see MASTER AND SERVANT.****LACHES, 12, 828**

See CERTIORARI; LIMITATION.

Admiralty, 1, 287

Amendments, 1, 522

Bills in equity, 12, 735

Laches of applicant, 1, 600

Answer (see *infra*, Plea or answer). 12, 833

Appeals, 12, 840

Appearances:

Unauthorized appearance by attorney, 2, 694

Attachment:

Issuing writ, 3, 6

Avoidance of, 12, 834

Absence of allegation of avoidance, 12, 834

Allegations should be full, specific, positive, and certain, 12, 836

Alleging discovery of fraud, 12, 838

Alleging ignorance or concealment of fraud, 12, 838

Amendment of bill, 12, 835

Avoidance upon ground of fraud or mistake, 12, 837

LACHES, *cont'd.*Avoidance of, *cont'd.*

Avoidance upon ground of ignorance, 12, 836

Excuse or explanation, 12, 834

Facts and circumstances, 12, 835

General necessity of alleging avoidance in bill, 12, 834

General requisites of allegations of avoidance, 12, 835

Necessity of alleging fraud and mistake in bill, 12, 837

Reasons for delay, 12, 834

Bills in equity:

Amendment of bill, 12, 835

Excuse or explanation, 12, 834

Fraud or mistake, 12, 837

General necessity of alleging avoidance in bill, 12, 834

Ignorance, 12, 836

Refusal of relief and dismissal of bill, 12, 840

Where apparent on face of bill, 12, 832

Where not apparent on face of bill, 12, 832

Bills to impeach decrees and judgments, 3, 631

Certiorari, see **CERTIORARI**.

Change of venue, 4, 383

Contempt, 4, 774

Copyright, 5, 21

Court's discretion, 12, 839

Death:

Failure to suggest, 5, 843

Decrees:

Opening decrees *pro confesso*, 5, 1021

Defaults:

Application for relief, 6, 190

Definition, 12, 829

Demurrers in chancery, 6, 404

Demurrers in equity, 12, 832

Depositions:

Waiver of objections, 6, 631

Determination of, 12, 839

Appellate review, 12, 840

Discretion of court, 12, 839

Elements, facts, and circumstances, 12, 839

Discretion of court, 12, 839

Dismissal, discontinuance, and nonsuit, 6, 920

Disposition of case, 12, 840

Disposition of other questions, 12, 841

Refusal of relief and dismissal of bill, 12, 840

Divorce, 7, 93

Drainage, 7, 220

Forma pauperis, 16, 685**LACHES, *cont'd.***

Fraud:

Alleging discovery of fraud, 12, 838

Alleging ignorance or concealment of fraud, 12, 838

Alleging the fraud, 12, 837

Necessity of alleging in pleading, 12, 837

Ignorance:

Alleging ignorance or concealment of fraud, 12, 838

Avoidance upon ground of ignorance, 12, 836

Infants:

Laches not imputable to infants, 10, 590

Interpleader, 11, 462

Judgments (see **OPENING, AMENDING, AND VACATING JUDGMENTS**):

Equitable relief against judgments, 11, 1186

Landlord's actions to recover rent or damages:

Actions for rent by tenants in common or joint tenants, 12, 862

Manner of pleading, 12, 831

Mistake, 12, 837

Necessity of pleading, 12, 829

Defense arising upon bill or upon whole case, 12, 829

Doctrine that laches need not be pleaded, 12, 829

Objection at hearing, 12, 829

Where apparent on face of bill, 12, 832

Where not apparent on face of bill, 12, 832

Opening, amending, and vacating judgments, see **JUDGMENTS**.*Orders*, see **ORDERS**.

Patents, 16, 102

Pleading, see *infra*, **Necessity of pleading**.

Plea or answer, 1, 880; 12, 833

Insufficient answer, 12, 833

Requisites to plea or answer, 12, 833

Possession, writ of, 16, 757

Privilege, 16, 986

Public officers, 17, 206

Recordari, 17, 901

Rehearing, 18, 10

Rescission, cancellation, and reformation of contracts, see **RESCISSIION, CANCELLATION, AND REFORMATION OF CONTRACTS**.

Scope of article, 12, 829

Set-off, recoupment, and counterclaim (see **SET-OFF, RECOUPMENT, AND COUNTERCLAIM**), 19, 722

Specific performance, 20, 471

LACHES, *cont'd.*

- Taking advantage of (see *infra*, Manner of pleading; Necessity of pleading), 12, 829
- Insufficient answer, 12, 833
- Requisites of plea or answer, 12, 833
- Time of presenting defense, 12, 832

Time of presenting defense, 12, 832

LANDLORD AND TENANT, 12, 842**Abatement:**

Attachment, 12, 920

- Actions (see *infra*, Landlord's actions to recover possession; Landlord's actions to recover rent or damages; Tenant's actions; Use and occupation):
- Covenant*, see *infra*, *Covenant*.
- Debt*, see *infra*, *Debt*.

Adjournments:

Summary proceedings under statutes, 12, 894

Advances, see *infra*, *Liens*.

Affidavits (see *infra*, Summary proceedings under statutes):

Attachment, 12, 913

Amending affidavit, 12, 917

Instances of insufficient affidavits, 12, 916

Necessary averments, 12, 914

Unnecessary averments, 12, 917

Who may make, 12, 917

Amendments:

Affidavit for attachment, 12, 917

Answers:

Summary proceedings under statutes, 12, 887

Counter-affidavit, 12, 889

Manner of making, 12, 888

Necessity for, 12, 887

Verification, 12, 888

Written, 12, 888

Answers under the codes, 12, 866

Appeals:

Summary proceedings, 12, 900

Arson, 2, 831

Assignee of lease:

Covenant, 12, 856

Debt, 12, 860

Summary proceedings, 12, 874

Use and occupation against, 12, 850

Attachment, see *infra*, *Liens*.

Attorney's fees:

Attachment, 12, 913

Attornment:

Summary proceedings, 12, 874

Bonds:

Attachment, 12, 917

Burglary, 3, 764

Averment of ownership, 3, 764

LANDLORD AND TENANT, *cont'd.***Burglary, *cont'd.***

Common entrance, 3, 766

Distinct entrance, 3, 766

Several apartments, 3, 765

Where owner does not reside under roof, 3, 765

Certiorari, 4, 89

Landlord as petitioner, 4, 166

Summary proceedings, 12, 898

Codes, see *infra*, Landlord's actions to recover rent or damages.

Constructive possession:

Use and occupation, 12, 850

Costs:

Summary proceedings under statute, 12, 895

Covenant, 12, 853

Against whom maintainable, 12, 856

Assignee, 12, 856

Assignees of reversion, 12, 854

Declaration, 12, 858

Eviction, 12, 859

For what maintainable, 12, 854

Heirs, 12, 855

Joint defendants, 12, 857

Owner of undivided moiety, 12, 855

Pleas, 12, 859

Quiet enjoyment, 12, 902

Replication, 12, 859

Several and joint plaintiffs, 12, 855

Venue, 12, 857

When action may be brought, 12, 857

When covenant lies, 12, 853

Who may maintain, 12, 854

Damages, see *infra*, Landlord's actions to recover rent or damages.

Debt, 5, 900; 12, 859

Assignee or lessee, 12, 860

Assignment of lease, 12, 860

By whom and against whom maintainable, 12, 860

Declaration, 12, 861

Pleas, 12, 862

Venue, 12, 861

When action lies, 12, 859

Declaration and complaint:

Covenant, 12, 858

Debt, 12, 861

Under the codes, 12, 865

Use and occupation, 12, 852

Detainer, allegations of wrongful detainer, 12, 881

Dismissal, discontinuance, and nonsuit:

Summary proceedings, 12, 895

Disorderly houses, 7, 12

Dispossession, see *infra*, Summary proceedings under statutes.

LANDLORD AND TENANT, *cont'd.*

Distress (see **DISTRESS**; and see *infra*,
Liens), 12, 862

Enforcement of lien, 12, 925

Ordinary attachment and dis-
tress distinguished, 12, 907

Double rent, award of, 12, 896

Dower:

Tenant as party, 7, 179

Ejectment, 7, 298, 307, 325; 12, 867

Historically, 7, 307

Improper admission of defend-
ant, 7, 310

Landlord alone, 7, 311

Landlord defending in tenant's
name, 7, 311

Meaning of the term landlord, 7,
308

Privity, 7, 309

Right to maintain an ejectment,
7, 298

Technical relation of landlord
and tenant, 7, 309

Tenants at sufferance, 7, 299

Tenants at will, 7, 299

What must be shown to court,
7, 310

Who may be let in to defend, 7,
307

Who may be sued, 7, 304

Eminent domain:

Notice, 7, 489

Parties, 7, 507

Equity:

Enforcement of lien, 12, 932

Eviction (see *infra*, Summary pro-
ceedings under statutes; War-
rant to dispossess):

Plea of eviction in covenant, 12,
859

Use and occupation, 12, 848

Execution:

Enforcement of lien, 12, 930

Exemptions, 12, 919

Forcible entry and detainer (see
**FORCIBLE ENTRY AND DE-
TAINER**):

Parties, 9, 49, 53

Foreclosure:

Enforcement of lien, 12, 931

Forthcoming and delivery bonds:

Attachment, 12, 920

Gaming:

Permitting gaming on premises,
9, 774

Guardians, 10, 843

Infants, 10, 843

In general, 10, 843

Statutory regulations, 10, 844

Injunctions:

Summary proceedings, 12, 900

Insane persons, 10, 1238

Interpleader, 11, 451; 12, 903, 922

LANDLORD AND TENANT, *cont'd.*

Issues to the jury, 11, 651

Joint tenants and tenants in com-
mon:

Actions for rent by tenants in
common or joint tenants, 12,
862

Judgments:

Enforcement of lien, 12, 930

Jurisdiction:

Summary proceedings under
statutes, 12, 876

Jury:

Summary proceedings, 12, 890

Justices of the peace, 12, 684

Actions for rent, 12, 684

Proceedings to dispossess ten-
ant, 12, 684

Summary proceedings under
statutes, 12, 876

Landlord's actions to recover posses-
sion, 12, 867

At common law, 12, 867

Ejectment, 12, 867

*Summary proceedings under stat-
utes*, see *infra*, Summary pro-
ceedings under statutes.

Landlord's actions to recover rent or
damages, 12, 844

At common law, 12, 844

Action for use and occupa-
tion, 12, 844

Actions for rent by tenants
in common or joint ten-
ants, 12, 862

Debt, see *infra*, *Debt*.

Distress, 12, 862

Covenants, see *infra*, *Covenant*.

Debt, see *infra*, *Debt*.

Distress, 12, 862

Under the codes, 12, 864

Against whom lies, 12,
864

Allegations in complaint, 12,
865

Answer, 12, 866

Complaint, 12, 865

Description of premises, 12,
866

In general, 12, 864

Joint defendants, 12, 864

Set-off, recoupment, and
counterclaim, 12, 867

Who may maintain, 12,
864

Use and occupation, see *infra*, *Use
and occupation*.

Waste, 12, 862

Landlord's liens for rent and advances,
see *infra*, *Liens*.

Liens, 12, 903

Enforcement by action to fore-
close, 12, 931

LANDLORD AND TENANT, *cont'd.***Liens, *cont'd.***

Enforcement by attachment, 12, 904

Affidavit, 12, 913

Amendment of affidavit, 12, 917

In general, 12, 913

Instances of insufficient affidavits, 12, 916

Necessary averments, 12, 914

Unnecessary averments, 12, 917

Who may make, 12, 917

After rent is due, 12, 910

Attorney's fees, 12, 913

Before rent is due, 12, 910

Bond, 12, 917

Construction of statutes, 12, 907

Crops of subtenant, 12, 918

Exclusive remedy, 12, 905

Exemptions, 12, 919

Form of writ of attachment, 12, 918

Forthcoming bond, 12, 920

For what claims attachment lies, 12, 812

In general, 12, 904

Issuance and levy of writ, 12, 918

Judgment, 12, 923

Levy after removal, 12, 919

Levy on property in hands of third person, 12, 919

Ordinary attachment and distress distinguished, 12, 907

Parties, 12, 922

Defendants, 12, 922

Interpleading claimants, 12, 922

Plaintiffs, 12, 922

Pleadings, 12, 923

Plea in abatement, 12, 920

Proceedings *in rem*, 12, 907

Proceedings to procure attachment, 12, 913

Quashing, vacating, or discharging attachment, 12, 920

Removal of goods, 12, 911

Statute controls, 12, 909

Subtenant, 12, 921

When attachment lies, 12, 909

Enforcement by distress, 12, 925

Enforcement by judgment and execution, 12, 930

Enforcement in collateral proceedings, 12, 934

Enforcement in equity, 12, 932

LANDLORD AND TENANT, *cont'd.***Liens, *cont'd.***

How enforced, 12, 903

In general, 12, 903

Strict construction, 12, 903

Summary process, 12, 925

Name of defendant:

Summary proceedings, 12, 883

Occupation, see *infra*, Use and occupation.

Parties:

Attachment, 12, 922

Defendants, 12, 922

Interpleading claimants, 12, 922

Plaintiffs, 12, 922

Partition, see *PARTITION*.

Pleas:

Covenant, 12, 859

Debt, 12, 862

Use and occupation, 12, 853

Possession (see *infra*, Landlord's actions to recover rent or damages; Summary proceedings under statutes; Use and occupation):

Tortious possession, 12, 848

Railroads, 17, 642

Action for tort, 17, 643

Action or suit against parties to lease, 17, 642

Action or suit between parties to lease, 17, 643

Establishing validity of lease, 17, 644

Recovery of rent, 17, 644

Remedy for forfeiture and specific performance of lease, 17, 643

Relation of landlord and tenant, 12, 844, 865, 870, 880

Removal of goods, 12, 919

Attachment, 12, 911

Rent, see *infra*, Landlord's actions to recover rent or damages; Liens; Summary proceedings under statutes

Replevin, 12, 902

Restitution:

Summary proceedings, 12, 901

Returns:

Summary proceedings under statutes, 12, 886

Service of process:

Summary proceedings under statutes, 12, 885

Set-off, recoupment, and counterclaim:

Summary proceedings, 12, 893

Under the codes, 12, 867

Splitting causes of action, 1, 155, 156

Statutes, see *infra*, Summary proceedings under statutes.

LANDLORD AND TENANT, *cont'd.*

Stay of proceedings:

Summary proceedings, 12, 898

Subtenant, 12, 921

Summary proceedings under statutes (see *infra*, Warrant to dispossess), 12, 868

Action for damages for dispossession, 12, 902

Affidavits, 12, 878

Allegation of notice, 12, 882

Allegation of relation of landlord and tenant, 12, 880

Allegation of wrongful detainer, 12, 881

Description of premises, 12, 882

In general, 12, 879

Name of defendant, 12, 883

Necessity for, 12, 878

Requisites, 12, 879

Verification, 12, 884

Where proceeding is for non-payment of rent, 12, 882

Against whom, 12, 875

Answer of tenant, 12, 887

Counter-affidavit, 12, 889

Manner of making, 12, 888

Necessity for, 12, 887

Verification, 12, 888

Written, 12, 888

Appeal, 12, 900

Assignees of lease or reversion, 12, 874

Attornment, 12, 874

Certiorari, 12, 898

Enforcement of lien, 12, 925

Final order, 12, 895

Generally, 12, 868

Heirs, devisees, and grantees, 12, 874

Holding hostile to landlord, 12, 871

Injunction, 12, 900

In what cases, 12, 868

Jurisdiction, 12, 876

Justices' courts, 12, 876

Landlord conveying all interest, 12, 875

Necessity of reservation of rent, 12, 872

New trial, 12, 902

Possession under agreement to purchase, 12, 872

Purchaser at execution sale, 12, 875

Purpose, 12, 868

Relation of landlord and tenant essential, 12, 870

Requisites to maintain, 12, 870

Security on appeal, 12, 901

Stay of proceedings, 12, 898

LANDLORD AND TENANT, *cont'd.*Summary proceedings under statutes, *cont'd.*

Strict compliance with statute necessary, 12, 877

Summons, 12, 884

Direction, 12, 885

Issuance, 12, 884

Requisites, 12, 884

Return, 12, 886

Service, 12, 885

Time of service, 12, 886

Two or more tenants, 12, 886

Tenants at will or by sufferance, 12, 875

Trial, 12, 890

Adjournment, 12, 894

By court or jury, 12, 890

Counterclaim, 12, 893

Discontinuance, 12, 895

Manner of securing jury, 12, 891

Matter of defense, 12, 892

Right to challenge juror, 12, 892

Tender of costs and expenses, 12, 891

Upon what issues, 12, 892

Who may maintain, 12, 873

Writ of restitution, 12, 901

Summons, see *infra*, Summary proceedings under statutes.

Tenant's actions, 12, 902

Actions for wrongful or irregular distress, 12, 902

Covenant for quiet enjoyment, 12, 902

Forcible entry and detainer, 12, 903

Interpleader, 12, 903

Replevin, 12, 902

Trespass, 12, 902

Trespas, 12, 902

Trial, see *infra*, Summary proceedings under statutes.

Trover and conversion, 21, 1046

Trusts and trustees, see TRUSTS AND TRUSTEES.

Under tenant:

Use and occupation, 12, 850

Use and occupation, 12, 844

Actions for, 12, 844

Assignee of a lease, 12, 850

By and against whom maintainable, 12, 850

Constructive possession, 12, 850

Contract express or implied, 12, 846

Declaration, 12, 852

Essential averment in declaration, 12, 852

LANDLORD AND TENANT, *cont'd.*Use and occupation, *cont'd.*

Former and present English doctrine as to necessity of occupation, 12, 849

For what action lies, 12, 844

Legal owner, 12, 850

Necessity of relation of landlord and tenant, 12, 844

Original action lay only under implied contract, 12, 847

Pleas, 12, 853

Possession essential, 12, 849

Possession under contract of sale, 12, 851

Remedy barred by eviction, 12, 848

Tortious possession, 12, 848

Trustee, 12, 850

Under tenant, 12, 851

Venue, 12, 852

When action maintainable, 12, 844

Vendor and purchaser:

Summary proceedings, 12, 872

Use and occupation against person in possession under contract of sale, 12, 851

Venue, 22, 783

Covenant, 12, 857

Debt, 12, 861

Use and occupation, 12, 852

Verification:

Affidavit in summary proceedings, 12, 884

Answer in summary proceedings, 12, 888

Warrant to dispossess, 12, 896

Contents, 12, 897

Effect of warrant, 12, 897

Issuance, 12, 896

Waste, 12, 862; 22, 1098

LAND PATENTS, 12, 936

Action to cancel, 12, 838

Action by individuals, 12, 940

Action by the government, 12, 939

Action by the state, 12, 940

Averments of bill or complaint, 12, 942

Defense of innocent purchaser, 12, 943

In general, 12, 938

Manner of instituting proceedings, 12, 941

Return of purchase money, 12, 942

Who may bring suit, 12, 839

Bills in equity:

Cancellation of patent, 12, 942

Caveats, 12, 943

Effect of judgment, 12, 944

Equity jurisdiction, 12, 945

LAND PATENTS, *cont'd.*Caveats, *cont'd.*

Grounds of claim, 12, 944

In general, 12, 943

Procedure, 12, 944

Showing better right, 12, 944

Trial, 12, 944

Collateral attack, 12, 936

Patents merely voidable, 12, 936

Void patents, 12, 937

Declaration and complaint:

Cancellation of patent, 12, 942

Innocent purchaser, 12, 943

LANGUAGE, see ABUSIVE AND OFFENSIVE LANGUAGE; ENGLISH LANGUAGE; OBSCENITY.

LARCENY, 12, 946

See BURGLARY; ROBBERY.

Affidavit, see infra, Jurisdiction.

Agistor, 12, 963

Animals, 12, 983

Animals *feræ naturæ*, 12, 987

Cattle, 12, 985

Cows, 12, 985

Dead animals, 12, 987

Description of animals in general, 12, 983

Estrays, 12, 984

Geldings, 12, 986

Generic term, 12, 984

Hogs, 12, 984

Horses, 12, 986

Mares, 12, 986

Oxen, 12, 985

Sheep, 12, 984

Steer, 12, 985

Animals *feræ naturæ*, 12, 987

Asportation, 12, 954

Assumpsit, 2, 1023

Attempts, 2, 99, 100

Bailment, 12, 964, 1001

Bank bills, 12, 992

Bank notes, 12, 992

Bonds, 12, 995

Burglary, 12, 1004, 1009

Cattle, 12, 985

Certainty in charging offense, 12, 952

Allegations in the disjunctive, 12, 953

Description of property, see infra, Description of property.

Generally, 12, 952

Immaterial inaccuracy, 12, 952

Informality, 12, 952

Language of statute, 12, 952

Statutory offense, 12, 952

Surplusage, 12, 953

Checks, 12, 994

Conflict of laws, 12, 948

In general, 12, 948

Property stolen in another jurisdiction, 12, 1001

LARCENY, *cont'd.*Conflict of laws, *cont'd.*

Property stolen in foreign country or sister state, 12, 949

Property stolen in one county and conveyed into another, 12, 948

Property stolen in sister state or foreign country, 12, 1002

Consent, want of owner's consent, 12, 976

Corporations:

Ownership of corporate property, 12, 973

Counts:

Verdict, 12, 1017

County, *see infra*, Conflict of laws.

Cows, 12, 985

Crops, 12, 978

Custodia legis, 12, 972

Dead animals, 12, 987

Decedents' estates, 12, 971

Definiteness, *see infra*, Certainty in charging offense.

Definition, 12, 948

Description of property, 12, 977

Animals, 12, 983

Animals *feræ naturæ*, 12, 987

Application of rules of certainty to particular cases, 12, 983

Bank bills, 12, 987

Bank notes, 12, 987

Cattle, 12, 985

Cows, 12, 985

Current money of the United States, 12, 988

Dead animals, 12, 987

Description of animals in general, 12, 983

Description of money generally, 12, 987

Divers, 12, 980

Divers and sundry, 12, 980

Estrays, 12, 984

Gelding, 12, 986

General description, 12, 980

General rule as to certainty, 12, 977

Generic name for animals, 12, 984

Growing crops, 12, 978

Hogs, 12, 984

Horses, 12, 986

Mares, 12, 986

Money, 12, 987

Bank bills, 12, 992

Bank notes, 12, 992

Current money of the United States, 12, 988

Description of money generally, 12, 987

Excuse for want of accurate description, 12, 990

LARCENY, *cont'd.*Description of property, *cont'd.*Money, *cont'd.*

Treasury notes and certificates, 12, 990

Value, 12, 991

More certain description unknown to grand jury, 12, 982

Oxen, 12, 985

Personal property, 12, 978

Sheep, 12, 984

Steer, 12, 985

Unnecessary particularity, 12, 982

Usual names by which articles are known, 12, 980

Value, *see infra*, Value.

Written instruments, 12, 993

Bonds, 12, 995

Checks, notes, and the like, 12, 994

Examples, 12, 993, 996

In general, 12, 993

Railroad tickets, 12, 995

Receipts, 12, 994

Voucher, 12, 995

Disjunctive allegations, 12, 953

Duplicity, 12, 1003

Articles belonging to different owners, 12, 1007

Articles belonging to same owner, 12, 1006

Charge of burglary, 12, 1004

Conviction of larceny under charge of kindred offenses, 12, 1003

Conviction of lesser offense, 12, 1003

Joinder of offenses in separate counts, *see infra*, Joinder of offenses in separate counts.

Larceny of several articles, 12, 1006

Under a charge of robbery, 12, 1003

Variation of charge in separate counts, 12, 1005

Dwelling house, 12, 999, 1004

Election, 12, 1010

Embezzlement, 12, 1010

Averments contained in indictments for larceny, 7, 417

Distinction between embezzlement and larceny, 7, 457

Indictment for embezzlement and conviction of larceny, and *vice versa*, 7, 455

Instructions on distinction between embezzlement and larceny, 7, 457

Joinder, 7, 449

Particularity required in indictments for larceny, 7, 425

LARCENY, *cont'd.*

- Estrays, 12, 984
 - Allegation of ownership, 12, 966
- Felonious intent, 12, 974
- Former conviction or second offense, 12, 1003
- Fraudulently, 12, 975
- Geldings, 12, 986
- Growing crops, 12, 978
- Guilty knowledge, 12, 976
- Hogs, 12, 984
- Horses, 12, 986
- House, 12, 957, 999
- Husband and wife:
 - Property of *feme covert*, 12, 969
- Indictments, informations, and complaints, 12, 952
 - Allegations, 12, 954
 - Asportation, 12, 954
 - Averments, 12, 954
 - Carry away, 12, 954
 - Certainty in charging offense, see *infra*, Certainty in charging offense.
 - Description of property, see *infra*, Description of property.
 - Duplicity, see *infra*, Duplicity.
 - Dwelling house, 12, 999
 - Form, 12, 952
 - Former conviction or second offense 12, 1003
 - Guilty knowledge, 12, 976
 - Intent, see *infra*, Intent.
 - Knowledge, 12, 976
 - Larceny by a servant, 12, 1001
 - Larceny from a dwelling house, 12, 999
 - Larceny from a person, 12, 1000
 - Larceny of bailee and after breach of trust, 12, 1001
 - Ownership, see *infra*, Ownership and possession.
 - Particular allegations and averments, 12, 954
 - Place as descriptive of offense, 12, 955
 - Possession, see *infra*, Ownership and possession.
 - Property stolen in another jurisdiction, 12, 1001
 - Taking, 12, 954
 - Time, 12, 955
 - Value, see *infra*, Value.
 - Venue, 12, 955
 - Want of owner's consent, 12, 976
- Infants:
 - Ownership in infants, 12, 965
- Informations, see *infra*, Indictments, informations, and complaints.
- Inns and innkeepers, 12, 963
- Instructions, 12, 1010
 - Definition of offense, 12, 1012

LARCENY, *cont'd.*

- Instructions, *cont'd.*
 - Generally, 12, 1010
 - Intent, 12, 1014
 - Ownership and possession, 12, 1013
 - Purchase, 12, 1011
 - Value, 12, 1012
- Intent, 12, 974
 - Allegations of, 12, 974
 - Felonious intent, 12, 974
 - Guilty knowledge, 12, 976
 - In general, 12, 974
 - Instructions, 12, 1014
 - Intent to deprive owner of property, 12, 975
 - Want of owner's consent, 12, 976
 - Whether the word steal is indispensable, 12, 975
- Joinder of counts and offenses (see *infra*, Duplicity), 12, 1005
- Conviction of lesser offense, 12, 1003
- Larceny of several articles, 12, 1006
- Variation of charge in separate counts, 12, 1005
- Joinder of offenses in separate counts, 12, 1008
- Application of rule to particular case, 12, 1009
- Burglary, 12, 1009
- Election, 12, 1010
- Embezzlement, 12, 1010
- Generally, 12, 1008
- Joint tenants and tenants in common:
 - Allegation of ownership, 12, 967
- Judgment, 12, 1018
- Jurisdiction (see *infra*, Conflict of laws), 12, 948
 - Conflict of laws, 12, 948
 - In general, 12, 948
 - Jurisdictional facts determined by indictment, 12, 952
- Jurisdiction of local courts, 12, 951
- Property stolen in foreign country or sister state, 12, 949
- Property stolen in one county and conveyed into another, 12, 948
- Statutory remedy, 12, 951
- Knowledge, see *infra*, Intent.
- Language of statute, 12, 952
- Mails:
 - Allegation of ownership, 12, 973
- Mares, 12, 986
- Master and servant, 12, 1001
- Money (see *infra*, Value), 12, 987
 - Bank bills, 12, 992
 - Bank notes, 12, 992

LARCENY, *cont'd.***Money, *cont'd.***

Current money of the United States, 12, 988

Description of money generally, 12, 987

Excuse for want of accurate description, 12, 990

Treasury notes and certificates, 12, 990

Value, 12, 991

Ownership and possession, 12, 956

Agistor, 12, 963

Alleging possession as well as ownership, 12, 956

Bailor and bailee, 12, 964

Banknotes, 12, 959

Corporate property, 12, 973

Custodia legis, 12, 972

Decedent's estate, 12, 971

Estrays, 12, 966

Feme covert, 12, 969

Fraternal societies' property, 12, 971

Full possession with responsibility to the owner, 12, 962

General and special ownership, 12, 961, 965

Goods and chattels, 12, 959

House, 12, 957

Husband and wife, 12, 969

In general, 12, 956

Innkeeper, 12, 963

Instructions, 12, 1013

Joint ownership, 12, 967

Larceny by general from special owner, 12, 965

Mails, 12, 973

Master and servant, 12, 962, 963

Money, 12, 959

Name acquired by reputation, 12, 960

Necessity of laying ownership in true owner, 12, 960

No particular words essential, 12, 959

Ownership, 12, 956

Ownership in minor, 12, 965

Ownership of building descriptive of offense, 12, 957

Ownership unknown, 12, 960

Partnership property, 12, 967

Person in possession unknown, 12, 956

Possession, 12, 956, 962

Property belonging to estate of decedent, 12, 971

Property stolen or purchased from thief, 12, 974

Property taken in execution or attachment, 12, 972

Public officers, 12, 972

Railroad car, 12, 958

LARCENY, *cont'd.***Ownership and possession, *cont'd.***

Religious societies' property, 12, 971

Separate allegation of ownership and possession, 12, 962

Societies, 12, 971

Sufficiency of allegation, 12, 958

Sufficiency of words importing ownership, 12, 958

Tenant in possession, 12, 966

Variance, 12, 960

Oxen, 12, 985

Partnership:

Allegation of ownership, 12, 967

Person, 12, 1000, 1005

Place, 12, 955

Possession, see *infra*, Ownership and possession.

Post offices:

Indictment for breaking into post office with intent to commit larceny, 16, 767

Indictment for theft from mail, 16, 763

Property, see *infra*, Description of property.

Public officers, 12, 972

Railroad car, 12, 958

Receipts, 12, 994

Receiving stolen goods, see RECEIVING STOLEN GOODS.

Religious societies, 12, 971

Robbery, 12, 1010

Second offense, 12, 1003

Sheep, 12, 984

Societies and clubs, 12, 971

Statutes:

Language of statute, 12, 952

Surplusage, 12, 953

Value, 12, 997

Territorial sovereignty, see *infra*, Jurisdiction.

Tickets, 12, 995

Time, 12, 955

Value, 12, 996

Aggregate value of several articles, 12, 998

Assignment of separate values preferable, 12, 998

In general, 12, 996

Instructions, 12, 1012

Jurisdiction, 12, 996

Penalty to be inflicted, 12, 996

Statutory offense, 12, 996

Sufficiency of allegation generally, 12, 997

Surplusage, 12, 997

Verdict finding value, 12, 1017

Variance (see *infra*, Description of property):

Ownership and possession, 12, 960

LARCENY, *cont'd.*

Venue (see CONFLICT OF LAWS), 12, 955

Verdict, 12, 1016

Finding of value, 12, 1017

General verdict, 12, 1016

In general, 12, 1016

Several counts, 12, 1017

With force and arms, 12, 1000

Written instruments, see *infra*, Description of property.**LASCIVIOUS**, see FORNICATION; LEWDNESS.**LAW** (see REMEDIES AT LAW):*Legal conclusions*, see LEGAL CONCLUSIONS.**LEADING QUESTIONS**, see EXAMINATION OF WITNESSES.**LEASES**, see FORECLOSURE OF MORTGAGES; LANDLORD AND TENANT.**LEAVE OF COURT** (see MOTIONS):*Amendments*, see AMENDMENTS.

Bill of review, 3, 586

Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE AND NONSUIT.*Motions*, see MOTIONS.

Official bonds, 15, 93

Public officers:

Procurement of leave to sue, 17, 148

Quo warranto:

Application for leave, 17, 450

Institution of proceedings, 17, 444

Receivers, see RECEIVERS.*Supplemental pleadings*, see SUPPLEMENTAL PLEADINGS.

Trusts and trustees, 22, 152

Venditioni exponas, 22, 646

Winding up corporations, 22, 1253

LEGACIES AND DEVISES, see EXECUTORS AND ADMINISTRATORS; HEIRS AND DEVISEES.**LEGAL CONCLUSIONS:**

Affidavits, 1, 322

Allegation of a conclusion of law raises no issue, 12, 1024

Allegations consisting of both law and fact, 12, 1044

Allegations of duty, 12, 1040

Answers in code pleading, 1, 805

Allegations admitted by failure to deny, 1, 793

Answers containing a legal conclusion, 1, 807

Denial of capacity, 1, 807

Denial of indebtedness, 1, 805

Denial of the facts impliedly denies the conclusion of law, 1, 808

Duly done, 1, 807

Fraud, 1, 806

In general, 1, 805

LEGAL CONCLUSIONS, *cont'd.*

Apparent conclusions of law, 12, 1045

In general, 12, 1045

Negligence, 12, 1045

Title to personal property, 12, 1045

Title to real property, 12, 1045

Appeals:

Evidence presumed to support conclusions of law, 2, 492

Belief, 12, 1030

Bills and notes, 12, 1034

Bills in equity, 3, 357

Certiorari, 4, 155

Code system, 12, 1022

Conclusions of law need not be denied, 12, 1025

Conclusions of law need not be pleaded, 12, 1024

Consideration, 12, 1035

Construction of contracts and written instruments, 12, 1038

Corporations, 12, 1035

Corporate existence, 5, 75

Defaults:

Admissions, 6, 118

Demurrers:

Conclusions of law not admitted by demurrer, 12, 1026

Construction of instruments, 12, 1040

Demurrers in chancery, 6, 397

Duly, 12, 1033

Duty, 12, 1040

Examination of witnesses, 8, 78

Examples of legal conclusions, 12, 1030, 1031

Exceptions and objections, 8, 278

Effect of exceptions, 8, 279

In general, 8, 278

Necessity, 8, 278

Raised for the first time in appellate court, 8, 278

References, 8, 285

What authorized review of law 8, 278

Foreign laws, 12, 1041

Fraud, 12, 1041

General rule, 12, 1020

Heirs and devisees, 12, 1042

Illegal, 12, 1033

Indebtedness, 12, 1042

Indictments, 10, 474, 475

Injunctions:

Denial of plaintiff's legal conclusions, 10, 1064

Particularity and clearness, 10, 1062

Judgments:

Equitable relief against judgments, 11, 1204

Liens, 12, 1035

LEGAL CONCLUSIONS, *cont'd.*

- Limitations, 12, 10, 44; 13, 237
- Mandamus, 13, 676
 - Demurrer does not admit, 13, 700
 - Return or answer, 13, 721
- Mixed law and fact, 12, 1044
- Negotiable instruments:
 - Allegation and denial of legal conclusions in plea or answer, 14, 607
 - Denial of plaintiff's title, 14, 670
 - Denial of plaintiff's conclusions as to ownership, 14, 671
 - Examples, 14, 670, 672
 - Necessity of alleging facts, 14, 670
 - Liability, 14, 503
- Official bonds, 15, 125
- Ownership, 12, 1034
- Party not bound by allegation of a conclusion of law, 12, 1025
- Payment, 16, 190
- Penalties and penal actions, 16, 271, 272, 273
- Performance, 16, 313
- Pleas at law, 16, 564, 565
- Pleas in equity, 16, 603
- Public officers, 17, 186
 - Suspension and removal, 17, 221
- Replevin, 18, 547
- Replications and replies, 18, 662, 704
 - Altering and denying legal conclusions, 18, 662
 - Traversing matter of law, 18, 663
- Rescission, cancellation, and reformation of contracts, 18, 803
 - Bill or complaint, 18, 803
 - Sufficiency of averment of facts, 18, 803
- Scandal and impertinence, 19, 198
- Set-off, recoupment, and counterclaim, 19, 752
- Settlement of decedents' estates:
 - Sales of realty under order of court, 19, 880
- Special interrogatories to juries, 20, 326
- Surplusage, irrelevant or redundant matter, 21, 292; 12, 1028
 - In general, 21, 292
 - Matters of which court takes judicial notice, 21, 292
 - Repugnant conclusions, 21, 293
- Taxation, 21, 454
- Title, ownership, and possession, 21, 718
 - "By virtue of," 21, 719
 - Entitled to exclusive possession, 21, 719
 - In general, 21, 718

LEGAL CONCLUSIONS, *cont'd.*

- Title, ownership, and possession, *con.*
 - "Owner of" or "seized of," 21, 718
- What are conclusions of law, 21, 718

Traverses, 18, 664

Trespass, 21, 842

Trover and conversion, 21, 1059

Unlawful, 12, 1033

Usury, 12, 1036; 22, 434

What are conclusions of law, 12, 1030

Winding up corporations, 22, 1264

Wrongful, 12, 1033

LEGAL HOLIDAYS, see SUNDAYS AND HOLIDAYS.**LEGALITY OF EVIDENCE, 10, 396****LEGAL REMEDIES, see REMEDIES AT LAW.****LEGAL REPRESENTATIVES, see EXECUTORS AND ADMINISTRATORS.****LEGATEES AND DISTRIBUTES, 13, 1**

See EXECUTORS AND ADMINISTRATORS; HEIRS AND DEVISEES; SETTLEMENT OF DECEDENTS' ESTATES.

Actions against legatees and distributees, 13, 11

Bill, 13, 13

By personal representatives, 13, 16

Allegations, 13, 17

Refunding bond, 13, 17

To recover overpayment made by mistake, 13, 16

Common law, 13, 11

Creditors, 13, 11

Declaration, 13, 15

Decree, 13, 14

Equity, 13, 11, 15

Law or equity, 13, 15

Parties, 13, 13, 15

Statute, 13, 14

Actions against personal representatives to recover legacies or distributive shares, 13, 9

At common law, 13, 9

Distributive share, 13, 10

Executor *de bonis propriis*, 13, 10

For a legacy, 13, 9

Form of action, 13, 10

Statute, 13, 10

Actions by legatees and distributees, 13, 2

Against others than personal representatives to recover assets, 13, 2

Capacity to sue, 13, 2

Declaration, complaint, or bill, 13, 7

Exceptions to rule, 13, 3

General rule, 13, 2

Judgment or decree, 13, 9

LEGATEES AND DISTRIBUTEEES, *cont'd.*

Actions by legatees and distributees, *cont'd.*

Against others than personal representatives to recover assets, *cont'd.*

Objection for incapacity to sue, 13, 8

Parties, 13, 5

Bills in equity, 13, 7, 13, 15

Declaration and complaint, 13, 7, 15

Decrees, 13, 9, 14

Definition, 13, 2

Executors and administrators, see infra. Actions against personal representatives to recover legacies or distributive shares.

Judgments, 13, 9

Parties, 13, 5, 13

Probate and contest of wills:

Right to contest wills, 16, 1013, 1014

LEGITIMACY:

Issues to the jury, 11, 652

LETTERS (see POST OFFICE):

Threats and threatening letters, see

THREATS AND THREATENING LETTERS.

LETTERS OF ADMINISTRATION, see EXECUTORS AND ADMINISTRATORS; SETTLEMENT OF DECEDENTS' ESTATES.

LETTERS ROGATORY, 6, 497

Admiralty, 1, 285

Definition, 6, 497

Depositions:

United States courts, 6, 619

Distinguished from commission, 6, 497

Nature and origin, 6, 497

Origin, 6, 498

LETTERS TESTAMENTARY, see SETTLEMENT OF DECEDENTS' ESTATES.

LEVY (see ATTACHMENT; EXECUTIONS

AGAINST PROPERTY; GARNISHMENT; JUDICIAL SALES; SHERIFFS):

Judicial sales, 12, 12

Official bonds, 15, 140

Failure to levy, 15, 140

Failure to sell property levied on, 15, 141

LEWD AND LASCIVIOUS COHABITATION AND CONDUCT, see DISORDERLY HOUSES.

LEWDNESS, 13, 18

See FORNICATION.

Allegations of time, 13, 24

At common law, 13, 19

Generally, 13, 19

Necessary allegations, 13, 20

Public character of the act, 13, 20

Cohabitation, 13, 19, 23

LEWDNESS, *cont'd.*

Conclusion of indictment, 13, 25

Duplicity, 13, 24

Highways, 13, 21

Houses of ill fame, 13, 19, 23

Immoral shows, 13, 20

Incest, see INCEST.

Indecent exposure, 10, 339; 13, 19

Intent, 13, 25

Joinder of parties, 13, 23

Lascivious cohabitation, 13, 19

Night walking, 13, 20

Prostitution, 13, 23

Public character of the act, 13, 20, 21

Public place, 13, 21

Statutes, 13, 21

Frequenting houses of ill fame, 13, 21

Generally, 13, 21

Highway, 13, 21

Necessary allegations, 13, 21

Necessity to charge facts, 13, 22

Prostitution, 13, 23

Public character of the act, 13, 21

Public place, 13, 21

Statutory offenses of a lewd character, 13, 23

Under statutes punishing illegal cohabitation, 13, 22

Verdict:

Defects cured by verdict, 13, 25

LIBEL AND SLANDER, 13, 26

See ADMIRALTY.

Abatement, 13, 31

Amendments, 1, 570

Amendment under action for slander setting out defamatory charges in different forms, 1, 563

Changing libel or slander into action for malicious prosecution, 1, 570

Declaration and complaint, 13, 94

Different form of words, 13, 95

Foreign language, 13, 49

New cause of action, 13, 94

Permissible amendments, 13, 95

Plea or answer, 13, 96

Answer, see infra. Plea or answer.

Answers in code pleading:

Allegations admitted by failure to deny, 1, 795

General denial and justification joined, 1, 858

Assault and battery, 13, 61

Joinder, 1, 188

Bill of particulars, 3, 552; 13, 92

Answer not sufficiently specific, 13, 94

Office of bill of particulars, 13, 92

When ordered, 13, 93

LIBEL AND SLANDER, *cont'd.*

- Colloquium (see *infra*, Declaration and complaint):
 - Indictments, 13, 98
 - Innuendo supplying place of colloquium, 13, 53
- Consolidation of actions, 4, 687
- Costs, 13, 113
 - Amount in controversy, 5, 170
- Criminal procedure*, see *infra*, Indictments.
- Damages, 5, 763
 - Failure to allege special damage, 5, 771
 - General allegation of damage, 5, 763
 - How special damages alleged, 5, 767
 - In general, 5, 763
 - Loss of customers, 5, 768
 - Mental suffering, 5, 765
 - Mitigation of damages, 5, 776
 - Pecuniary damages, 5, 767
 - Slander of title, 5, 772
 - Special damage, 5, 766
 - Words actionable *per se*, 5, 764
 - Words imputing want of chastity, 5, 766
 - Words not actionable *per se*, 5, 766
- Death:
 - Death of defendant, 5, 828
 - Death of plaintiff, 5, 808
- Declaration and complaint:
 - Amendments, 13, 94
 - Averment of falsity, 13, 58
 - Averment of publication, 13, 43
 - Conjunctive and disjunctive averments, 13, 45
 - In general, 13, 42
 - Newspaper libel, 13, 45
 - Publication of slander, 13, 43
 - Technical form, 13, 43
 - Where the defamatory matter is in writing, 13, 44
 - Averment that words were spoken by defendant, 13, 58
- Damages, 13, 60
- Inducement and colloquium, 13, 32
 - Ambiguous words, 13, 36
 - Averment that publication was of or concerning plaintiff, 13, 39
 - Connecting defamatory matter with plaintiff, 13, 39
 - Defamatory charges held not to need a colloquium, 13, 37
 - Defective statement, 13, 41
 - Definition, 13, 32
 - Effect of statutory provisions, 13, 36

LIBEL AND SLANDER, *cont'd.*

- Declaration and complaint, *cont'd.*
- Inducement and colloquium, *con.*
 - In what part of pleading set out, 13, 42
 - Necessity of, 13, 32
 - Rejecting colloquium as surplusage, 13, 37
 - Repetition, 13, 41
 - Stating extrinsic facts to connect defamatory matter with plaintiff, 13, 40
 - Sufficiency of statement of inducement and colloquium, 13, 35
 - Words actionable *per se*, 13, 37
 - Words held not actionable without inducement or colloquium, 13, 34
 - Words not actionable *per se*, 13, 32
 - Words spoken of one's business or profession, 13, 38
- Innuendo*, see *infra*, *Innuendo*.
- Joinder of causes of action, 13, 60
- Malice, 13, 58
- Place, 13, 60
- Privileged publication, 13, 59
- Scienter, 13, 59
- Setting out defamatory matter, 13, 45
 - Amendment, 13, 49
 - Exceptions to rule, 13, 47
 - Foreign language, 13, 48
 - Oral defamation, 13, 48
 - Pleading should purport to set out exact words, 13, 47
 - Reason for rule, 13, 46
 - Statement of rule, 13, 45
 - Understanding of words, 13, 49
 - Whole or part of libel, 13, 47
- Time, 13, 60
- Variance*, see *infra*, *Variance*.
- Demurrers, 13, 91
 - Admissions, 13, 91
 - Demurrer to answer, 13, 92
 - In general, 13, 91
 - Meaning of words, 13, 91
- Directing verdict, 13, 111
- Falsity:
 - Alleging, 13, 103
 - Averment of, 13, 58
- Foreign language, 13, 48
- Husband and wife, 13, 31
 - Joinder of husband and wife, 10, 208
 - Words actionable *per se*, 10, 208
 - Words not actionable *per se*, 10, 209

LIBEL AND SLANDER, *cont'd.*

- Indictments, 13, 98
 - Alleging falsity, 13, 103
 - Alleging malice, 13, 103
 - Alleging publication, 13, 100
 - Alleging tendency to provoke breach of peace, 13, 104
 - Colloquium, 13, 98
 - Connecting defamatory matter with plaintiff, 13, 99
 - Duplicity, 13, 104
 - Inducement, 13, 98
 - In general, 13, 98
 - Innuendo, 13, 102
 - Place, 13, 103
 - Setting forth defamatory matter, 13, 100
 - Time, 13, 103
 - Variance, 13, 104
- Inducement (see *infra*, Declaration and complaint):
 - Indictments, 13, 98
- Innuendo, 13, 49
 - Colloquium, 13, 53
 - Defamatory charges held not to need an innuendo, 13, 56
 - Enlarging or restricting natural meaning of words, 13, 51
 - Explanatory of matter already expressed, 13, 49
 - Extending sense of word, 13, 52
 - Indictments, 13, 102
 - Nature, 13, 102
 - Necessity, 13, 103
 - Office, 13, 102
 - Innuendoes not warranted by previous words, 13, 52
 - Justifying in sense imputed by innuendo, 13, 85
 - Limiting natural import of words, 13, 53
 - Meaning ascribed by innuendo binding, 13, 55
 - Nature and office, 13, 49
 - Not capable of proof, 13, 54
 - Rejecting innuendo as surplusage, 13, 56
 - Supplying place of colloquium, 13, 53
 - When necessary, 13, 55
 - Words charged in themselves innocent, 13, 51
 - Words held *prima facie* defamatory, 13, 57
 - Words obviously defamatory, 13, 55
- Instructions, 13, 108
 - Cautionary instructions, 13, 110
 - Charging on weight of evidence, 13, 109
 - Directing verdict, 13, 111
 - Error cured by instructions, 13, 111

LIBEL AND SLANDER, *cont'd.*

- Instructions, *cont'd.*
 - Giving undue prominence to evidence, 13, 109
 - Harmless error, 13, 111
 - Improper assumptions of fact, 13, 109
 - Limiting effect of evidence, 13, 110
 - Limiting instructions to pleadings and evidence, 13, 108
 - Requests for instructions, 13, 110
- Joinder of counts and causes, 1, 174; 13, 60
 - Assault and battery, 1, 188
 - Assault and battery and injury to property, 13, 61
 - Different sets of words, 13, 62
 - False imprisonment, 1, 189
 - In general, 13, 60
 - Libel, slander, and malicious prosecution, 13, 61
 - Malicious prosecution, 1, 193
 - Several defendants, 13, 62
- Joinder of defenses, 13, 89
- Joinder of parties, 15, 542
- Jurisdiction, 13, 28
- Jury:
 - Juries as judges of the law, 13, 107
- Justification, 13, 78
 - Admitting publication, 13, 81
 - Averring truth of publication, 13, 81
 - Defamatory charge itself specific, 13, 83
 - Defendant must state the substantial facts, 13, 83
 - How truth should be stated, 13, 82
 - Joinder of justification and mitigation, 13, 89
 - Justification and privilege, 13, 91
 - Justification must be as broad as charged, 13, 84
 - Justifying exact words unnecessary, 13, 81
 - Justifying in sense imputed by innuendo, 13, 85
 - Multiplicity, 13, 83
 - Necessity of averring truth of publication, 13, 81
 - Necessity of pleading matter, 13, 78
 - Notice of justification, 13, 87
 - Precise charge must be justified, 13, 80
 - Prolixity, 13, 83
 - Proof corresponding with plea, 13, 79
 - Requisites of plea, 13, 80
 - Withdrawing plea of justification, 13, 86

LIBEL AND SLANDER, *cont'd.*

- Larceny, 13, 68
- Malice:
 - Alleging, 13, 103
 - Averment of, 13, 58
 - Questions of law and fact, 13, 106
- Malicious prosecution, 13, 61
 - Changing form of action, 1, 570
 - Joinder of counts and causes, 13, 61
- Mitigating circumstances, 13, 71
 - At common law, 13, 71
 - Codes, 13, 77
 - Effect of plea in justification, 13, 73
 - Facts showing grounds of suspicion, 13, 74
 - General character of plaintiff, 13, 72
 - Inquiry confined to character, 13, 73
 - Matters tending to prove truth of charge, 13, 76
 - Mere repetition of charges, 13, 72
 - Truth, 13, 78
 - Truth of publication, 13, 75
- Mitigation:
 - Joinder of justification and mitigation, 13, 89
 - Mitigation in general issues, 13, 90
- Nonsuit, 13, 111
- Notice of publication, 13, 87
- Open and close, 15, 194
 - Jurisdiction in which defendant opens and closes, 15, 194
 - Jurisdiction in which plaintiff opens and closes, 15, 195
 - Where words are libelous or slanderous *per se*, 15, 194
- Parties, 13, 29
 - Abatement, 13, 31
 - Defendants, 13, 30
 - Husband and wife, 13, 31
 - Joint defendants, 13, 30
 - Joint libel, 13, 29
 - Partners, 13, 29
 - Plaintiffs, 13, 29
 - Publication affecting a class, 13, 29
 - Publisher, editor, and printer, 13, 31
- Partnership, 13, 29, 32
- Perjury, 13, 68
- Place, 13, 60
 - Indictments, 13, 103
- Plea or answer, 13, 70
 - Amendments, 13, 96
 - In general, 13, 70
 - Joinder of defenses, 13, 89
 - Justification, *see infra*, Justification.

LIBEL AND SLANDER, *cont'd.*

- Plea or answer, *cont'd.*
 - Mitigating circumstances, *see infra*, Mitigating circumstances.
- Privilege, 13, 98
 - Repeating words to another, 13, 88
 - Set-off and counterclaim, 13, 89
- Privilege, 13, 88
 - At common law, 13, 88
 - General issue privilege, 13, 90
 - In general, 13, 88
 - Justification and privilege, 13, 91
 - Pleading, 13, 88
 - Questions of law and fact, 13, 107
 - What plea should allege, 13, 88
- Privileged publication, 13, 59
- Publication, 13, 42
 - Alleging, 13, 100
 - Conjunctive and disjunctive averments, 13, 45
 - In general, 13, 42
 - Newspaper libel, 13, 45
 - Publication of slander, 13, 43
 - Technical form, 13, 43
 - Where the defamatory matter is in writing, 13, 44
- Questions of law and fact, 13, 105
 - Examples, 13, 105, 107
 - In general, 13, 105
 - Malice, 13, 106
 - Power of juries to judge the law, 13, 107
 - Privilege, 13, 106
- Replication and reply, 13, 91
- Scandal and impertinence, 19, 196, 221
 - Civil actions, 19, 221
 - Criminal actions, 19, 221
 - Publication outside of court, 19, 221
 - Relation between actions for libel, malicious prosecutions, and the like, 19, 222
 - Scandal against strangers to suit, 19, 221
 - Whether action or prosecution for libel will lie for scandal published in due course of legal proceedings, 19, 221
- Scienter, alleging, 13, 59
- Security for costs, 19, 357
- Set-off, recoupment, and counterclaim, 13, 89
- Setting forth defamatory matter:
 - Indictments, 13, 100
- Slander of title, 13, 32, 97
 - Averment of special damage, 13, 97
 - Examples, 13, 97, 98
 - In general, 13, 97

LIBEL AND SLANDER, *cont'd.*

- Splitting causes of action, 1, 162
- Surplusage:
 - Innuendo, 13, 56
- Survival of actions, 21, 349
- Survivors, 13, 31
- Taxation, 21, 424
- Time, 13, 60, 67
 - Indictments, 13, 103
- Title*, see *infra*, Slander of title.
- Trial, 13, 105
- Truth (see *infra*, Justification), 13, 75, 78
- Variance, 13, 62
 - Addressee of words, 13, 65
 - Affirmation and interrogation, 13, 66
 - Conditional and positive charge, 13, 66
 - Difference in tense of verb, 13, 67
 - Immaterial variances illustrated, 13, 68
 - Indictments, 13, 104
 - Language used, 13, 67
 - Material variances illustrated, 13, 67
 - Misconduct in office, 13, 68
 - Name of the alleged injured party, 13, 66
 - Person in which words were spoken, 13, 65
 - Proof of additional words, 13, 65
 - Proof of all words, 13, 64
 - Proof of equivalent words, 13, 63
 - Proving words substantially, 13, 63
 - Statement of the rule, 13, 62
 - Time, 13, 67
 - Words imputing larceny, 13, 68
 - Words imputing perjury, 13, 68
- Venue, 22, 782
- Verdict, 13, 112
 - General and special verdicts, 13, 112
 - Several counts, 13, 113
 - Uncertain verdict, 13, 113

LIBEL FOR DIVORCE, see DIVORCE.

LIBEL IN ADMIRALTY, see ADMIRALTY.

LICENSES, 13, 115

- See PHYSICIANS AND SURGEONS.
- Answers in code pleading, 1, 848
- Certiorari:
 - Granting licenses, 4, 82
 - Prosecution in name of state to obtain a review of proceedings to prohibit, regulate, or license the sale of intoxicating liquors, 4, 163
 - Refusal to grant liquor licenses, 4, 102
 - Reviewing grant of license, 4, 78

LICENSES, *cont'd.*

- Complaint for violation of municipal ordinance requiring license, 13, 121
- Ejectment, 7, 275
 - Mines and mining claims, 7, 272
- Eminent domain:
 - Joinder of parties holding license, 7, 503
 - Licensee as party, 7, 507
- From the state, 13, 116
- Hawkers and peddlers*, see HAWKERS AND PEDDLERS.
- Indictment for circulating license improperly issued, 13, 120
- Indictment for violation of statute requiring license, 13, 116
 - Allegation of amount of taxes, 13, 120
 - Allegation of occupation or act requiring license, 13, 116
 - Allegation of price, 13, 120
 - Allegation of want of license, 13, 119
 - Allegation that business or occupation was pursued for profit, 13, 118
 - Allegation that sale was by retail, 13, 120
 - Averment of time of offense, 13, 119
 - Designation of person to whom sale made, 13, 120
 - Existence of conditions, 13, 118
 - In general, 13, 116
 - Negating exceptions, 13, 118
- Intoxicating liquors*, see INTOXICATING LIQUORS.
- Ordinances, 13, 121
- Patents*, see PATENTS.
- Physicians and surgeons*, see PHYSICIANS AND SURGEONS.
- Theatres and shows, 21, 646

LIENS, 13, 122

- See MECHANICS' LIENS.
- Actions*, see *infra*, Enforcement; Remedies for wrongful interference with property.
- Advances*, see *infra*, Agricultural liens.
- Agricultural liens, 13, 159
 - Farm laborers' lien, 13, 165
 - Affidavit, 13, 155
 - Examples, 13, 155
 - In general, 13, 155
 - Pleadings, 13, 155
- Lien on crops for advances, 13, 159
 - Affidavit, 13, 161
 - In general, 13, 159
 - Notice filed with sheriff, 13, 164
 - Raising and determining the issue, 13, 163

LIENS, *cont'd.*

- Agricultural liens, *cont'd.*
 - Lien on crops for advances, *cont'd.*
 - Vacating attachment or seizure, 13, 163
 - Verdict, 13, 164
 - Threshing liens, 13, 166
- Alimony*, see ALIMONY.
- Amount in controversy, 1, 727
- Answers in code pleading, 1, 850
- Appeals, 2, 46, 48, 49
 - Release of lien, 2, 331
- Attachment, 13, 131
 - Costs, 13, 134
 - In general, 13, 131
 - Judgment, 13, 133
 - Notice to owners, 13, 131
 - Pleadings, 13, 132
 - What property subject to levy, 13, 131
 - Writ and levy, 13, 131
- Attorneys' liens, 13, 140
 - Charging lien is a special lien, 13, 143
 - Definition, 13, 140
 - General lien, 13, 144
 - General or retaining lien, 13, 140
 - How enforced, 13, 143
 - Inquiry into reasonableness of claim, 13, 145
 - Kinds, 13, 140
 - Nature, 13, 140
 - Papers, 13, 143
 - Remedy by rule or action against attorney, 13, 146
 - Retaining and charging liens distinguished, 13, 143
 - Retaining lien, 13, 144
 - Retaining lien extends to general balance, 13, 143
 - Special or charging lien, 13, 141, 146
 - Action on judgment, 13, 153
 - Admission of attorney as party, 13, 148
 - After payment, satisfaction, or discharge, 13, 157
 - Collection of judgment, 13, 151
 - Compulsory reference, 13, 155
 - Continuing prosecution, 13, 148
 - Court may refuse to set aside a judgment, 13, 147
 - Declaring lien in judgment, 13, 155
 - Discharge in bad faith, 13, 159
 - Dismissal or discontinuance denied, 13, 147
 - Enforcement against assignee, 13, 159

LIENS, *cont'd.*

- Attorneys' liens, *cont'd.*
 - Special or charging lien, *cont'd.*
 - Execution, 13, 152
 - Imposition of terms on the client, 13, 146
 - Independent action, 13, 155
 - Independent action by attorney will not lie, 13, 149
 - Judgment for costs only, 13, 154
 - Leave of court to continue prosecution, 13, 150
 - Motion in cause the proper remedy, 13, 154
 - Motion to vacate a settlement, 13, 150
 - Proceedings in cause, 13, 154
 - Protection accorded by court, 13, 146
 - Provisional remedies and securities, 13, 152
 - Remedies after judgment, 13, 151
 - Settlement before judgment, 13, 148
 - Stop order, 13, 155
 - Supplementary proceedings, 13, 153
 - Trial upon merits, 13, 151
 - Unassignable causes of action, 13, 151
 - Vacating satisfaction, 13, 158
 - What law governs, 13, 151
 - Where there is a fund in court, 13, 147
 - Who may prosecute, 13, 155
 - Taxation of attorneys' fees and costs, 13, 144
- Collateral proceeding, 13, 138
- Conflict of laws:
 - Attorneys' liens, 13, 151
- Consolidation of actions, 4, 69a
- Costs:
 - Attachment, 13, 134
 - Lien for costs, 5, 260
- Criminal procedure:
 - Interference with property, 13, 174
- Cross-bills:
 - Bill to enforce liens, 5, 643
- Definition, 13, 123
- Distress, 13, 137
- Enforcement, 13, 123
 - Averment of existence of lien, 13, 124
 - By action or suit, 13, 125
 - Character of action, 13, 125
 - Declaration or petition, 13, 125
 - Equitable liens, 13, 129

LIENS, *cont'd.*

Enforcement, *cont'd.*

By action or suit, *cont'd.*

Generally, 13, 125

In equity, 13, 126

Judgment liens in equity, 13, 128

Judgments in actions to enforce liens, 13, 126

Landlord's liens in equity, 13, 128

Ordinary judgment and execution, 13, 125

Parties, 13, 125, 130

Statutory liens in equity, 13, 127

Statutory remedy unavailable, 13, 128

United States courts, 13, 130

Waiver of lien, 13, 126

What the bill should show, 13, 130

Collateral proceeding, 13, 138

Common-law lien, 13, 123

General principles, 13, 123

Lienholder may sue at law upon his debt, 13, 124

Statutory lien, 13, 123

Summary proceedings, see *infra*, Summary or special proceedings.

Equitable attachment, 7, 796

Equity:

Enforcement in, 13, 126

As a general rule, 13, 126

Equitable liens, 13, 129

Judgment liens, 13, 128

Landlord's liens, 13, 128

Parties, 13, 130

Statutory liens, 13, 127

United States courts, 13, 130

What bill should state, 13, 130

Executions, 13, 134

Affidavit, 13, 135

Attorney's liens, 13, 152

Averment of demand, 13, 135

Counter-affidavit, 13, 136

In general, 13, 134

Jurisdiction of justices of the peace, 13, 136

Set-off, 13, 137

Executions against the body and arrest in civil cases:

Liens acquired during imprisonment, 8, 638

Farmers, see *infra*, Agricultural liens.

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Garnishment:

Where plaintiff acquires, 9, 808

LIENS, *cont'd.*

Indictments:

Interference with property, 13, 175

Issues to the jury, 11, 640

Judgments (see *infra*, Attorneys' liens):

Actions to enforce liens, 13, 126

Attachment, 13, 133

United States courts, 22, 307

Legal conclusions, 12, 1035

Logs and lumber, see LOGS AND LUMBER.

Mechanics' liens, see MECHANICS' LIENS.

Notice of agricultural lien filed with sheriff, 13, 164

Penalties and penal actions, 16, 236

Petitions:

Priority of liens, 16, 510

Pledges, see PLEDGES.

Redemption, see REDEMPTION.

Remedies for wrongful interference with property, 12, 166

Action on the case, 13, 170

Criminal prosecutions, 13, 174

Landlord, 13, 167, 171

Lien claimant against owner, 13, 166

Lien claimant against third persons, 13, 167

Lienor's right of action, 13, 167

Liens unaccompanied by possession, 13, 169

Owner against lien claimant, 13, 172

Owner against third persons, 13, 174

Possessory liens, 13, 168

Removal of causes:

Suits involving priority of liens, 18, 221

Replevin, 13, 140

Set-off, recoupment, and counterclaim, 13, 137

Set-off in trover against lien claimant, 13, 140

Special proceedings, see *infra*, Summary or special proceedings.

Summary or special proceedings, 13, 131

By attachment, 13, 131

Costs, 13, 134

In general, 13, 131

Judgment, 13, 133

Notice to owners, 13, 131

Pleadings, 13, 132

What property subject to levy, 13, 132

Writ and levy, 13, 131

Distress, 13, 137

Executions, 13, 134

Affidavit, 13, 135

LIENS, *cont'd.*

Summary or special proceedings, *con.*

Executions, *cont'd.*

Averment of demand, 13,

135

Counter-affidavit, 13, 136

In general, 13, 134

Jurisdiction of justices of
the peace, 13, 136

Set-off, 13, 137

Garnishment, 13, 134

Order of sale, 13, 137

Strict or liberal construction of
statute, 13, 138

Taxation, see TAXATION.

Thrashing liens, 13, 166

Trover and conversion, 21, 1047

United States courts, 13, 130

Vendor's liens, see VENDOR'S LIENS.

Waiver of lien, 13, 126

LIFE INSURANCE (see INSURANCE):

Directing verdict, 6, 706

LIFE TENANTS AND REMAIN-

DERMEN, see PARTIES TO ACTIONS.

LIMITATIONS, 13, 176

See CERTIORARI; LACHES.

Absence, 13, 259

Allegations of, in bill or petition
13, 259

Replication, 13, 260

Accounts:

Merchants' accounts, 13, 264

Acknowledgment, see *infra*, New
promise, payment, or acknowledg-
ment.

Admiralty, 1, 287

Adverse possession, 13, 283

Actual possession, 13, 286

Averment of payment of taxes,
13, 289

Continuity of possession, 13, 287

Definition, 13, 283

Duration of possession, 13, 287

Essential averments as to pos-
session, 13, 285

Exclusive possession, 13, 286

Hostility of possession, 13, 287

Manner of pleading specially,
13, 285

Necessity of pleading specially
by the defendant, 13, 284

Necessity of pleading specially
by the plaintiff, 13, 284

Open and notorious possession,
13, 286

Pleading claim of title, 13, 288

Pleading color of title, 13, 289

When taken advantage of by de-
murrer, 13, 284

Affidavit of defense, 13, 226

Agency, 16, 922

Agreement not to plead statute, 13,
264

LIMITATIONS, *cont'd.*

Amendments, 1, 497, 500, 621

Amendments barred by statute,
1, 518

Bills in equity, 13, 234

Effect of amendments, 1, 621

How question is raised, 1, 623

Setting up statute, 1, 601

Suspension of statute, 1, 492

Unconscionable defense, 1, 520

Where amendment does not in-
troduce a new cause of action,
1, 621

Where amendment introduces a
new cause of action, 1, 622

Where new parties are intro-
duced, 1, 623

Where plaintiff's claim would be
barred, 1, 600

Answer, see *infra*, Raising defense
by plea, answer, or demurrer.

Answer in support of plea, 13, 227

English rule, 13, 227

Fulness and clearness, 13, 229

New promise or an acknowledg-
ment charged in bill, 13, 229

Plea must contain complete bar,
13, 228

Reason for requiring defendant
to deny, 13, 228

Requisites of, 13, 229

To what action plea should be
confined, 13, 230

United States, 13, 227

Answers in code pleading, 1, 836,
846

General denials, 1, 826

Joinder of general denial and
statute of limitations, 1, 858

Statute of limitations joined with
other affirmative defenses, 1,
859

Answers in equity pleading, 1, 880

Appeals (see APPEALS), 2, 36; 13, 187,
269

Arrest of judgment, 13, 185

Civil suits, 2, 811

In criminal cases, 2, 811

Indictment, 13, 280

Indictment not setting forth time
of offense, 13, 280

Penal actions, 13, 283

Assumpsit, 2, 1032; 13, 187

Avoiding bar or anticipating defense
(see *infra*, Fraud; Mistake),
13, 233

Absence, 13, 259

Acknowledgment, 13, 247

Agreement not to plead statute,
13, 264

Avoidance upon particular
grounds or in special cases, 13,
243

LIMITATIONS, *cont'd.*

- Avoiding bar or anticipating defense, *cont'd.*
 - By allegations of bill in equity, 13, 233
 - By allegations of declaration at law, 13, 234
 - By allegations of petition or complaint under the code, 13, 235
 - By replication, 13, 238
 - Coverture, 13, 257
 - Diligence, 13, 246
 - Former action, 13, 261
 - Fraud, 13, 243
 - Ignorance of rights or wrongs, 13, 247
 - Infancy, 13, 257
 - In general, 13, 233
 - Merchants' accounts, 13, 264
 - Mistake, 13, 243
 - Necessary allegations of petition or bill to state cause or avoid bar, 13, 237
 - New promise, 13, 247
 - New promise, payment, or acknowledgment, see infra*, New promise, payment, or acknowledgment.
 - Nonresidence, 13, 259
 - Replication, 13, 246
 - Replication or repealed provision, 13, 265
- Awards, 3, 143
- Bills in equity (see *infra*, Declaration and complaint):
 - Allegations avoiding bar or anticipating defense, 13, 233
 - Amendment of bill, 13, 234
 - Demurrer to bill, 13, 233
 - Effect of omitting, 13, 233
 - Necessity of, 13, 233
 - Necessity to amended bill, 13, 233
- Book debt, 5, 903
- Breach of promise of marriage, 3, 693
- Certiorari*, see *CERTIORARI*.
- Conclusions of law, 13, 237
- Confession and avoidance, 4, 666
- Conspiracy, 4, 624
- Coram nobis* and *coram vobis*, 5, 31
- Coverture, 13, 257
 - Allegations of, in bill or petition, 13, 257
 - Replication, 13, 259
- Creditors' bills, 13, 191
- Criminal procedure, 13, 279
 - Allegations of indictment, 13, 279
 - Arrest of judgment, 13, 280
 - Demurrer to indictment, 13, 282
 - How time should be laid, 13, 279
 - Necessity for special plea, 13, 281

LIMITATIONS, *cont'd.*

- Criminal procedure, *cont'd.*
 - Necessity to aver matters of avoidance or exceptions, 13, 280
 - Quashing indictment, 13, 280
 - Special plea, 13, 281
 - Death by wrongful act, 5, 881, 882, 884
 - Debt, 13, 187
 - Plea in action on statutes, 5, 928
 - Plea to action on simple contracts, 5, 923
 - Declaration and complaint, 4, 615
 - Allegations avoiding bar or anticipating defense, 13, 234
 - Declaration need not anticipate defense, 13, 234
 - Examples, 13, 234
 - Avoiding bar or anticipating defense in petition or complaint under the code, 13, 235
 - Complaint must state substance of cause of action, 13, 236
 - Reply, 13, 235
 - When averments as to statute unnecessary, 13, 235
 - Necessary allegations of petition or bill to state cause or avoid bar, 13, 237
 - Competency and sufficiency of allegations, 13, 237
 - Facts, 13, 237
 - Fulness and clearness, 13, 237
 - Not conclusions of law, 13, 237
- Decrees:**
- Opening decrees *pro confesso*, 5, 1021
 - Opening decrees to let in defense, 5, 1019
- Dedication, 13, 293**
- Definition, 13, 293
 - Manner of pleading, 13, 293
 - Remedy for improper use of dedicated property, 13, 294
- Defaults, 13, 210**
- Condition that defendant shall not plead limitation of action, 6, 220
 - Relief from defaults, 6, 153
- Demurrers (see *infra*, Raising defense by plea, answer, or demurrer):**
- Raising statute on demurrer, 6, 323
 - Replications and replies, 19, 782, 789
 - Waiver of defects by failure to demur, 6, 376, 377
- Demurrers in chancery, 6, 403**

LIMITATIONS, *cont'd.*

- Demurrer to indictment, 13, 282
- Demurrer to plea, 13, 231
 - Defects cured by verdict, 13, 232
 - Plea to amended declaration, 13, 232
 - When proper, 13, 231
- Detinue, 6, 658; 13, 187
- Devises, 13, 195
- Discovery:
 - Self-crimination, 6, 746
- Discretion of court, 13, 211
- Dismissal, discontinuance, and non-suit, 13, 265
 - At what stage proper, 13, 265
 - Summons served after bar, 13, 265
 - When motion sustained, 13, 265
- Duplicity, 13, 226
- Ejectment, 13, 189
 - Pleas, 7, 343
- Equitable defenses, 7, 802
- Equity, 13, 183, 194
 - Method of pleading in equity, 13, 217
- Error, writ of, 7, 872; 13, 187
 - Before end of term, 7, 873
 - Bill of exceptions, 7, 872
 - Computation of time, 7, 877
 - Exception to operation of statutes, 7, 874
 - Extension, 7, 876
 - How statute availed of, 7, 877
 - Motion, 7, 877
 - Motion in error, 7, 873
 - Part excepted, 7, 876
 - Retroactive legislation, 7, 874
 - Rule stated, 7, 872
 - Statutes governing, 7, 873
 - What may be waived, 7, 874
 - When statute begins to run, 7, 876
 - When writ considered brought, 7, 877
- Exceptions, negating, 13, 220
- Executions*, see EXECUTIONS.
- Executors and administrators, 13, 195, 272
 - Administration and nonadministration, 13, 276
 - Averments as to lapse of time, 13, 274
 - Averments in bill or complaint, 13, 274
 - General or special replication, 13, 276
 - In general, 13, 272
 - Necessary averments in bill or complaint, 13, 274
 - New promise, payment, or acknowledgment, 13, 251
 - Replication, 13, 276

LIMITATIONS, *cont'd.*

- Executors and administrators, *cont'd.*
 - Requisites and sufficiency of replication, 13, 277
 - Requisites of plea, 13, 273
 - Specially pleading defense, 13, 272
- Findings, 13, 267
 - Finding as to application of specified section of code, 13, 268
 - Finding of probative facts sufficient, 13, 268
 - Prescription, 13, 293
 - Ultimate facts must be found, 13, 267
- Foreign statutes, 13, 277
 - Manner of pleading, 13, 277
 - Necessity of pleading, 13, 277
- Form, 13, 209
- Former action, 13, 261
 - In general, 13, 261
 - Necessity of special replication, 13, 262
 - Requisites of replication, 13, 262
- Form of plea, 13, 212
 - In general, 13, 212
 - Non accrevit infra*, 13, 213
 - Non assumpsit infra*, 13, 213
- Fraud, 13, 243
 - Allegations in bill or petition, 13, 243
 - Bar after discovery of fraud, 13, 244
 - Diligence, 13, 245
 - Discovery within statutory period, 13, 244
 - How discovery made, 13, 245
 - Particularity in alleging fraud, 9, 692
- Funds and deposits in court, 9, 734
- Guardians, 9, 992
- Heirs and devisees, 13, 195
- Homicide, 10, 112
- Ignorance of rights or wrongs, 13, 247
- Inconsistent defenses, 13, 227
- Indictments, 13, 279
 - Allegations of indictment, 13, 279
 - Arrest of judgment, 13, 280
 - Demurrer to indictment, 13, 282
 - How time should be laid, 13, 279
 - Necessity of special plea, 13, 281
 - Necessity to aver matters of avoidance or exceptions, 13, 280
 - Negating statute of limitations, 10, 516
 - Quashing indictment, 13, 280
 - Special plea, 13, 281
- Infants, 13, 206
 - Allegations of, in bill or petition, 13, 257
 - Replication, 13, 259

LIMITATIONS, *cont'd.*

- Injunctions:
 - Enjoining plea, 13, 199
- Judgments (see **OPENING, AMENDING, AND VACATING JUDGMENTS**):
 - Equitable relief against judgments, 11, 1203
 - Judgments as contracts, 11, 834
 - Plea on opening and vacating judgments, 13, 197
- Justices of the peace, 13, 271
 - Manner of raising defense, 13, 271
 - Sufficiency of plea, 13, 272
 - Trial *de novo* on appeal, 13, 272
- Laches, 13, 183
- Legal conclusions, 12, 1044
- Manner of pleading, 13, 209
- Married women:
 - Allegations of, in bill or petition, 13, 257
 - Replication, 13, 259
- Mechanics' liens, 13, 1018
- Merchants' accounts, 13, 264
- Meritorious defense, 13, 209
- Mistake, 13, 243
 - Allegations in bill or petition, 13, 243
 - Bar after discovery of fraud, 13, 244
 - Diligence, 13, 245, 246
 - Discovery within statutory period, 13, 244
 - How discovery made, 13, 245
 - Ignorance of rights or wrongs, 13, 247
 - Replication, 13, 246
- Mortgagees, 13, 195
- Motion to strike out, 13, 211
- Nature, 13, 209
- Nature of plea, 13, 209
 - Confession and avoidance, 13, 209
 - Meritorious defense, 13, 209
- Negating exceptions, 13, 220
- New promise, payment, or acknowledgment:
 - Amendment of petition, 13, 253
 - Conditional new promise, 13, 248
 - Declaration on new promise, 13, 249
 - Declaration on original obligation, 13, 247
 - Defendant's pleadings concerning, 13, 256
 - General reply sufficient, 13, 255
 - Necessity that plaintiff allege new promise, 13, 251
 - New promise, 13, 249
 - New promise before or after bar attached, 13, 248
 - New promise by executor or administrator, 13, 251

LIMITATIONS, *cont'd.*

- New promise, payment, or acknowledgment, *cont'd.*
 - New promise in case of bond or specialty, 13, 250
 - Original obligation, 13, 247, 249
 - Payment, 13, 206; 16, 213
 - Plea of payment, 13, 216; 16, 213
 - Plaintiff's allegations at law or under the code, 13, 252
 - Plaintiff's allegations in equity, 13, 251
 - Plea, 13, 256
 - Rejoinder, 13, 256
 - Requisites and sufficiency of replication, 13, 254
 - Traverse, 13, 256
 - Whether action should be brought on old or new promise, 13, 247
- Non accrevit infra*, 13, 213
- Non assumpsit infra*, 13, 213
- Nonresidence, 13, 205, 259
 - Allegations of, in bill or petition, 13, 259
 - Replication, 13, 260
- Nonsuit, 13, 265
- Opening, amending, and vacating judgments, 15, 244, 264
 - Judgments against nonresident, 15, 265
 - Laches within statutory period, 15, 266
 - Limitations inapplicable to motions not under statute, 14, 266
 - Statutory limitations, 15, 264
 - What applications limited by statutes, 15, 265
 - When time begins to run, 15, 255
- Payment*, see *infra*, New promise, payment, or acknowledgment.
- Penal actions, 13, 282
 - Arrest of judgment, 13, 283
 - Special plea or general issue, 13, 282
- Personal injuries, 16, 407
- Petition*, see *infra*, Declaration and complaint.
- Plea (see *infra*, Raising defense by plea, answer, or demurrer):
 - Findings, 13, 268
 - Justice's court, 13, 272
 - New promise, payment, or acknowledgment, 13, 256
- Pleading specially, 13, 180
 - Actions for official liability, 13, 190
 - Action to recover property, 13, 188
 - Action to quiet title, 13, 189
 - Appeal, 13, 187
 - Assumpsit, 13, 187

LIMITATIONS, *cont'd.*Pleading specially, *cont'd.*

- Bar apparent on face of pleadings, 13, 184
- Counterclaim, 13, 190
- Creditors' bills, 13, 191
- Debt, 13, 187
- Defendant must plead or waive the defense, 13, 181
- Defense personal and optional, 13, 180
- Detinue, 13, 187
- Ejectment, 13, 189
- Equity, 13, 183
- General issue, 13, 184
- Hearing or on trial, 13, 184
- Instructions, 13, 185
- Interposition by court, 13, 185
- Justices' courts, 13, 194
- Laches and limitations distinguished, 13, 183
- Motion in arrest of judgment, 13, 185
- Necessity of, in general, 13, 180
- Particular cases, 13, 187
- Probate or surrogates' courts, 13, 193
- References, 13, 193
- Set-off, 13, 190
- Trover, 13, 187
- United States court of claims, 13, 194
- Where no opportunity to plead exists or pleadings not required, 13, 187
- Where statute creates absolute bar or vests title, 13, 186
- Writ of error, 13, 187
- Pleas in equity, 16, 600
- Possession, writ of, 16, 747
- Prescription, 13, 290
 - Definition, 13, 290
 - Findings, 13, 293
 - Manner of pleading, 13, 290
 - Necessity of pleading, 13, 290
 - Pleading and proof, 13, 292
- Probate, 13, 193
- Questions of law and fact, 13, 266
- Raising defense by plea, answer, or demurrer, 13, 200
 - Actions under the code, 13, 202
 - Demurrer not generally obligatory, 13, 209
 - Demurrer sometimes obligatory, 13, 209
 - Demurrer waived by answering, 13, 209
 - In actions at law, 13, 200
 - Infancy, 13, 206
 - In suits in equity, 13, 201
 - Necessity of apparent bar in order to demur, 13, 203
 - Nonresidence, 13, 205
- Index Pl. & Pr. — 41

LIMITATIONS, *cont'd.*

- Raising defense by plea, answer, or demurrer, *cont'd.*
 - Payments, 13, 206
 - Permissibility of plea or answer, 13, 209
 - Qualifications of general rule, 13, 206
 - Special or general demurrer, 13, 207
 - When bar is or is not apparent, 13, 205
- References, 13, 193
- Rejoinder:
 - New promise, payment, or acknowledgment, 13, 256
- Replications and replies:
 - Absence, 13, 260
 - Agreement not to plead statute, 13, 264
 - Avoiding bar or anticipating defense, 13, 235
 - Avoiding plea of the statute, 13, 238
 - Codes, 13, 238
 - Demurrer, 13, 242
 - Distinctness, 13, 240
 - Issue to be made, 13, 239
 - Materiality, 13, 240
 - Necessity and propriety, 13, 238
 - Negating exceptions, 13, 241
 - Particularity, 13, 240
 - Rejoinder, 13, 241
 - Requisites, 13, 239
 - Responsiveness, 13, 240
 - Sufficiency, 13, 240
 - Coverture, 13, 259
- Executors and administrators, 13, 276
 - Administration and nonadministration, 13, 276
 - General or special replication, 13, 276
 - Requisites and sufficiency of replication, 13, 277
- Former action, 13, 262
- Infancy, 13, 259
- Merchants' accounts, 13, 264
- New promise, payment, or acknowledgment, 13, 254
- Nonresidence, 13, 260
- Repeated provision, 13, 265
- Requisites, 13, 209
- Requisites of plea, 13, 214
 - Admission of cause of action, 13, 221
 - Affidavit of defense, 13, 225
 - Allegation as to time when action accrued, 13, 218
 - Averment as to lapse of time, 13, 218

LIMITATIONS, *cont'd.*Requisites of plea, *cont'd.*

- Averment of facts constituting bar, 13, 214
- Averment of lapse of greater period than prescribed, 13, 219
- Averment of time prior to which limitation had run, 13, 218
- Duplicity, 13, 226
- Inconsistent defenses, 13, 227
- In general, 13, 214
- Matters of law, 13, 222
- Method of pleading in equity, 13, 217
- Negating exceptions, 13, 220
- Particular sections of statute, 13, 222
- Pleading particular statute, 13, 222
- Plea of payment, 13, 216
- Plea to part of bill in equity, 13, 223
- Plea to part of cause of action, 13, 223
- Plea where there are several causes of action, 13, 224
- Plea where there are several counts, 13, 224
- Special statute, 13, 222
- Verification, 13, 225
- Where separate causes of action are set up in separate counts, 13, 225
- Rescission, cancellation, and reformation of contracts, 18, 827
- Residence, 13, 205
- Rule day, 13, 210
- Scope of article, 13, 180
- Set-off, recoupment, and counterclaim, 13, 190
- Settlement of decedents' estates:
 - Sale, 19, 928
- Sheriffs and constables, 20, 156
- Special pleadings*, see *infra*, Pleading specially.
- Specific performance, 20, 449, 471
- Statutes (see *infra*, Requisites of plea):
 - Foreign statutes, 13, 277
- Striking out plea, 13, 231
 - Plea showing that insufficient time has elapsed, 13, 231
 - Plea wholly inappropriate, 13, 231
- Substitution of parties, 20, 1028, 1066
- Supplementary proceedings, 21, 101
- Surplus money, 21, 220
- Surrogates, 13, 193
- Taking advantage of*, see *infra*, Pleading specially, 13, 180
- Time or stage of pleading (see *infra*, Requisites of plea), 13, 210
 - After rule day or default, 13, 210

LIMITATIONS, *cont'd.*Time or stage of pleading, *cont'd.*

- Discretion of court, 13, 211
 - Exception to auditor's report, 13, 212
 - Interlocutory decree, 13, 212
 - Motion to strike out, 13, 211
 - Must be pleaded in first instance, 13, 210
 - Refusing on the trial, 13, 211
 - Traverse:
 - New promise, payment, or acknowledgment, 13, 256
 - Trover, 13, 187
 - United States court of claims, 13, 194
 - United States courts, 22, 325
 - Usury, 22, 487
 - Vendor and purchaser, 13, 195
 - Verdict, 13, 267; 22, 867
 - Verification, 13, 225
 - When and to whom plea available, 13, 194
 - Defendants brought in by an amended bill, 13, 196
 - Devisees, 13, 195
 - Effect of pleading before action barred, 13, 196
 - Enjoining plea, 13, 199
 - Executor and administrator, 13, 195
 - Heirs, 13, 195
 - Imposition of terms on the defendant, 13, 198
 - In general, 13, 194
 - Joint defendants, 13, 196
 - Mortgagees, 13, 195
 - Plea available in equity as at law, 13, 194
 - Plea on opening or vacating judgments, 13, 197
 - Purchasers, 13, 195
 - Setting up statute under leave to plead or answer, 13, 197
 - To whom plea is available, 13, 194
 - Withdrawal of plea, 13, 230
- LIMITED PARTNERSHIPS, 15,**
- 1114
- Accounting, dissolution, and settlement:
 - Jurisdiction, 15, 1057
 - Actions by and against limited partnerships, 15, 1114
 - Use of firm name, 15, 1114
 - Answers, 15, 1118
 - Declaration, petition, or complaint, 15, 1117
 - Joinder of parties, 15, 1115, 1116
 - Judgments, 15, 1119
 - Parties, 15, 1114
 - Action against limited partnerships, 15, 1116

LIMITED PARTNERSHIPS, *cont'd.*

Parties, *cont'd.*

- Action for subversion of partnership, 15, 1117
- Action in individual name after expiration of partnership, 15, 1116
- Actions to charge special partners as general partners, 15, 1117
- Exceptions to general rule, 15, 1117
- In actions by limited partnerships, 15, 1114
- Joinder of special partner, 15, 1115
- Joinder of special partner optional, 15, 1116
- Suits by firm after death of special partner, 15, 1115
- Replications and replies, 15, 1118
- Special partners, see infra, Parties.*

LIQUIDATED DAMAGES:

- Breach of contract, 5, 739
- Defaults, 6, 130

LIQUORS, *see* INTOXICATING LIQUORS.

LIS PENDENS (see ANOTHER SUIT

PENDING; GARNISHMENT):

Alimony:

- Decree as lien on land, 1, 443
- Divorce, 1, 443
- Error, writ of, 7, 825
- Foreclosure of mortgages, 9, 339
- Mechanics' liens, 13, 1022
- Partition, 15, 797

LOANS, *see* MONEY COUNTS.

LOCAL AND TRANSITORY ACTIONS, *see* VENUE.

LOCAL IMPROVEMENTS, 13, 295

See DRAINAGE.

Appeals, 13, 320

- Bond, 13, 332
- Discretion, 13, 331
- Effect, 13, 328
- Immaterial irregularities, 13, 331
- In general, 13, 320
- Issues involved, 13, 329
- Issues of lower tribunal, 13, 331
- Joint or several appeals, 13, 326
- Judgment, 13, 332
- Notice, 13, 326
- Time, 13, 327
- To what court, 13, 322
- To whom, 13, 324
- Trial *de novo*, 13, 330
- Waiver of appeal, 13, 332

Assessments, 13, 306

- Confirmation, 13, 308
- Effect of confirmation, 13, 314
- Hearing as to confirmation, 13, 311

LOCAL IMPROVEMENTS, *cont'd.*

Assessments, *cont'd.*

Confirmation, *cont'd.*

- Notice of application for confirmation, 13, 309
- Objections to confirmation, 13, 312
- Order of confirmation, 13, 313
- Petition to compromise, 13, 309
- Waiver of notice of confirmation, 13, 310
- Enforcing assessments, 13, 315
- Allegations, 13, 316
- Defenses, 13, 317
- Demand for payment, 13, 316
- Erroneous assessments, 13, 316
- In general, 13, 315
- Judgment, 13, 317
- Municipal corporation, 13, 316
- Precept, 13, 315
- In general, 13, 306
- Manner of notice, 13, 307
- Notice, 13, 306

Certiorari, see CERTIORARI.

Complaint, see infra, Petition.

Confirmation, see infra, Assessments.

Definition, 13, 296

Exceptions and objections, 13, 305

Assessments, 13, 312

Initiatory proceedings, 13, 298

Injunction (see INJUNCTIONS), 13, 318

Bill, 13, 320

Void assessments, 13, 298

When it does not lie, 13, 319

When it lies, 13, 318

Jurisdiction, 13, 297

Injunction against void assessments, 13, 298

Necessity of improvements, 13, 297

Notice, 13, 301

Appeals, 13, 326

Assessments, 13, 306

Construction of statutes, 13, 307

In general, 13, 306

Manner of notice, 13, 307

Contents, 13, 302

Designation of place and time, 13, 303

Duration, 13, 303

Jurisdictional, 13, 301

Notice of application for confirmation of assessment, 13, 309

Personal notice, 13, 302

Posting, 13, 302

Proof of notice, 13, 303

Publication, 13, 302

LOCAL IMPROVEMENTS, *cont'd.*

- Notice, *cont'd.*
 - Publication exclusive, 13, 303
 - Technicalities not fatal, 13, 301
 - Waiver, 13, 304
 - When notice is not required, 13, 303
- Objections, 13, 305
 - Assessments, 13, 312
- Orders:
 - Order of confirmation, 13, 313
- Ordinances, 13, 300
- Petition, 13, 298
 - Confirmation of assessment, 13, 309
 - Contents of petition, 13, 300
 - In general, 13, 298
- Publication, see *infra*, Notice.
- Removal of causes, 18, 221
- What not embraced by term, 13, 297

LOCAL OPTION, see INTOXICATING LIQUORS.**LOGS AND LUMBER:**

- Actions, see *infra*, Action by lien claimant for damages to logs; Actions for preventing passage of logs; Actions for unlawful cutting; Actions to enforce liens; Actions to recover toll on logs; Attachment. Conversion; Foreclosure.
- Action by lien claimant for damages to logs, 13, 346
 - Complaint, 13, 346
 - Generally, 13, 346
 - Joinder of plaintiffs, 13, 346
- Actions for preventing passage of logs, 13, 347
 - Complaint, 13, 347
 - Findings, 13, 347
- Actions for unlawful cutting, 13, 346
 - Declaration and complaint, 13, 347
 - In general, 13, 346
 - Waiver of tort, 13, 347
- Actions to enforce liens, 13, 334
 - Attachment, see *infra*, Attachment.
 - Foreclosure, see *infra*, Foreclosure.
 - In general, 13, 334
 - Manner of enforcing, 13, 335
 - Time of commencing suit, 13, 334
- Actions to recover toll on logs, 13, 347
- Affidavits:
 - Attachment to enforce lien, 13, 338
 - Conversion, 13, 346
- Amendments:
 - Declaration and complaint to enforce lien, 13, 344

LOGS AND LUMBER, *cont'd.*

- Attachment, 13, 336
- Affidavit, 13, 338
- Allegations in writ, 13, 340
- Amendment to declaration and complaint, 13, 344
- Declaration and complaint, 13, 344
- Demurrer by owner, 13, 345
- Essential allegations in affidavit, 13, 338
- Essentials of judgment, 13, 345
- Execution, 13, 345
- Generally, 13, 336
- Joinder of causes of action, 13, 337
- Joinder of claims, 13, 337
- Judgment, 13, 345
- Jurisdiction, 13, 338
- Nature of notice to general owner, 13, 343
- Nature of suit, 13, 336
- Necessity of affidavit, 13, 338
- Necessity of notice to general owner, 13, 342
- Notice to general owner, 13, 342
- Plea, 13, 345
- Separate actions on different claims, 13, 337
- Service of writ, 13, 341
- Time of filing affidavit, 13, 340
- Venue, 13, 338
- Who may maintain, 13, 336
- Writ, 13, 340
- Conversion, 13, 346
- Criminal procedure, 13, 347
 - Indictment for cutting and carrying away, 13, 348
 - Indictment for destroying log brands, 13, 347
 - Indictment for unlawful branding, 13, 348
- Declaration and complaint, 13, 335
 - Actions for preventing passage of logs, 13, 347
 - Actions for unlawful cutting, 13, 347
 - Enforcement of lien, 13, 344
- Demurrer:
 - Attachment to enforce lien, 13, 345
- Executions:
 - Enforcement of lien, 13, 345
- Foreclosure, 13, 335
 - Complaint, 13, 335
 - Decree, 13, 334
 - Generally, 13, 335
 - Joinder of claims, 13, 335
- Indictments, 13, 347
 - Indictment for cutting and carrying away, 13, 348
 - Indictment for destroying log brands, 13, 347

LOGS AND LUMBER, *cont'd.*Indictments, *cont'd.*

Indictment for unlawful branding, 13, 348

Joinder of causes of actions, 13, 335, 337

Judgment:

Suit to enforce lien, 13, 345

Jurisdiction:

Attachment to enforce lien, 13, 338

Liens, see *infra*, Actions to enforce liens.

Notice:

Attachment to enforce lien, 13, 342

Plea:

Attachment to enforce lien, 13, 345

Service of process:

Attachment to enforce lien, 13, 341

Toll, 13, 347

Venue:

Attachment to enforce lien, 13, 338

LORD CAMPBELL'S ACT, see DEATH BY WRONGFUL ACT.**LORD'S DAY**, see SUNDAYS AND HOLIDAYS.**LOST INDICTMENT**, see INDICTMENTS.**LOST INSTRUMENTS AND RECORDS, 13, 349**

Accident:

Jurisdiction in equity, 13, 356

Actions to recover lost instruments, 13, 350

Detinue, 13, 350

Replevin, 13, 350

Trove, 13, 250

Affidavit of loss, 13, 354, 367

Additional and amended affidavit, 13, 370

Affidavit filed with bill, 13, 367

Application to restore lost record, 13, 382

At what time filed, 13, 369

Bill for discovery only, 13, 369

Equity, 13, 368

Equity jurisdiction independent of loss, 13, 369

Form and contents of affidavit, 13, 370

Foundation for secondary evidence, 13, 369

Jurisdiction in equity, 13, 358

Loss of instrument, 13, 370

Propriety and necessity, 13, 367

Waiver of affidavit, 13, 369

Who to make, 13, 369

LOST INSTRUMENTS AND RECORDS, *cont'd.*

Amendments:

Application for restoration of judicial records, 13, 382

Bill in action on lost instruments, 13, 372

Instrument lost *pendente lite*, 13, 372

Restoration of judicial records, 13, 384

Answers, 13, 354

Recovery on lost instruments, 13, 370

Admissions, 13, 371

Answer setting up loss, 13, 371

Demand for indemnity, 13, 371

In general, 13, 370

Traverse, 13, 370

What answer must contain, 13, 371

Bonds, 3, 649

Declaration and complaint (see *infra*, Recovery on lost instruments):

Re-execution and restoration of lost instruments, 13, 353

Decrees, 13, 355

Restoration of lost decree, 13, 378

Demurrers, 13, 371

Depositions, 6, 583

Restoration of judicial records, 13, 383

United States courts, 6, 632

Detinue, 13, 350

Discovery:

Recovery on lost instruments, 13, 356

Re-execution and restoration of lost instruments, 13, 351

Executions, 8, 318

Forgery, 9, 578

Examples, 9, 578, 580

In general, 9, 578

In hac verba, 9, 578

Fraud:

Jurisdiction in equity, 13, 356

Indemnity:

Jurisdiction in equity, 13, 357

Tendering indemnity in actions on lost instruments and records, 13, 366

Given at trial, 13, 366

Indemnity need not be tendered, 13, 366

Judgment made conditional, 13, 367

Indictments, see INDICTMENTS.

Infants, 10, 838

Informations, 10, 458

LOST INSTRUMENTS AND RECORDS, *cont'd.***Intervention:**

Re-execution and restoration of lost instruments, 13, 352

Issues to the jury, 11, 651

Joinder of parties, 13, 363

Judgment roll, 18, 481

Judgments:

Restoration of judgments, 13, 378

Defense to remedy of judgment, 13, 379

In general, 13, 378

Remedy by action or judgment, 13, 379

Jurisdiction (see *infra*, Recovery on lost instruments; Re-execution and restoration of lost instruments; Restoration of judicial records):

Motions:

Application for restoration of judicial records, 13, 381

New trial:

Cumulative evidence, 14, 818

Newly discovered evidence, 14, 797

Notice:

Application for restoration of judicial records, 13, 380

Personal service, 13, 381

Statutory requirements, 13, 380

To whom notice given, 13, 380

What is sufficient notice, 13, 380

When notice not necessary, 13, 380

***Nunc pro tunc*:**

Restoration of lost records, 13, 384

Orders:

Restoration of judicial records, 13, 383

Amending and vacating order of restoration, 13, 384

Frame of order, 13, 384

Necessity for order, 13, 383

Nunc pro tunc, 13, 384

Parties to action (see *infra*, Recovery on lost instruments; Restoration of judicial records):

Re-execution and restoration of lost instruments, 13, 352, 362

Defendant, 13, 363

Intervention, 13, 352

Plaintiff, 13, 362

Petition (see *infra*, Recovery on lost instruments):

Application for restoration of judicial records, 13, 381

LOST INSTRUMENTS AND RECORDS, *cont'd.***Petition, *cont'd.***

Re-execution and restoration of lost instruments, 13, 353

Pleadings:

Restoration of lost or destroyed pleadings, 13, 376

Defendant's pleadings, 13, 377

In general, 13, 376

Plaintiff's pleadings, 13, 377

Prayer, 13, 354

Process, 13, 375

Profer and oyer:

Jurisdiction in equity, 13, 356

Recognizances, 13, 376

Records (see *infra*, Restoration of judicial records):

Amendment, 17, 914

Recovery on lost instruments, 13, 356

Accident, 13, 356

Affidavit of loss, 13, 358

Circumstances forbidding relief in equity, 13, 358

Discovery, 13, 357

Exclusive jurisdiction in equity, 13, 358

Fraud, 13, 356

Indemnity, 13, 357

Jurisdiction at law, 13, 356, 359

Assumpsit, 13, 362

Debt, 13, 362

Destruction pending suit, 13, 361

Instrument totally destroyed, 13, 361

Jurisdiction in equity not taken away, 13, 362

No jurisdiction, 13, 359

Statutory jurisdiction, 13, 361

Subject to equities, 13, 360

Transfer after loss, 13, 359

Jurisdiction in equity, 13, 356

No remedy at law, 13, 356

Over what instruments equity has jurisdiction, 13, 357

Parties, 13, 362

Defendant, 13, 363

Joinder, 13, 363

Joinder of defendants, 13, 363

Joinder of plaintiffs, 13, 363

Persons having no present interest, 13, 363

Plaintiff, 13, 362

Petition or complaint, 13, 364

Affidavit of loss, 13, 367

Allegation of loss, 13, 365

Certainty, 13, 364

General requisites, 13, 364

Technical accuracy, 13, 365

LOST INSTRUMENTS AND RECORDS, *cont'd.*

Recovery on lost instruments, *cont'd.*
 Petition or complaint, *cont'd.*
 Tendering indemnity, 13, 366
 Verification, 13, 367
 What averments necessary,
 13, 364

Profert, 13, 356
 Subsequent finding of instrument, 13, 358

Re-execution and restoration of lost instruments, 13, 351

Affidavit of loss, 13, 354
 Answer, 13, 354
 Complaint, 13, 353
 Defendant, 13, 353
 Discovery, 13, 351
 Findings and decree of the court,
 13, 355

Intervention, 13, 352
 Jurisdiction at law, 13, 352
 Jurisdiction in equity, 13, 351

Parties, 13, 352
 Petition, 13, 353
 Plaintiff, 13, 352

Prayer, 13, 354
 Reference, 13, 355
 Verification, 13, 354

References, 13, 355

Replevin, 13, 350

Replications and replies:

 Recovery on lost instruments, 13,
 371

Restoration of judicial records, 13,
 372

Affidavit of loss, 13, 382
 Application for restoration, 13,
 381
 Amendment, 13, 382
 Judgment by confession, 13,
 382
 Petition or motion, 13, 381
 What application should
 contain, 13, 381

Chancery jurisdiction, 13, 374
 Court having jurisdiction, 13, 375
 Depositions, 13, 383
 Grounds of jurisdiction not
 stated, 13, 373

Inherent jurisdiction, 13, 372
 Judge, 13, 375

Jurisdiction to restore, 13, 372
 Notice of application, 13, 380
 Personal service, 13, 381
 Statutory requirements, 13,
 380

To whom notice given, 13,
 380

What is sufficient notice, 13,
 380

When notice not necessary,
 13, 380

LOST INSTRUMENTS AND RECORDS, *cont'd.*

Restoration of judicial records, *cont'd.*
 Order of court, 13, 383

Parties, 13, 379
 Any party in interest, 13, 379
 Applicant, 13, 379
 Defendant, 13, 379
 Real party, 13, 379

Proof, 13, 383
 Resisting application, 13, 382

Statutes declaratory of common
 law, 13, 373

Statutory jurisdiction, 13, 374

Verification, 13, 382
 What records may be restored,
 13, 375

Bonds, 13, 376
 Examples, 13, 376

In general, 13, 375

Judgments, 13, 378

Pleadings, 13, 376

Process, 13, 375

Recognizances, 13, 376

Summons, 13, 375

Verdict, 13, 376

Writ, 13, 375

*Restoration of lost instruments, see in-
 fra.* Re-execution and restoration
 of lost instruments.

Returns, 13, 964

Scire facias, 13, 280

Summons and process, 13, 375; 20,
 1181

Trover and conversion, 13, 350

United States courts, 22, 307

Variance, 13, 372

Verdict, 13, 376

Verification, 13, 354, 367
 Application to restore lost record,
 13, 282

 Jurisdiction in equity, 13, 358

Writ, 13, 375

LOST PROPERTY:

Trover and conversion:

 Finder of lost property. 21,
 1046

**LOST WILLS, see PROBATE AND CON-
TEST OF WILLS.****LOTTERIES, 13, 386**

Complaints for search warrants, 13,
 399

Criminal prosecutions 13, 386

Duplicity, 13, 396

Incidental matters and pleading, 13,
 400

Indictment and information, 13, 387
 Advertising lottery tickets or lot-
 teries, 13, 392

Allegation of time, 13, 397

Allegations generally, 13, 388

Allegations in particular of
 fenses, 13, 390

LOTTERIES, *cont'd.*

Indictment and information, *cont'd.*
 Alleging offense in statutory words, 13, 388
 Certainty, 13, 388
 Character of statutory law, 13, 388
 Definition of lottery, 13, 388
 Description of ticket, 13, 387
 Duplicity, 13, 396
 Establishing, promoting, etc., lotteries, 13, 392
 Excuse, 13, 389
 General observations, 13, 387
 Location of lottery, 13, 391
 Negating exceptions in statute, 13, 387
 Sale of lottery policies or tickets, 13, 389
 Sale of lottery tickets, 13, 390
 Sciento, 13, 391
 Ticket or policy, 13, 391
 Unlawful use of United States mails, 13, 393
 Jurisdiction, 13, 386
 Plea in equity, 13, 400
 Plea of action at law, 13, 400
 Postal laws, 13, 393
 Indictment in general, 13, 393
 Intent, 13, 394
 Letter or circular, 13, 395
 Postage and address, 13, 396
 Shall knowingly deposit, 13, 395
 Using words of statute, 13, 394
Qui tam actions, 13, 399
 Time, allegation of, 13, 397
LUMBER, see LOGS AND LUMBER.
LUNATICS, see INSANE PERSONS.
MAGISTRATE, see JUSTICES OF THE PEACE; PRELIMINARY EXAMINATION.
MAILS (see CRIMINAL PROCEDURE;
 INDICTMENTS; POSTAL LAWS; POST OFFICES):
 Depositions:
 Return of deposition, 6, 533, 534, 535
 Larceny:
 Allegation of ownership, 12, 973
Obscenity, see OBSCENITY.
Publication of notice, see PUBLICATION.
Service of process, see SERVICE OF PROCESS.
MAINTENANCE, see BASTARDY; CHAMPERTY AND MAINTENANCE.
MALFEASANCE, see PUBLIC OFFICERS.
MALICE (see MALICIOUS MISCHIEF):
 Arson, 2, 824
 Assault and battery, 2, 853
Homicide, see HOMICIDE.
Malicious prosecution, see MALICIOUS PROSECUTION.

MALICIOUS MISCHIEF, 13, 400

Beast, 13, 412
 Cattle, 13, 412
 Corn, 13, 413
 Damages, amount of, 13, 414
 Dogs, 13, 413, 415
 Domestic animals, 13, 412
 Duplicity, 13, 416
 Feloniously, 13, 414
 Grain, 13, 413
 Indictments, informations, and complaints:
 Allegations generally, 13, 403
 Allegations where the statute used generic term, 13, 404
 Alleging act as done maliciously, wilfully, etc., 13, 408
 Alleging act as feloniously done, 13, 414
 Alleging a specific intent, 13, 414
 Amount of damage, 13, 415
 At common law, 13, 403
 Beast, 13, 412
 Cattle, 13, 412
 Corn, 13, 413
 Damages, 13, 414
 Describing property in general terms, 13, 412
 Description of property, 13, 417
 Description of property and injury, 13, 311
 Dogs, 13, 413
 Duplicity, 13, 416
 Equivalent words, 13, 409
 Means employed to cause the injury, 13, 406
 Mischievously, 13, 410
 Negative averments, 13, 415
 Not defendant's land or inclosure, 13, 415
 Ownership, 13, 410, 416
 Personal property, 13, 412
 Place, 13, 407
 Placing obstructions on railroad tracks, 13, 406
 Poison, 13, 406
 Public buildings, 13, 413
 Stack, 13, 413
 Surplusage, 13, 416
 Time, 13, 407
 Under statutes, 13, 403
 Unlawful entry on land, 13, 406
 Value, 13, 414
 Variance, 13, 416
 Vi et armis, 13, 407
 Words used in the disjunctive, 13, 409
Informations, see *infra*, Indictments, informations, and complaints.
 Instructions, 13, 418
 Intent, 13, 414
 Introductory, 13, 402
 Knowingly, 13, 408

MALICIOUS MISCHIEF, *cont'd.*

Maliciously, 13, 408, 410
 Mischievously, 13, 408, 410
 Public buildings, 13, 413
 Stack, 13, 413
 Surplusage, 13, 414, 416
 Trespass, 13, 402
 Unlawfully, 13, 409
 Value, 13, 414
 Variance, 13, 416
 Verdict, 13, 417
 Wantonly, 13, 409
 Wilfully, 13, 408

MALICIOUS PROSECUTION, 13,

419

See FALSE IMPRISONMENT.

Abuse of process:

Averments of declarations and complaints, 13, 432

Instructions, 13, 476

Joinder, 13, 424

Malice, 13, 443

Termination of the alleged malicious proceeding, 13, 452

Want of probable cause, 13, 442

What constitutes, 13, 432

Advice of counsel, 13, 475

Answers, see *infra*, Plea or answer.

Answers in code pleading:

General denials, 1, 823

Bills of particulars, 3, 553

Complaint, see *infra*, Declaration and complaint.

Conspiracy, averment of, 13, 436

Conspiracy, writ of, 13, 421

Counts, paragraphs, and separate statements, 13, 423

Criminal offense, 13, 477

Damages:

Declaration and complaint, 13, 452

Exemplary damages, 13, 454

General damages, 13, 452

General rule as to averment of damage, 13, 452

Joinder or severance of plaintiffs, 13, 453

Malicious civil suits, 13, 454

Recovery limited by *ad damnum*, 13, 454

Special damages, 13, 453

Special pleading, 13, 452

Instructions, 13, 475

Declaration and complaint, 13, 427

Affidavit, 13, 430

Amendments, 13, 454

Approved precedents of declarations and complaints, 13, 427

As to damages, 13, 452

Exemplary damages, 13, 454

General damages, 13, 452

General rule as to averment of damage, 13, 452

MALICIOUS PROSECUTION, *con.*

Declaration and complaint, *cont'd.*

As to damages, *cont'd.*

Joinder or severance of plaintiffs, 13, 453

Malicious civil suits, 13, 454

Recovery limited by *ad damnum*, 13, 454

Special damages, 13, 453

Special pleading, 13, 452

Averment of jurisdiction of court, 13, 429

Defects cured by verdict or judgment, 13, 457

Description of offense charged, 13, 431

Description of record, 13, 431

Description of the alleged malicious proceeding, 13, 428

Immaterial variances, 13, 430

In actions for malicious abuse of process, 13, 432

In general, 13, 427

Instigation by the defendant, 13, 433

Action against several defendants, 13, 434

Averment of conspiracy, 13, 436

In general, 13, 433

Instigating third person to prosecute, 13, 434

Institution of proceedings, 13, 428

Malice, 13, 442

Abuse of legal process, 13, 443

Malicious attachment, 13, 442

Malicious civil suit and proceedings generally, 13, 442

Malicious criminal prosecution, 13, 442

Malicious injunction suit, 13, 443

Necessity of averment, 13, 442

Sufficiency of averment, 13, 443

Material variance, 13, 432

Objections for omission, insufficiency, or indefiniteness of averments, 13, 456

By demurrer, 13, 456

By motion to dismiss, 13, 457

By motion to make more specific, 13, 457

Defects cured by verdict or judgment, 13, 457

Termination of the alleged malicious proceeding, see *infra*,

Termination of the alleged malicious proceeding.

MALICIOUS PROSECUTION, *con.*

- Declaration and complaint, *cont'd.*
 - Variances, 13, 430, 431
 - Want of probable cause, 13, 436
 - Attachment suit, 13, 437
 - Averments held insufficient, 13, 440
 - Civil suit or proceeding generally, 13, 437
 - Construction of pleading, 13, 440
 - In actions for malicious abuse of process, 13, 442
 - In general, 13, 436
 - Injunction suit, 13, 437
 - Necessity of averment, 13, 436
 - Sufficiency of averment, 13, 439
 - Where facts are alleged which are *prima facie* evidence of probable cause, 13, 441
- Warrant, 13, 430
- Definiteness and certainty in pleadings, 13, 456
- Demurrers:
 - Objections for omission, insufficiency, or indefiniteness of averments, 13, 456
- Demurrer to evidence, 13, 463
- Directing verdict:
 - Want of probable cause, 13, 468
- Dismissal, discontinuance, and non-suit, 6, 984; 13, 463
- Want of probable cause, 13, 467
- Evidence:
 - Indictment as evidence, 8, 31
- Exceptions and objections (see *infra*, Declaration and complaint):
 - Misjoinder, 13, 425
- Exemplary damages, 13, 454
- False imprisonment*, see FALSE IMPRISONMENT.
- Form of action, 13, 421
 - Action on the case, 13, 421
 - At common law, 13, 421
 - Difficulties arising from abolition of forms of action, 13, 422
 - When plaintiff may elect to sue in case or in trespass, 13, 422
 - Writ of conspiracy, 13, 421
- Husband and wife, 13, 427
- Indictments, 13, 477
- Information, 13, 477
- Instigation by the defendant, 13, 433
- Instructions:
 - Advice of counsel, 13, 475
 - Damages, 13, 475
 - Instigation by the defendant, 13, 464
 - Instructing as to inference of malice, 13, 474

MALICIOUS PROSECUTION, *con.*

- Instructions, *cont'd.*
 - Instructions as to probable cause, 13, 464
 - Malice, 13, 473
 - Malicious abuse of process, 13, 476
 - Probable cause, 13, 464
 - Termination in favor of plaintiff, 13, 475
- Joinder of counts and causes, 13, 423
 - Abuse of process, 13, 424
 - False imprisonment, 13, 423
 - How objections for misjoinder taken, 13, 425
 - In general, 13, 423
 - Libel, 13, 424
 - Libel and slander, 1, 193
 - Separate counts or paragraphs, 13, 424
 - Slander, 1, 174; 13, 424
- Joinder of parties, 13, 427; 15, 542
- Judgments, 13, 476
 - Defects cured by verdict or judgment, 13, 457
- Libel and slander, 13, 61
 - Changing form of action, 1, 570
- Malice (see *infra*, Declaration and complaint):
 - Instructions, 13, 474
 - Legal malice, 13, 474
- Married women, 13, 426
- Parent and child, 13, 427
- Parties, 13, 425
 - Defendants, 13, 427
 - Averments in cases of joinder, 13, 427
 - Joint or several actions, 13, 427
 - Plaintiffs, 13, 425
 - Assignee or personal representative, 13, 426
 - Husband, 13, 427
 - Married woman, 13, 426
 - Parent, 13, 426
 - Where the damages are several, 13, 425
 - Whether damages are joint, 13, 426
- Plea or answer, 13, 458
 - Allegations admitted if not denied, 13, 462
 - General denial, 13, 458
 - General issue, 13, 458
 - Special plea or answer, 13, 460
- Probable cause (see *infra*, Declaration and complaint), 13, 464
 - Collating the evidence, 13, 469
 - Definition of probable cause, 13, 470
 - Directing verdict, 13, 468
 - Duty of the judge as to instructions, 13, 469, 470

MALICIOUS PROSECUTION, *con.*

- Probable cause, *conf'd.*
 - Instructions, 13, 466
 - Necessity of requesting instructions, 13, 472
 - Nonsuit, 13, 467
 - Questions of law and fact, 13, 464
- Questions of law and fact, 13, 464
 - Advice of counsel, 13, 475
 - Damages, 13, 475
 - Instigation by the defendant, 13, 464
 - Instructing as to inference of malice, 13, 474
 - Instructions as to probable cause, 13, 464
 - Malice, 13, 473
 - Malicious abuse of process, 13, 476
 - Probable cause, 13, 464
 - Termination in favor of plaintiff, 13, 475
- Replications and replies, 13, 463
- Scandal and impertinence, 19, 222
- Security for costs, 19, 357
- Splitting causes of action, 1, 162
- Statutory actions for double and treble damages, 13, 477
- Survival of actions, 21, 351
- Termination in favor of plaintiff:
 - Questions of law and fact, 13, 475
- Termination of the alleged malicious proceeding, 13, 444
 - Abuse of process, 13, 452
 - Approved precedents of declarations and complaints, 13, 449
 - Arrest on civil process, 13, 448
 - Attachment of property, 13, 448
 - Averment held sufficient, 13, 447
 - Averment of method of termination, 13, 446
 - Averments nullifying effect of conviction, 13, 449
 - Immaterial variance, 13, 451
 - In general, 13, 444
 - Malicious injunctions, 13, 449
 - Necessity of averment, 13, 444
 - Pendency of appeal, 13, 448
 - Sufficiency of averment, 13, 444
 - Termination of provisional or auxiliary remedies, 13, 448
- Variance, 13, 450
 - Description of alleged malicious proceedings, 13, 430, 431, 432
 - Termination of the alleged malicious proceeding, 13, 450
- Venue, 13, 420, 428
- Verdict, 13, 476
 - Defects cured by verdict or judgment, 13, 457
- Want of probable cause, see infra*, Declaration and complaint; Probable cause.

MALPRACTICE, 16, 527

- See ATTORNEYS; DISBARMENT; DRUGGISTS; PHYSICIANS AND SURGEONS.
- Attorneys, 3, 107
- Cause of action, 16, 528
- Civil liability, 16, 527
- Contributory negligence, 16, 531, 533
 - Negating contributory negligence, 16, 530
- Criminal liability, 16, 527
 - Declaration and complaint, see infra*, Pleadings.
- Defenses, 16, 531
 - Contributory negligence, 16, 531
 - Judgment previously recovered by physician, 16, 532
 - Other concurring causes, 16, 531
- Defense to action for services, 16, 534
- Evidence:
 - Instructions as to sufficiency, 16, 533
- Form of action, 16, 528
- Ignorance, 16, 530
- Indictments, 16, 531
 - Manslaughter, 16, 531
- In general, 16, 527
- Insane persons:
 - Action for wrongfully certifying that patient is insane, 16, 535
- Instructions, 16, 532
 - Contributory negligence, 16, 533
 - Miscellaneous matters, 16, 533
 - Ordinary skill, 16, 532
 - Ordinary skill question for jury, 16, 532
 - Sufficiency of evidence, 16, 533
- Malpractice as a defense to action for services, 16, 534
- Misconduct, allegations of, 16, 529
- Negligence (*see infra*, Pleadings):
 - Contributory negligence, 16, 531
- Ordinary skill, 16, 532
- Pleadings, 16, 528
 - Allegations of misconduct, 16, 529
 - Defenses, see infra*, Defenses.
 - Duty to use proper treatment, 16, 529
 - General form of declaration and complaint, 16, 528
 - Ignorance and want of skill, 16, 530
 - Indictments for criminal malpractice, 16, 531
 - Negating contributory negligence, 16, 530
 - Promise to cure, 16, 529
 - Proper treatment, duty to use, 16, 529
- Questions of law and fact:
 - Ordinary skill, 16, 532
- Skill, 16, 530
 - Ordinary skill, 16, 532

MALPRACTICE, *cont'd.*

Survival of actions, 21, 347
Verdict, 16, 534
Want of skill, 16, 530

MANAGING AGENT:

Service of process, see **SERVICE OF PROCESS.**

MANDAMUS, 13, 479

Abatement of the action, 13, 755
Death of relator, 13, 755
Death of respondent, 13, 756
In general, 13, 755
Successors in office, 13, 756, 757
Termination of relator's office, 13, 756
Termination of respondent's office, 13, 756

Abstract rights, 13, 494

"According to law," 13, 676, 784

Actions, 13, 490

Actions for false return, see *infra*, **Returns.**

Adequate remedy, 13, 498

Admissions (see *infra*, **Return or answer**):

Reply, 13, 747

Effect of denial by the relator, 13, 748

Effect of failure to reply, 13, 747

Reply admits legal sufficiency of answer, 13, 748

Where a case is submitted on petition and answer, 13, 748

Affidavits, 13, 685

Aider of alternative writ by reference to affidavit, 13, 771

Return or answer, 13, 744

Alternative writ (see *infra*, **Notice, rule to show cause, and alternative writ; Peremptory writ**):

Amendments, 13, 753

Appeal from order granting or refusing, 13, 827

Conformity to peremptory writ, 13, 786

Amendments, 13, 545, 751

Alternative writ, 13, 753

Amendment after return, 13, 754

Conformity to peremptory writ, 13, 786

Discretion of court, 13, 753

Effect of bringing action against wrong person, 13, 661

In general, 13, 751

Particulars, 13, 752

Peremptory writ, 13, 790

Petition, 13, 752

Pleadings, 13, 546

Records, 13, 545

Amendment useless, 13, 545

MANDAMUS, *cont'd.*

Amendments, *cont'd.*

Records, *cont'd.*

Compelling court to make amendment, 13, 545

Delay by relator, 13, 545

Discretion of court, 13, 545

Return, 13, 754

Rule to show cause, 13, 754

What amendments permitted, 13, 754

Amount in controversy, 13, 826

Another legal remedy, 13, 498

Another remedy, 13, 498

Allegations of no other remedy, 13, 683

Mandamus to courts to try cause, 13, 539

Another suit pending, 1, 751; 13, 728

Interfering by mandamus with other proceedings, 13, 502

Answer, see *infra*, **Return or answer.**

Appeals, 2, 47, 122; 13, 570, 823

Affirmance in part, 13, 831

Alternative mandamus, 13, 827

Amount in controversy, 13, 826

Appealable judgments and orders, 13, 823, 826

Bills of exceptions, 13, 576, 829

Contempt proceedings, 13, 831

Costs, 13, 828

Dismissal, 13, 832

Final orders, 13, 826

Harmless errors, 13, 830

In matters relating to appeal, 13, 570

Judgment, 13, 831

Mandamus instead of appeal or error, 13, 530

In general, 13, 530

When appeal or error inadequate, 13, 533

Motion for new trial, 13, 829

Objections not raised below, 13, 829

Order granting or refusing alternative mandamus, 13, 827

Order refusing peremptory mandamus, 13, 827

Peremptory mandamus, 13, 827

Peremptory writ, 13, 782

Peremptory writ awarded, 13, 831

Presumptions on appeal, 13, 830

Procedure, 13, 829

Review, 13, 829

Stay of proceedings, 13, 586

Strangers, 13, 828

Successors in office, 13, 828

Supersedeas, 13, 586

Supersedeas and stay, 13, 833

To compel appeal, 2, 21

To dismiss appeal, 13, 574

MANDAMUS, *cont'd.*Appeals, *cont'd.*

- To entertain appeal, 13, 574
- To grant appeal, 13, 570
 - Appeal a matter of discretion, 13, 572
 - Appeal and mandamus confused, 13, 571
 - Appeal unavailing, 13, 572
 - Defects in application for appeal, 13, 572
 - In general, 13, 570
 - Irreparable injury, 13, 573
 - Justice's appeal, 13, 571
 - When no right to appeal, 13, 571
 - When right to appeal not perfected, 13, 573
- To perfect appeal, 13, 573
 - Effect of laches, 13, 574
 - Performance of necessary acts compelled, 13, 573
- To reinstate appeal, 13, 575
- Trial *de novo*, 13, 829
- United States supreme court, 13, 824
 - When appeal lies, 13, 823
 - Who may appeal, 13, 828
 - Writ of error, 13, 826
- Appraisalment of damages, 13, 605
- Appointment of appraisers, 13, 605
 - To compel assessment, 13, 606
- Arbitration and award, 13, 551
- Arguments of counsel, 13, 804
- Arrest of judgment, 2, 822
- Associations*, see *infra*, Societies and clubs.
- Attachment, 13, 597
 - Delivery of attached property, 13, 599
 - To appear and answer, 13, 598
 - To grant new trial, 13, 597
 - To pay over proceeds, 13, 598
 - To quash proceedings, 13, 597
 - To reinstate proceedings, 13, 598
 - To release attached property, 13, 598
 - To set aside continuance, 13, 598
- Attorney-general, 13, 626
- Attorneys, 13, 615
 - Appointment of attorney, 13, 615
 - Examination for admission, 13, 615
 - Proceedings against and concerning attorneys, 13, 615
 - To compel institution of action, 13, 615
 - To compel substitution of attorney, 13, 616
 - To enforce right to attorney, 13, 616

MANDAMUS, *cont'd.*

Bail:

- Certifying recognizance, 13, 597
- Discretion of court to admit to bail, 13, 597
- Setting aside proceedings on bail bond, 13, 597
- To admit to bail, 13, 596
- Bill in chancery, 13, 499
- Injunction, 13, 500
- Legal and equitable remedies respectively, 13, 500
- No redress for past privations, 13, 499
- Bill in equity:
 - Mandamus compared with, 13, 499
- Bills of exceptions, 3, 489; 13, 576
 - Alternative writ, 3, 493
 - Amendment of bill, 13, 585
 - Another remedy, 13, 578
 - Appeal, 13, 829
 - Arbitrary refusal to sign, 13, 580
 - Bill must be true, 13, 580
 - Cases not subject to review, 13, 578
 - Correction of bill, 13, 585
 - Decision of judge conclusive, 13, 582
 - Delay by other persons, 13, 584
 - Delay waived, 13, 584
 - Extension of time, 13, 584
 - Form of the writ, 3, 490
 - Incorrect bill, 3, 491
 - Incorrect or informal bill, 13, 580
 - Insertion of testimony, 13, 577
 - Laches, 13, 583
 - Lost bill of exception, 13, 586
 - Refusal of judge, 3, 489
 - Requisites of petition, 3, 492
 - Return or answer, 13, 736
 - Right defeated by laches, 13, 583
 - Right to appeal, 13, 578
 - Scope of the writ, 3, 490
 - Statement must be fair, 13, 582
 - To restore altered bill, 13, 585
 - To settle and sign, 13, 576
 - To sign certificate, 13, 579
 - To sign particular bill, 13, 579
 - To sign second bill, 13, 585
 - Trial of facts involved, 13, 586
 - Waiver of right, 13, 582
 - When judge will be compelled to act, 3, 491
 - When return insufficient, 13, 579
 - When there is no error, 15, 578
- Bonds, 13, 601
- Carriers:
 - Illegal charges, 3, 869
 - Refusal to carry, 3, 815
- Certiorari, 13, 500, 834
 - Coercion of officer to make return, 4, 231

MANDAMUS, *cont'd.***Certiorari, *cont'd.***

Joinder, 1, 174

Mandamus compared with certiorari, 13, 500

Mandamus in lieu and in aid of certiorari, 13, 599

Effect of another remedy, 13, 600

In aid of appeal, 13, 600

No right in relator, 13, 600

Proceedings useless or trivial, 13, 600

To certify or send up records, 13, 599

To compel obedience to certiorari, 13, 601

To quash writ of certiorari, 13, 601

Chambers and vacation, 4, 358

Alternative writ, 4, 359

Award of writ, 4, 358

Peremptory writ, 4, 359

Change of venue, 4, 386, 492; 13, 548

Clerk's ministerial duties, 13, 549

Mandamus to compel court to proceed notwithstanding improper change of venue, 13, 540

To compel granting of change, 13, 548

To hear motion for change, 13, 548

To proceed to trial after change of affidavit, 13, 549

To set aside change, 13, 549

Citizenship:

Relator, 13, 679

Civil or criminal action:

In general, 13, 490

Claims:

Contents of relator's pleading, 13, 689

Common-law or equitable remedy, 13, 491

Compared with other remedies, 13, 499

Conclusions of law, 13, 676

Concurrent jurisdiction, *see infra*, Jurisdiction.

Confession and avoidance, 13, 725

Reply, 13, 748

Conflict of jurisdiction between federal and state courts, *see infra*, Jurisdiction.

Constitutional law:

Determination of constitutional questions, 13, 496

Unconstitutionality of statute, 13, 728

Contempt, 4, 819; 13, 606, 807

Against whom obedience enforced, 13, 812

Attachment, 13, 810

MANDAMUS, *cont'd.***Contempt, *cont'd.***

Attorney's fees, 13, 814

Continued disobedience, 13, 808

Costs, 13, 819

Court without jurisdiction, 13, 607

Delay in performance, 13, 808

Excusing compliance, 13, 808

Fine, 13, 814

Guilty persons only punished, 13, 812

Imprisonment, 13, 814

Members of board, 13, 913

Method of procedure, 13, 810

Nature of punishment, 13, 814

Officer of corporation, 13, 813

Persons causing disobedience, 13, 812

Persons who owe obedience, 13, 812

Punishment inflicted on individuals, 13, 813

Refusal to obey, 13, 807

Resignation to escape obedience, 13, 808

Rule to show cause, 13, 811

Service, 13, 809

Successor, 13, 813

To hear contempt proceedings, 13, 607

To punish for contempt, 13, 607

To review contempt proceedings, 13, 606

What is a contempt, 13, 807

When respondent has no power to perform, 13, 809

Writ issued in excess of jurisdiction, 13, 809

Continuances, 13, 550

Justices of the peace, 4, 897

To grant continuances, 13, 550

To set aside continuances, 13, 550

Corporations, 13, 647

Corporation or officer, 13, 647

Joinder of parties in proceedings affecting private corporations, 13, 658

Relator's pleading in proceedings against private corporations, 13, 697

Service of process, 13, 763, 765

What officer, 13, 648

Costs, 13, 568, 816

Action for false return, 13, 818

Amount, 13, 821

Appeal, 13, 828

Contempt proceedings, 13, 819

Costs in discretion of court, 13, 817

Judgment for costs alone, 13, 818

Judicial officers, 13, 819

Mandamus for issuance of execution, 5, 257

MANDAMUS, *cont'd.***Costs, *cont'd.***

- Matters affecting public rights, 13, 821
- Ministerial officers, 13, 820
- Punitive costs, 13, 819
- Real party in interest, 13, 821
- Recovery of damages necessary, 13, 817
- Refusal of peremptory writ, 13, 817
- Retaxation, 5, 247
- Right to costs follows judgment, 13, 816
- Security for costs, 13, 822
- Strangers, 13, 820
- Sundry items of costs, 13, 822
- Taxation, 13, 568, 821
- To enter judgment for costs, 13, 569
- To require security, 13, 568
- To vacate allowance of costs, 13, 569
- Who liable for costs, 13, 819
- Counties:
 - Enforcing judgment, 5, 299
- County seat:
 - Return or answer, 13, 739
- Courts (see *infra*, Jurisdiction; Mandamus to courts and judicial officers):
 - To hold court, see *infra*, Mandamus to courts and judicial officers.
- Criminal procedure, 13, 502, 593
 - Certifying recognizance, 13, 597
 - Control of discretion, 13, 593
 - Depositions, 13, 594
 - Discretion of court to admit to bail, 13, 597
 - How effected by criminal prosecution, 13, 502
 - Quashing an indictment, 13, 595
 - Setting aside proceedings on bail bond, 13, 597
 - Testimony, 13, 594
 - To admit to bail, 13, 596
 - To discharge prisoner, 13, 595
 - To issue warrant, 13, 593
 - To make arrest, 13, 594
 - To sentence prisoner, 13, 596
 - To take jurisdiction and hear case, 13, 595
 - Whether mandamus is a civil or criminal action, 13, 490
- Damages, 13, 814
 - Amount of damages, 13, 816
 - Appraisement of damages, 13, 605
 - Appointment of appraisers, 13, 605
 - To compel assessment, 13, 606

MANDAMUS, *cont'd.***Damages, *cont'd.***

- Assessing damages, 13, 816
- Damages follow judgment, 13, 814
- Damages in original action as to false return, 13, 815
- False return, 13, 815
- Interest, 13, 816
- Right to damages, 13, 814, 815
- Death, 5, 792
- Defaults (see *infra*, Demand and default):
 - Defendant's failure to plead, 6, 78
 - Effect of default, 6, 113
- Defenses*, see *infra*, Return or answer.
- Definiteness and certainty in pleadings:
 - Peremptory writ of mandamus, 13, 783
 - Relator's pleading, 13, 674
 - Certainty as in ordinary proceedings, 13, 674
 - In general, 13, 674
 - In what respects required, 13, 675
 - Sufficient certainty, 13, 674
- Return or answer, 13, 716
 - Argumentativeness, 13, 720
 - As compared with other pleadings, 13, 717
 - Common law, 13, 718
 - Denial in terms unnecessary, 13, 719
 - Distinct denial necessary, 13, 717
 - Evasiveness, 13, 720
 - In general, 13, 716
 - Responsiveness, 13, 720
 - Surplusage, 13, 719
 - What statements must be certain, 13, 721
- Definition, 13, 487
- Demand and default, 13, 616
 - Absolute duty prescribed by statute, 13, 619
 - Default necessary, 13, 620
 - Duties owed to individuals, 13, 619
 - Duties owed to the public, 13, 618
 - Effect of want of demand, 13, 625
 - Instances, 13, 521
 - Knowledge necessary, 13, 624
 - On whom demand must be made, 13, 622
 - Presumptions, 13, 624
 - Prior refusal or default, 13, 618
 - Refusal of predecessor, 13, 618
 - Waiver of want of judgment, 13, 619

MANDAMUS, *cont'd.*Demand and default, *cont'd.*

What constitutes a default, 13, 623

Anticipation of supposed omission of duty, 13, 623

Examples, 13, 623, 624

In general, 13, 623

Knowledge necessary, 13, 624

Presumptions, 13, 624

What is a sufficient demand, 13, 621

Compliance with statute, 13, 622

Examples, 13, 621, 633

Express request, 13, 621

General requisites, 13, 621

In general, 13, 621

On whom demand must be made, 13, 622

When necessary, 13, 616

Why there must be a default, 13, 521

Demand and refusal:

Relator's pleading, 13, 681

In general, 13, 681

Precision necessary, 13, 682

Reasons for refusal, 13, 682

Waiver of omission, 13, 682

Demurrer and motion to quash, 13, 697

Another adequate remedy, 13, 703

Answer treated as demurrer, 13, 700

Application of ordinary rules to demurrer, 13, 698

At what time, 13, 700

Conclusions of law not admitted, 13, 700

Demurrer admits the truth, 13, 699

Demurrer and plea improper, 13, 707

Demurrer or motion to quash, 13, 699

Demurrer relates back to first pleading, 13, 698

Demurrer to petition, 13, 702

Demurrer to petition not permitted, 13, 704

Demurrer to plea or reply, 13, 709

Demurrer to return, 13, 705

Distinction between demurrer and motion to quash, 13, 697

Facts not well pleaded, 13, 700

False and frivolous returns, 13, 708

Form of demurrer, 13, 700

MANDAMUS, *cont'd.*Demurrer and motion to quash, *con.*

General or special demurrer, 13, 701

Inconsistent defenses, 13, 709

Insufficient facts of improper form, 13, 702

Judgment on demurrer, 13, 709

Judgment on motion to quash, 13, 710

Judicial knowledge of facts not alleged, 13, 703

Motion for judgment, 13, 708

Motion to quash alternative writ, 13, 704

Motion to quash broader in effect, 13, 698

Motion to quash return, 13, 708

Objections which should not be taken by demurrer, 13, 707

Peremptory writ, 13, 779

Relator's demurrer, 13, 707

Right to reply lost by demurrer, 13, 747

Special demurrer, 13, 701

Sufficiency of relator's pleading, 13, 703

Waiver of right to demurrer or quashal, 13, 701

Withdrawal of demurrer, 13, 709

Depositions, 13, 553

Criminal procedure, 13, 594

Disbarment and suspension of attorneys, 6, 719

Discretion, see *infra*, Mandamus to courts and judicial officers.

Discretion of court, 13, 498

Not always a matter of right, 13, 498

When relator has been at fault, 13, 499

Dismissal, discontinuance, and nonsuit, 13, 794

Appeal, 13, 832

Before peremptory writ issues, 13, 794

By relator, 13, 795

Effect of bringing action against wrong person, 13, 661

Examples, 13, 794, 795

To compel court to dismiss, 13, 555

District attorneys, 13, 627

Docket entries, 13, 543

Compelling entries in docket, 13, 543

Inaccurate entry, 13, 544

Justices of the peace, 13, 544

Precedence on the calendar, 13, 544

Rules of court, 13, 545

Useless corrections, 13, 544

MANDAMUS, *cont'd.***Elections:**

Relator's pleading in proceedings relating to elections,

13, 695

Examples, 13, 695, 696

Relator's qualifications, 13, 695

Right to office, 13, 696

Return and answer, 13, 738

What is a sufficient private interest, 13, 639

Eminent domain, 7, 665

Appointment of commissioners, 7, 558

Landowner's rights, 7, 715

Enforcing performance of public rights, 13, 493

Equitable defenses, 13, 727

Equity, 13, 499

Common-law or equitable remedy, 13, 491

Equity pleading inapplicable, 13, 668

Error, writ of (see *infra*, Appeals), 13, 826

Mandamus as substitute, 7, 851

Mandamus instead of appeal or error, 13, 530

In general, 13, 530

When appeal or error inadequate, 13, 533

Evidence, 13, 552

Exceptions and objections, 8, 302; 13, 829

Executions, 13, 588

In matters pertaining to executions, 13, 588

Issuance, 8, 383

Levy, 8, 491

To execute sheriff's deed, 13, 591

To issue execution, 13, 588

• *Alias* execution, 13, 589

Appeal pending, 13, 589

Conditions precedent, 13, 590

Denial of jurisdiction to issue execution, 13, 589

Judicial officers, 13, 589

No right to execution, 13, 589

To clerk of court, 13, 588

To issue venditioni exponas, 13, 591

To levy execution, 13, 591

To release levy, 13, 591

To vacate and set aside execution, 13, 590

To vacate rule setting aside execution, 13, 590

Extraordinary remedy, 13, 489

False return, see *infra*, Returns.

Forcible entry and detainer, 9, 33, 82

Index Pl. & Pr. — 42

MANDAMUS, *cont'd.***Garnishment, 13, 597**

Delivery of attached property, 13, 599

To appear and answer, 13, 598

To grant new trial, 13, 597

To pay over proceeds, 13, 598

To quash proceedings, 13, 597

To reinstate proceedings, 13, 598

To release attached property, 13, 598

To set aside continuance, 13, 598

Gas and gas companies, 9, 878

General principles governing issue of the writ, 13, 493

Habeas corpus, 9, 1024; 13, 608

To compel hearing, 13, 608

To enforce writ, 13, 608

To grant writ, 13, 608

To vacate discharge, 13, 608

Highways:

Private citizens, 13, 634

Relator's pleading, 13, 688

Holding court, see *infra*, Mandamus to courts and judicial officers.

How proceedings entitled:

Relator, 13, 670

Naming private person as plaintiff, 13, 671

Practice to name relator, 13, 670

Who should be named as relator, 13, 671

Whether in name of state, 13, 668

In general, 13, 668

Name of state may be added, 13, 670

Public or private interest, 13, 669

Use of private person's name, 13, 670

Whether name of state indispensable, 13, 669

Indictments, see *infra*, Criminal procedure.

Information and belief:

Return or answer, 13, 723

Injunctions, 13, 500, 609

Dissolution of injunction, 10, 1032

Enforcement of peremptory writ, 13, 806

Interfering by mandamus, 13, 503

Mandamus as affected by other proceedings, 13, 502

Mandamus compared with, 13, 500

Pendency of injunction, 13, 729

Preliminary injunctions, 10, 994

To clerk, 13, 610

To compel granting, 13, 609

To dissolve injunction, 13, 610

MANDAMUS, *cont'd.*

- Injunctions, *cont'd.*
 - To enforce injunction, 13, 611
 - To reinstate injunction, 13, 611
- Insolvency, 13, 611
 - Insolvency proceedings, 13, 611, 612
 - To compel discharge, 11, 32
 - To discharge insolvent, 13, 611
- Inspection of books:
 - Return or answer, 13, 737
- Insurance:
 - Mutual benefit insurance, 11, 382
- Interfering by mandamus with other proceedings, 13, 502
 - Another action pending, 13, 502
 - In general, 13, 502
 - Injunction, 13, 503
- Interrogatories, 13, 553
- Intervention, 13, 551, 664
 - Collusion between relator and respondent, 13, 665
 - Defendants, 13, 666
 - Persons whose rights are affected, 13, 664
 - Plaintiffs, 13, 665
 - Restrictions on intervention, 13, 666
 - To compel permission to intervene, 13, 551
 - Vacation of erroneous order, 13, 552
- Intoxicating liquors:
 - Return or answer, 13, 737
- Irrigation, 11, 596
- Joinder of actions, 13, 504
 - Acts relating to the same matter, 13, 505
 - Mandamus and other proceedings, 13, 504
 - Mandamus to enforce several rights, 13, 505
- Joinder of counts and causes:
 - Mandamus and certiorari, 1, 172
- Joinder of parties:
 - Joinder of relators, 13, 645
 - Respondents, 13, 654
 - Collection of taxes, 13, 657
 - Enforcing claims against municipal corporations, 13, 658
 - In general, 13, 654
 - Members of boards, 13, 659
 - Multiplicity of actions, 13, 656
 - Municipal corporations and officers, 13, 657
 - Officers of private corporations, 13, 658
 - Particular cases, 13, 657
 - Persons collaterally interested, 13, 655
 - Private corporations, 13, 658

MANDAMUS, *cont'd.*

- Joinder of parties, *cont'd.*
 - Respondents, *cont'd.*
 - Private individual interest in official acts, 13, 660
 - Title to office involved, 13, 659
 - Title to real property involved, 13, 660
 - Who cannot be joined, 13, 655
 - Who must be joined, 13, 655
 - Who need be joined, 13, 654
- Judges:
 - Relator's pleading in proceedings against judicial officers, 13, 693
- Judgments (see *infra*, Peremptory writ):
 - Appeal, 13, 831
 - Enforcing judgment against a municipality, 11, 1083
 - Entering and signing judgments and orders, 13, 562
 - Before refusal to enter judgment, 13, 563
 - In general, 13, 562
 - On verdict, 13, 564
 - Order must be authorized, 13, 563
 - Sufficiency of verdict, 13, 564
 - To enter particular judgment, 13, 563
 - Peremptory writ, 13, 780
 - Rendition of judgments, 18, 436
 - Vacating and altering judgments and orders, 13, 565
 - Refusal to vacate proper, 13, 566
 - Revision of discretion, 13, 566
 - To modify judgment after entry, 13, 568
 - To reverse order vacating judgment or decree, 13, 567
 - To vacate or set aside judgments or decrees, 13, 565
 - Where the respondent has no power, 13, 567
- Judicial acts, see *infra*, Ministerial acts.
- Judicial sales, 13, 591
 - In matters pertaining to judicial sales, 13, 591
 - Restitution of money to purchaser, 13, 592
 - Reversal of order of sale, 13, 591
 - To make a judicial sale, 13, 591
- Jurisdiction (see *infra*, Venue), 13, 505
 - Concurrent jurisdiction, 13, 514

MANDAMUS, *conf'd.*Jurisdiction, *conf'd.*

Conflict of jurisdiction between federal and state courts, 13, 519

Injunction out of state court, 13, 522

Interference by state courts with federal courts, 13, 521

Writs out of federal courts, 13, 519

Writs out of federal courts commanding unauthorized acts, 13, 521

Writs out of federal courts to state judicial officers, 13, 521

Writs out of federal courts to state ministerial officers, 13, 519

Writs out of state courts to enforce federal judgments, 13, 522

Writs out of state courts to federal officers, 13, 522

Consent, 13, 506

Courts of common law jurisdiction, 13, 505

Courts of the District of Columbia, 13, 510

Exclusive or concurrent jurisdiction, 13, 514

Highest state courts, 13, 510

Inferior state courts, 13, 516

In general, 13, 505

Jurisdiction limited in some states, 13, 507

King's bench, 13, 506

Mandamus to courts to entertain and try cause, 13, 537

Restrictions and limitations, 13, 513

United States, 13, 506

United States circuit courts, 13, 508

United States circuit courts of appeals, 13, 508

United States courts, 13, 507

United States district courts, 13, 510

United States supreme court, 13, 507

Varying provisions of state constitutions and statutes, 13, 516

Jury, 13, 554

To compel trial by judge, 13, 555

To compel trial by jury, 13, 554

To secure discharge from jury service, 13, 555

Justices of the peace:

Appeal, 13, 571

Docket entries, 13, 544

MANDAMUS, *conf'd.*

Legal conclusions, 13, 676

Demurrer does not admit, 13, 700

Return or answer, 13, 721

Mandamus to courts and judicial officers, 13, 526

Abuse of discretion, 13, 526

Amendments, 13, 545

Amendments of pleadings, 13, 546

Amendments of records, 13, 545

Appeal of error inadequate, 13, 533

Appeals, see infra, Appeals.

Appraisement of damages, 13, 605

Attachment, 13, 597

Attorneys, proceedings against and concerning, 13, 615

Awards, 13, 551

Bonds, 13, 601

Certiorari, 13, 599

Change of venue, 13, 548

Compelling court to dismiss cause, 13, 555

Compelling court to reinstate cause, 13, 556

Compelling performance of judicial acts, 13, 529

Compelling performance of ministerial acts, 13, 528, 529

Compelling performance of specific acts, 13, 529

Contempt proceedings, 13, 606

Continuances, 13, 550

Costs, see infra, Costs.

Criminal and police cases, 13, 593

Depositions, 13, 553

Discretion, 13, 526

Dismissal of causes, 13, 555

Docket entries, 13, 543

Entering and signing judgments and orders, 13, 562

Entry of verdict, 13, 559

Executions, see infra, Executions.

Habeas corpus, 13, 608

In general, 13, 526

Injunctions, 13, 609

Insolvency proceedings, 13, 611

Instead of appeal or error, 13, 530

Interrogatories, 13, 553

Intervention, 13, 551

Judicial sales, 13, 591

Jury, 13, 554

Jury service, 13, 554

Matters incident to the conduct of causes, 13, 542

Matters of discretion, 13, 526

Matters of practice generally, 13, 542

MANDAMUS, *cont'd.*

- Mandamus to courts and judicial officers, *cont'd.*
 - Ministerial acts, 13, 528
 - Ministerial and judicial acts distinguished, 13, 530
 - Miscellaneous acts and proceedings, 13, 597
 - New trial, 13, 559
 - Notice, 13, 543
 - Pleas, 13, 552
 - Probate proceedings, 13, 512
 - Prohibition, 13, 614
 - Proof, 13, 552
 - Receivers, 13, 614
 - Reception of verdict, 13, 559
 - Reference, 13, 553
 - Rehearing, 13, 559
 - Reinstatement of causes, 13, 555
 - Relator's pleading in proceedings against judicial officers, 13, 693
 - Bills of exception, 13, 694
 - Exhibition of bill tendered, 13, 695
 - Refusal to entertain jurisdiction, 13, 693
 - Restoration of attorney, 13, 694
 - Removal of causes, 13, 546
 - Replevin, 13, 614
 - Reply, 13, 747
 - Rules of the lower court, 13, 543
 - Service of process, 13, 543
 - Stipulations, 13, 551
 - To compel reversal of decision, 13, 533
 - To enforce mandates and orders, 13, 592
 - To entertain and try cause, 13, 535
 - After exercise of discretion and disposition of cause, 13, 539
 - Another remedy, 13, 539
 - Criminal cases, 13, 595
 - Default improperly granted, 13, 541
 - Directions to the inferior tribunal, 13, 542
 - Improper change of venue, 13, 540
 - Improper conditions imposed, 13, 540
 - Improper delay, 13, 539
 - In general, 13, 535
 - In what proceeding, 13, 521
 - Mandamus compared with procedendo, 13, 536
 - Preliminary question of practice, 13, 540
 - Refusal to entertain jurisdiction, 13, 537

MANDAMUS, *cont'd.*

- Mandamus to courts and judicial officers, *cont'd.*
 - To entertain and try cause, *con.*
 - Under what circumstances and in what proceedings, 13, 537
 - When court has no jurisdiction, 13, 538
 - When court's refusal is proper, 13, 538
 - To hold and preside over court, 13, 534
 - At place required by law, 13, 534
 - At time required by law, 13, 534
 - Competency of judge, 13, 534
 - Trial by jury, 13, 534
 - Vacating and altering judgments and orders, 13, 565
 - Verdict, 13, 559
 - Witnesses, 13, 552
- Mandate, 13, 488
- Ministerial action:
 - Private persons as relators, 13, 641
- Ministerial acts, 13, 497
 - Mandamus to courts and judicial officers, 13, 528
 - In general, 13, 528
 - Judicial acts, 13, 529
 - Ministerial and judicial acts distinguished, 13, 530
- Ministerial officers:
 - Relator's pleading in proceedings against, 13, 695
- Motions:
 - For further return, 13, 751
 - Indefiniteness, 13, 750
 - Motion to strike out and demurrer, 13, 750
 - Relator's initial pleading, 13, 673
 - Striking out irrelevant allegations, 13, 750
 - To dismiss, 13, 751
 - To make more definite and certain, 13, 750
 - To strike out, 13, 750
- Motion to quash*, see *infra*, Demurrer and motion to quash.
- Municipal corporations (see MUNICIPAL CORPORATIONS):
 - To compel levy of tax by municipal corporations*, see TAXATION.
- Municipal securities:
 - Enforcement of judgment, 14, 261, 267
 - Federal jurisdiction, 14, 268
- Name*, see *infra*, How proceedings entitled.
- Nature, 13, 489

MANDAMUS, *cont'd.*

- Nature of the acts commanded, 13, 497
 - As respects respondent's duty, 13, 497
 - Ministerial acts, 13, 497
 - What control will be imposed, 13, 497
- New trial, 13, 559
 - To act on motion for new trial, 13, 560
 - To compel granting of new trial, 13, 559
 - To set aside order for new trial, 13, 560
 - To settle statements, 13, 561
- Notice, 13, 543
- Notice, rule to show cause, and alternative writ, 13, 757
 - Acceptance and waiver, 13, 766
 - Contempt, 13, 811
 - Necessity of notice, 13, 757
 - Continuance, 13, 759
 - Discretion of court, 13, 759
 - In general, 13, 757
 - Notice of motion for alternative writ, 13, 760
 - Where defendant has actual knowledge, 13, 759
 - Where no excuse is possible, 13, 759
- Rule to show cause and alternative writ, 13, 767
 - Aider by reference to affidavit, 13, 771
 - Aider by reference to petition, 13, 770
 - Alternative writ must correspond with petition, 13, 770
 - Alternative writ on rule absolute, 13, 769
 - Command of alternative writ, 13, 771
 - Contents, 13, 769
 - Denial of alternative writ, 13, 769
 - Form, 13, 769
 - Petition, 13, 768
 - When they are issued, 13, 768
 - Which begins proceedings, 13, 767
- Service, 13, 809
- Several respondents, 13, 762
- Sufficiency of notice and service, 13, 765
 - Length of notice, 13, 765
 - Notice as in motions, 13, 765
 - Order of court directing service, 13, 766
 - Personal service necessary, 13, 765

MANDAMUS, *cont'd.*

- Notice, rule to show cause, and alternative writ, *cont'd.*
- Sufficiency of notice and service, *cont'd.*
 - Reasonable notice, 13, 765
 - Service by publication, 13, 766
 - Who may serve the writ, 13, 766
- Waiver, 13, 766
- What is served, 13, 760
 - Copy, 13, 761
 - In general, 13, 760
- Who should be served, 13, 763
 - All members of board, 13, 764
 - Clerk, 13, 764
 - Corporations, 13, 763
 - Foreign corporations, 13, 765
 - In general, 13, 763
 - Interested parties, 13, 763
 - Nominal parties, 13, 763
 - Officers of corporations, 13, 764
- Office, see infra*, Public officers.
- Officers of private corporations:
 - Joinder of parties, 13, 658, 659
 - Respondents, 13, 647
 - Bill of exceptions, 13, 649
 - Board of members, 13, 650
 - Corporation or officer, 13, 647
 - Naming individuals, 13, 650, 652, 653
 - Proceedings relating to debts and obligations of municipal corporations, 13, 648
 - Proceedings relating to the assessment and collection of taxes, 13, 649
 - Successor of judge, 13, 650
 - What disqualifies respondents, 13, 654
 - What officer, 13, 648
 - Service of process, 13, 763, 765
- Official bonds, 13, 601
 - Acts pertaining to bonds, 13, 601
 - Approval of bonds, 13, 601
 - Copy of bond, 13, 601
 - Discretion in approval of bonds, 13, 603
 - In general, 13, 601
 - To fix amount of bond, 13, 604
 - To quash bond, 13, 605
 - To substitute bond, 13, 605
- Open and close, 13, 804
- Orders:
 - Entering and signing judgments and orders, 13, 562
 - Before refusal to enter judgment, 13, 563
 - In general, 13, 562
 - On verdict, 13, 564

MANDAMUS, *cont'd.***Orders, *cont'd.***

Entering and signing judgments and orders, *cont'd.*

Order must be authorized, 13, 563

Sufficiency of verdict, 13, 564

To enter particular judgment, 13, 563

To enforce mandates and orders, 13, 592

Discretion of inferior court, 13, 593

To inferior court, 13, 592

When writ is denied, 13, 593

Vacating and altering judgments and orders, 13, 565

Refusal to vacate proper, 13, 566

Revision of discretion, 13, 566

To modify judgment after entry, 13, 568

To reverse order vacating judgment or decree, 13, 567

To vacate or set aside judgments or decrees, 13, 565

Where respondent has no power, 13, 567

Ordinances, 15, 446

Origin, 13, 488

Other remedy:

Demurrer to petition, 13, 703

Parties, 13, 625

All persons interested, 13, 625

Bringing in new parties, 13, 664

In general, 13, 664

Intervention, 13, 664

In general, 13, 625

Intervention, 13, 664

New parties, 13, 664

Relator and respondent called plaintiff and defendant, 13, 626

Respondents, see *infra*, Respondents.

Statutory provisions admitting all parties, 13, 626

Strangers, rights of, 13, 625

Title to real property, 13, 625

Patents:

Commissioner, 16, 24

Payment:

Enforcement of payment of claims, 13, 689

Peremptory writ, 13, 771

Amendments, 13, 790

Appeal from order granting or refusing, 13, 827

Effect, 13, 791

Enforcing obedience, 13, 805

Contempt, see *infra*, Contempt.

MANDAMUS, *cont'd.***Peremptory writ, *cont'd.***

Enforcing obedience, *cont'd.*

Federal courts and state officers, 13, 806

Fieri facias, 13, 806

In general, 13, 805

Injunction, 13, 806

Injunctions out of another court, 13, 806

Power of court, 13, 805

Form and contents, 13, 782

According to law, 13, 784

Against all respondents, 13, 786

Against whom issues, 13, 788

Amendment of alternative writ, 13, 786

Certainty, 13, 783

Conformity to judgment and pleadings, 13, 785

Conformity to prayer, 13, 787

Filing alternative writ, 13, 785

In general, 13, 782

Judicial officers, 13, 789

Less relief than asked, 13, 787

Must be single, 13, 784

Specification of acts to be performed, 13, 789

Sufficiency or conformity to alternative writ, 13, 786

Writ must be complete in itself, 13, 784

Peremptory writ in the nature of execution, 13, 792

Quashal, 13, 790

Res adjudicata, 13, 791

Return, 13, 792

What authorizes issuance of peremptory writ, 13, 776

Answer insufficient, 13, 777

Appeal, 13, 782

Complete determination necessary, 13, 780

Consent of parties, 13, 782

Demurrer or motion to quash, 13, 779

Examples of insufficient answers, 13, 778

Failure to answer, 13, 776

Insufficient pleadings, 13, 781

Judgment, 13, 780

Judgment against relator, 13, 781

Judgment for false return, 13, 781

Judgment for relator, 13, 781

Necessity of judgment, 13, 780

MANDAMUS, *cont'd.*Peremptory writ, *cont'd.*

- What authorizes issuance of peremptory writ, *cont'd.*
- Peremptory writ cannot issue when answer is insufficient, 13, 778
- Return not compelled, 13, 777
- Service, 13, 777
- When issues are raised, 13, 779
- When issues before alternative, 13, 771
- Alternative writ on motion for peremptory, 13, 776
- Clear right and no possible excuse, 13, 773
- Discretion of court, 13, 774
- Doubtful writ, 13, 775
- Extraordinary circumstances, 13, 775
- Facts disputed, 13, 772
- General practice, 13, 771
- When peremptory writ only can be issued, 13, 776

Petition, 13, 672

- Aider by alternative writ by reference to petition, 13, 770
- Alternative writ to correspond with petition, 13, 770
- Amendments, 13, 752
- Rule to show cause, 13, 768

Pleadings, 13, 667

- Action for false return, 13, 749
- Amendments, *see infra*, Amendments.
- Contents of relator's pleading, *see infra*, Relators.
- Demurrer and motion to quash, *see infra*, Demurrer and motion to quash.
- Equity pleading, 13, 668
- How proceedings entitled, *see infra*, How proceedings entitled.
- In general, 13, 667
- Motions, *see infra*, Motions.
- Ordinary rules apply, 13, 667
- Relator's initial pleading, *see infra*, Relators.
- Reply, *see infra*, Replications and replies.
- Return or answer, *see infra*, Return or answer.
- Strict or liberal construction of pleadings, 13, 668
- Writing, 13, 668

Pleas, 13, 552

Possession, writ of, 16, 748

Prayer, 13, 684

- Acts to be performed, 13, 684
- Conformity to peremptory writ and prayer, 13, 787

MANDAMUS, *cont'd.*Prayer, *cont'd.*

- Prayer too broad, 13, 684
- Relief conformable to prayer, 13, 684
- Preliminary examination, 13, 595
- Mandamus to compel examination, 16, 823
- Prerogative writ, 13, 492
- Private persons, *see infra*, Relators.
- Probate and contest of wills, 13, 612
- Admitting will to probate, 13, 612
- Allowance to widow, 13, 613
- Appointment of guardian, 13, 614
- Assignment of dower, 13, 613
- Claims against decedent, 13, 613
- Extension of time for persons to claim official settlement, 13, 613
- Grant of administration, 13, 613
- Refusal of writ, 13, 612
- To determine sanity, 13, 614
- Vacating probate, 13, 612
- Procedendo, 13, 501
- Mandamus compared with procedendo, 13, 501, 536
- Mandamus to entertain and try cause, 13, 536
- Prohibition, 13, 501, 614
- Mandamus as affected by other proceedings, 13, 502
- Mandamus compared with prohibition, 13, 501
- Prosecuting attorneys:
 - Fees, 17, 24
- Publication, 13, 766
- Public officers (*see infra*, Mandamus to courts and judicial officers; Relators; Respondents):
 - Default, *see infra*, Demand and default.
 - Demand, *see infra*, Demand and default.
 - Effect of termination of office, 13, 661, 663
 - Joinder of municipal corporations and officers, 13, 657
 - Relators, 13, 626
 - Attorney-general, 13, 626
 - County officers, 13, 628
 - District and county attorneys, 13, 627
 - Officers and boards in general, 13, 627
 - State officers, 13, 628
 - Town officers, 13, 628
 - Relator's pleading in proceedings against ministerial officers, 13, 695
 - Resignation pending application, 13, 663

MANDAMUS, *cont'd.*Public officers, *cont'd.*

- Respondents, 13, 647
 - Bill of exceptions, 13, 649
 - Board of members, 13, 650
 - Corporation or officer, 13, 647
 - Naming individuals, 13, 650, 652, 653
- Proceedings relating to debts and obligations of municipal corporations, 13, 648
- Proceedings relating to the assessment and collection of taxes, 13, 649
- Successor of judge, 13, 650
- What disqualifies respondents, 13, 654
- What officer, 13, 648

Return or answer, 13, 739

- Admission and restoration, 13, 739
- Location of office, 13, 740
- Property of office, 13, 740

Successor of delinquent officer, 13, 663

Termination of office, 13, 661, 663

To recover books, papers, and other office property, 17, 158

Public rights, 13, 493

Quashal, see *infra*, Demurrer and motion to quash.*Quo warranto*, 13, 501

- Concurrent remedies, 13, 501
- Mandamus compared with *quo warranto*, 13, 501
- Proper remedy, 17, 410
 - Appropriate remedy for possession, 17, 411
 - In general, 17, 410
 - To compel proceedings to fill office, 17, 411

Real property:

- Relator's averments in proceedings affecting real property, 13, 687

Receivers, 13, 614

- Appointment or vacation of appointment, 13, 614
- Restoration to office, 13, 614
- To compel action by receiver, 13, 615
- Vacation of order appointing receiver, 17, 859

Recognizance, 13, 597

Records, see *infra*, Amendments; *Certiorari*; Docket entries.

References, 13, 553, 804

Rehearing, 13, 559; 18, 69

- To compel granting of rehearing, 13, 561
- To set aside rehearing, 13, 561

MANDAMUS, *cont'd.*

Reinstatement:

- To compel court to reinstate causes, 13, 556
- In general, 13, 556
- Instances, 13, 557
- Reinstatement unavailing, 13, 559
- When appeal lies, 13, 557
- When properly dismissed, 13, 557

Relators (see *infra*, Demurrer and motion to quash), 13, 626

Attorney-general, 13, 626

Bringing in new parties, 13, 664

Citizenship, 13, 679

Collusion between relator and respondent, 13, 665

Contents of relator's pleading, 13, 674

According to law, 13, 676

Action in behalf of another, 13, 680

Affidavit, 13, 685

Allegation of facts, 13, 676

Allegation that there is no other remedy, 13, 683

Anticipating objections, 13, 679

Certainty, 13, 674

Citizenship, 13, 679

Conclusions of law, 13, 676

Corporations, 13, 697

Demand and refusal, 13, 681

Elections, 13, 695

Enforcement of payment of claims, 13, 689

Certificates or vouchers, 13, 690

Claim previously established, 13, 690

Execution unsatisfied, 13, 691

Money in treasury, 13, 691

Particular fund, 13, 692

Power of respondents, 13, 690

Right to money demanded, 13, 689

Terms of statute or ordinance, 13, 689

Highways, 13, 688

Judicial officers, 13, 693

Jurisdiction of court, 13, 674

Ministerial officers, 13, 695

No other remedy, 13, 683

Prayer, 13, 684

Proceedings affecting real property, 13, 687

Real property, 13, 687

Reinstatement in voluntary associations, 13, 687

MANDAMUS, *cont'd.*Relators, *cont'd.*Contents of relator's pleading, *cont'd.*

Relator's right, 13, 677

Respondent's power and duty, 13, 680

Schools, 13, 692

Showing right against respondent, 13, 678

Special injury or damage, 13, 379

Special interest of relators, 13, 678

Sufficiency in particular proceedings, 13, 687

Unnecessary facts, 13, 680

Verification, 13, 685

County officers, 13, 628

Disqualification of relators, 13, 644

Examples, 13, 644, 645

Laches and other impediments, 13, 644

Person in contempt, 13, 645

District and county attorneys, 13, 627

How proceedings entitled, see infra.
How proceedings entitled.

Initial pleading, 13, 671

Alternative writ, 13, 671

Motion, 13, 673

Petition, 13, 672

Joinder of relators, 13, 645

Common and joint interest, 13, 645

When joinder necessary, 13, 645

Who cannot join, 13, 646

Officers and boards in general, 13, 627

Private persons, 13, 630

Private right affected, 13, 636

Person specially injured by public wrong, 13, 637

Private person may be relator, 13, 636

Private person must be relator, 13, 637

Real party in interest, 13, 637

Special interest necessary, 13, 638

Public right involved, 13, 630

City ordinances, 13, 635

Collection of assessments, 13, 634

Duty not due to state as such, 13, 632

Highways, 13, 634

Instances in which writ has been refused, 13, 631

Miscellaneous examples, 13, 633

MANDAMUS, *cont'd.*Relators, *cont'd.*Public right involved, *cont'd.*

Public schools, 13, 635

Relator must show special interest, 13, 630

Special interest not necessary, 13, 632

Taxation, 13, 634

To compel officer to perform duty, 13, 631

Where officer fails or refuses to act, 13, 631

Special interest, 13, 678

State officers, 13, 628

Successors in office, 13, 629

Town and city officers, 13, 629

Township officers, 13, 628

What is a sufficient private interest, 13, 638

In actions against quasi-public corporations, 13, 638

Judicial actions, 13, 640

Legislative actions, 13, 641

Ministerial action, 13, 641

Police regulations, 13, 640

Proceedings affecting private property, 13, 642

Proceedings relating to elections, 13, 639

Rights respecting incorporeal personal property, 13, 643

Rights respecting public schools, 13, 638

Relator's right, 13, 496

Must be a clear legal right, 13, 496

Must be an existing right, 13, 497

Removal of causes, 13, 546; 18, 171

From federal to state or federal court, 18, 387

From superior to inferior court, 18, 386

Remand of cause improperly removed, 13, 547

Vacating orders improperly remanding causes, 13, 548

Writ out of federal court, 13, 546

Writ out of state court, 13, 547

Rendition and entry of judgment, 13, 562

Before refusal to enter judgment, 13, 563

In general, 13, 562

Mandamus to compel rendition, 18, 436

On verdict, 13, 564

Order must be authorized, 13, 563

Sufficiency of verdict, 13, 564

To enter particular judgment, 13, 563

MANDAMUS, *cont'd.*

- Replevin, 13, 614
- Replications and replies, 13, 745
 - Action for false return, 13, 749
- Admissions, 13, 747
 - Effect of denial by relator, 13, 748
 - Effect of failure to reply, 13, 747
 - Reply admits legal sufficiency of answer, 13, 748
 - Where a case is submitted on petition and answer, 13, 748
- Form and contents of reply, 13, 748
 - Departure, 13, 749
 - Equitable defenses, 13, 749
 - Traverse or confession and avoidance, 13, 748
- For propriety of reply, 13, 745
- Judicial officers, 13, 747
- Right to reply lost by demurrer, 13, 747
- States in which no replies are permitted, 13, 746
- States in which replies are permitted, 13, 745
- Statute of Anne, 13, 745
- Res adjudicata*, 13, 504
 - General effect of proceeding, 13, 504
 - Second application, 13, 504
- Respondents, 13, 646
 - Against officer after expiration of term of office, 13, 661
 - Against successor of delinquent officer, 13, 663
 - Amendment when action is brought against wrong person, 13, 661
 - Bringing in new persons, 13, 664, 666
 - Clerk of court, 13, 647
 - Collusion between relator and respondents, 13, 665
 - Discontinuance when action is brought against wrong person, 13, 661
 - Effect of bringing action against wrong person, 13, 661
 - How respondent designated, 13, 647
 - In general, 13, 646
 - Joinder of respondents*, see *infra*, Joinder of parties.
 - Necessary parties, 13, 647
 - Person who is to perform the duty, 13, 646
 - Successor, 13, 663
 - What disqualifies respondents, 13, 654
- Restitution, 18, 896

MANDAMUS, *cont'd.*

- Return or answer, 13, 710
 - Action for false return, 13, 749
 - At common law, 13, 749
 - Judgment, 13, 750
 - Reply and action for false return, 13, 749
 - Statute of Anne, 13, 749
 - Admissions and waivers, 13, 734
 - Allegations not denied, 13, 734
 - Defects cured by answer, 13, 736
 - Express admissions, 13, 734
 - Waiver of formal defects, 13, 734
 - Waiver of substantial defects, 13, 735
- Affidavits, 13, 744
- Allegation of facts, 13, 721
- Another action pending, 13, 728
- Answer by another person for respondent, 13, 715
- Answer in place of return, 13, 711
- Argumentativeness, 13, 720
- Assessment and collection of taxes, 13, 743
- At what day the writ is returnable, 13, 713
- Bills of exceptions, 13, 736
- By whom return to be made, 13, 714
- Certainty, 13, 716
- Claims against public corporations, 13, 740
- Conclusions, 13, 721
- Confession and avoidance, 13, 725
- Contents of return, 13, 716
- Corporations, 13, 715
- County seat location, 13, 739
- Date, 13, 716
- Day, 13, 713
- Demurrer to return, 13, 705
- Denial in terms, 13, 719
- Denial or confession or avoidance, 13, 725
- Denying allegations, 13, 724
- Duty to make return, 13, 713
- Elections, 13, 738
- Equitable defenses, 13, 727
- Evasiveness, 13, 720
- Exceptions must be negatived, 13, 724
- Excuse for disobedience, 13, 724
- Facts occurring since writ issued, 13, 727
- Form of return, 13, 716
- How right to make return is lost, 13, 712
- Identical writ must be returned, 13, 712

MANDAMUS, *cont'd.*Return or answer, *cont'd.*

- Inconsistent defenses, 13, 726
- Information and belief, 13, 723
- In general, 13, 710
- Injunction pending, 13, 729
- Inspection of books, 13, 737
- Lapse of time for performance, 13, 728
- Liquor licenses, 13, 737
- Motion to quash return, 13, 708
- Office, 13, 739
- Officers, 13, 739
- Ordinary rules of pleading applicable, 13, 711
- Particular defenses, 13, 727
- Peremptory writ, 13, 792
 - Examples of insufficient answers, 13, 778
 - Excuses for noncompliance, 13, 793
 - Failure to answer, 13, 776
 - Goods returned, 13, 793
 - Insufficient answer, 13, 777
 - Obedience unlawful, 13, 793
 - Peremptory writ cannot issue when answer is insufficient, 13, 778
 - Return not conclusive, 13, 794
 - Return of compliance, 13, 792
 - Subsequent facts making performance impossible, 13, 793
- Performance of the act sought, 13, 732
 - Compliance with statute, 13, 733
 - In general, 13, 732
 - Levy of tax, 13, 733
 - What is sufficient return of performance, 13, 733
- Presumption and intendment, 13, 711
- Requisite particulars, 13, 724
- Respondent a board, 13, 714
- Responsiveness, 13, 710
- Return at same term, 13, 714
- Return corresponds to plea or answer, 13, 710
- Right to make return, 13, 712
- Separate answers, 13, 716
- Several defenses, 13, 726
- Stranger, 13, 715
- Sufficiency of return in particular cases, 13, 736
- Surplusage, 13, 719
- Test of certainty, 13, 718
- Time, 13, 713
- Time fixed by statute, 13, 714
- Title to realty, 13, 738
- To what return is made, 13, 712

MANDAMUS, *cont'd.*Return or answer, *cont'd.*

- Traverse, 13, 725
- Two answers, 13, 715
- Unconstitutionality of statute, 13, 728
- Vacation, 13, 714
- Verification, 13, 744
- Want of funds, 13, 730
 - Compliance with statute, 13, 733
 - Drawing of warrant, 13, 731
 - Exercise of corporate franchise, 13, 731
 - Illustrations of sufficient returns, 13, 730
 - Performance of the act sought, 13, 732
 - Temporary want of funds, 13, 731
 - What is sufficient return of performance, 13, 733
 - When a sufficient return, 13, 730
- Returns:
 - Action for false return, 13, 749, 796
 - Costs, 13, 818
 - Amendments, 13, 754
 - Peremptory writ, 13, 792
 - Excuses for noncompliance, 13, 792
 - Goods returned, 13, 793
 - Obedience unlawful, 13, 793
 - Return not conclusive, 13, 794
 - Return of compliance, 13, 792
 - Subsequent facts making performance impossible, 13, 793
- Review (see *infra*, Appeals), 13, 829
- Certiorari, 13, 834
- Rules of court:
 - Docket entries, 13, 545
- Rule to show cause, see *infra*, Notice, rule to show cause, and alternative writ.
- Schools:
 - Private citizens, 13, 635
 - Relator's pleading, 13, 692
 - Admission of pupil, 13, 692
 - Apportionment of funds, 13, 693
 - Exclusion of pupil, 13, 692
 - Payment for schoolhouse, 13, 693
 - Prevention of religious instruction, 13, 693
 - What is a sufficient private interest, 13, 638
- Scope of writ, 13, 489
- Sentence:
 - To sentence prisoner, 13, 596

MANDAMUS, *cont'd.*

- Service of process (see *infra*, Notice, rule to show cause, and alternative writ), 13, 543
- To compel giving notice, 13, 543
- To issue process, 13, 543
- To vacate service, 13, 543
- Settlement of decedents' estates:
 - To compel a legal appointment of administrator, 19, 832
- Sheriffs and constables, 20, 119
- Societies and clubs, 20, 273
 - Illegality of expulsion, 13, 687
- Relator's petition in actions seeking reinstatement, 13, 687
- Special proceedings:
 - Whether a special proceeding, 13, 392
- State, see *infra*, How proceedings entitled.
- Stay of proceedings, see *infra*, Supersedeas and stay of proceedings.
- Stipulations, 13, 551
- Stock and stockholders:
 - Enforcement of stockholders' liability, 20, 702
 - Inspection of books, 20, 794, 796, 797
 - Proceedings respecting transfer of stock and certificates, 20, 814, 826
 - Averments of petition, 20, 826
 - Demand, 20, 826
 - Identification of stock, 20, 826
 - Joinder of petitioners, 20, 826
 - To whom writ should be directed, 20, 826
- Review of corporate election, 20, 805
- Street railways:
 - Mandamus to compel operation of road, 20, 864
- Streets and highways, see STREETS AND HIGHWAYS.
- Substitution of parties, 20, 1066
- Suits, 13, 490
- Supersedeas and stay of proceedings, 13, 586, 833; 20, 1230, 1234, 1278
 - Another adequate remedy, 13, 587
 - Discretion of lower court, 13, 587
 - Relief obtainable in superior court, 13, 587
 - To compel granting, 13, 586
 - To fix and approve supersedeas bond, 13, 588
 - To vacate supersedeas, 13, 587
 - When mandamus will not issue, 13, 586

MANDAMUS, *cont'd.*

- Supplementary remedy, 13, 489
- Taxation, see TAXATION.
- Telegraphs and telephones:
 - Enforcing service, 21, 504
 - Adequate remedy at law, 21, 505
 - Answer, 21, 505
 - Application or petition, 21, 505
 - In general, 21, 504
 - Whether considered common carriers, 21, 504
- Title (see *infra*, How proceedings entitled), 13, 493
- Tolls, 21, 750
- Traverse, 13, 725
- Reply, 13, 748
- Trial, 13, 795
 - Argument of counsel, 13, 304
 - Calendar cases, 13, 796
 - Continuance, 13, 797
 - How conducted, 13, 795
 - In general, 13, 795
 - Issues, 13, 797
 - Issues of fact, 13, 798
 - Issues of law, 13, 797
 - Issues of law and fact, 13, 797
 - Issue where there is insufficient return, 13, 799
 - Joinder of issues later than return, 13, 798
 - Joinder of issues on the return, 13, 798
 - Jury trial, 13, 801
 - Mandamus to court to entertain and try cause, see *infra*, Mandamus to courts and judicial officers.
 - Method of joining issues, 13, 797
 - Open and close, 13, 804
 - Reference, 13, 804
 - Right to be heard, 13, 796
 - Same as action for false return, 13, 796
 - Sending issues to another court, 13, 799
 - Variance, 13, 804
 - Verdict, 13, 805
 - What questions considered, 13, 800
- Unauthorized acts, see *infra*, Useless, unauthorized, and unlawful acts.
- United States courts, 13, 507; 22, 310
 - Circuit courts, 13, 508
 - Circuit courts of appeals, 13, 508
 - Conflict of jurisdiction between federal and state courts, 13, 519
 - District courts, 13, 510
 - Supreme court, 13, 507
- Unlawful acts, see *infra*, Useless, unauthorized, and unlawful acts.

MANDAMUS, *cont'd.*

- Useless, unauthorized, and unlawful acts, 13, 493
 - Abstract rights, 13, 494
 - Never issued uselessly, 13, 493
 - Tax collector, 13, 495
 - Unauthorized acts never compelled, 13, 494
 - Unlawful acts never compelled, 13, 495
- Venue (see *infra*, Jurisdiction), 13, 523
 - County of respondent's residence, 13, 524
 - County where facts arose, 13, 524
 - Courts having jurisdiction in more than one county or district, 13, 525
 - Mandamus against corporations, 13, 525
 - Mandamus against state officers, 13, 526
 - Public officers in county of office, 13, 524
 - Where courts of inferior jurisdiction, 13, 523
- Verdict, 13, 805
 - Entering and signing judgment, 13, 564
 - Reception and entry of verdict, 13, 559
- Verification, 13, 685
 - Return or answer, 13, 744
- Voluntary associations, see *infra*, Societies and clubs.
- Waiver, see *infra*, Return or answer.
- Warrants, 13, 593
- Water companies and waterworks, 22, 1141
- When issued (see *infra*, Useless, unauthorized, and unlawful acts), 13, 493
 - Determination of constitutional questions, 13, 496
 - Discretion of court, 13, 498
 - Effect of another remedy, 13, 498
 - Nature of relator's right, 13, 496
 - Nature of the acts commanded, 13, 497
- Witnesses, 13, 552
 - Attachment against party or witness, 13, 553
 - Coercion of witnesses, 13, 553
 - To receive proof or hear witnesses, 13, 552
- Writing, 13, 668
- Writ of error*, see *infra*, Appeals.

MANDATE, 13, 835

See MANDAMUS.

Admiralty, 1, 282

Amendments, 13, 849

Amendment of pleadings, 13, 860

Causes triable *de novo* on appeal, 13, 862**MANDATE, *cont'd.***Amendments, *cont'd.*

- Amendment of pleadings, *cont'd.*
 - Imposition of terms, 13, 862
 - Matters arising subsequent to decision, 13, 862
 - Presentation of new question, 13, 862
 - Remand generally, 13, 860
 - Remand with directions, 13, 861

Appeals:

- Judgment entered on mandate, 13, 867

Appearances, 13, 857

Compliance with mandate, 13, 845

- Construing mandate with reference to opinion, 13, 847

Duty to comply, 13, 845

Effect of payment or compromise, 13, 846

Failure to comply, 13, 848

Remand with specific directions, 13, 846

Sufficiency of compliance, 13, 847

Costs:

Payment of costs, 13, 839

Courts (see *infra*, Jurisdiction and proceedings of lower court after remand):

To what court directed, 13, 838

Decision as law of case, 13, 842

Matters of fact, 13, 843

New state of facts, 13, 844

Qualification of rule, 13, 843

Statement of the rule, 13, 842

Definition, 13, 836

Dismissal, discontinuance, and nonsuit, 13, 849

Dismissal of appeal, 13, 852

Dockets:

Redocketing cause, 13, 852

Enforcement of mandate, 13, 867

Evidence:

New trial, 13, 858

Executions against the body and arrest in civil cases, 8, 634

Filing of mandate, 13, 840

In general, 13, 840

Notice of filing, 13, 841

Sufficiency of filing, 13, 841

Time of filing, 13, 841

Findings:

Amendment, 13, 849

Form of mandate, 13, 840

Instructions:

New trial, 13, 860

Issuance of mandate, 13, 838

Payment of costs, 13, 839

Time of issuance, 13, 839

To what court directed, 13, 838

Judgments:

Correction of judgment, 13, 866

MANDATE, *cont'd.*Judgments, *cont'd.*

Entry of judgment in accordance with mandate, 13, 863

Modification or vacation of judgment by lower court, 13, 850

Causes triable *de novo* on appeal, 13, 851

Correction of errors, 13, 851

In general, 13, 850

Jurisdiction (see *infra*, Jurisdiction and proceedings of appellate court after remand):

Cause without jurisdiction of lower court, 13, 852

New trial, 13, 858

Jurisdiction and proceedings of appellate court after remand, 13, 864

Correction of judgment, 13, 866

Correction of mandate, 13, 865

Jurisdiction after remand, 13, 864

Recalling mandate, 13, 865

Rehearing after remand, 13, 866

Reinstatement of cause, 13, 866

Time of divestment of jurisdiction, 13, 864

Jurisdiction and proceedings of lower court after remand, 13, 842

Amendment of pleadings, see *infra*, Amendments.

Cause without jurisdiction of lower court, 13, 852

Compliance with mandate, see *infra*, Compliance with mandate.

Decision as law of case, 13, 842

Entry of judgment in accordance with mandate, 13, 863

New trial, see *infra*, New trial.

Order vacating previous proceedings, 13, 852

Powers of lower court, see *infra*, Powers of lower court.

Redocketing cause, 13, 852

Status of cause on remand, 13, 851

Jury:

Reading decision to jury, 13, 859

Necessity of mandate, 13, 837

New trial, 13, 853

Defenses, 13, 857

Evidence, 13, 858

Instructions to jury, 13, 860

Issues determined, 13, 856

Issues triable, 13, 855

New notice, 13, 857

Objections to jurisdiction, 13, 858

Objections to pleadings or proof, 13, 858

MANDATE, *cont'd.*New trial, *cont'd.*

Parties, 13, 857

Reading decision to jury, 13, 859

Remand generally, 13, 853

Remand with directions, 13, 854, 856

Time of new trial, 13, 855

Notice:

New trial, 13, 857

Notice of filing, 13, 841

In general, 13, 841

Notice of motion to remand, 13, 842

Waiver of notice, 13, 842

Order vacating previous proceedings, 13, 852

Parties:

New trial, 13, 857

Powers of lower court, 13, 848

Amendment of findings, 13, 849

Causes triable *de novo* on appeal, 13, 851

Correction of errors in judgment, 13, 851

Dismissal of cause, 13, 849

Fixing time of compliance with judgment, 13, 851

Grant of rehearing, 13, 849

In general, 13, 848

Modification or vacation of judgment, 13, 850

Sending cause back to appellate court, 13, 849

Puis darrein continuance, 17, 269

Rehearing, 13, 849, 866

Reinstatement of cause, 13, 866

Remittitur, see REMITTITUR.

Removal of causes, 18, 399, 400, 403

Search warrants, see SEARCH WARRANTS.

Status of cause on remand, 13, 851

Time of issuance, 13, 839

Transmission of mandate, 13, 840

Waiver of mandate, 13, 837

MANSION HOUSE:

Burglary, 3, 747

MANSLAUGHTER, see HOMICIDE.

MAPS, see EMINENT DOMAIN.

Arguments of counsel, 2, 708, 741

MARINE INSURANCE, 11, 382

See INSURANCE.

Insurance, 11, 382

MARITIME LIENS, see SHIPPING.

MARRIAGE (see ADULTERY; BREACH OF PROMISE OF MARRIAGE):

Alimony, 1, 421

Application after dissolution of marriage, 1, 414

Bigamy, 3, 325

Conspiracy, 4, 731

Criminal conversation, see CRIMINAL CONVERSATION.

MARRIAGE, *cont'd.*

- Divorce (see DIVORCE):
 - Appellant remarrying, 7, 138
 - Opening decree where plaintiff has remarried, 7, 142
- Dower (see DOWER):
 - Declaration and complaint, 7, 163
- Ejectment:
 - General issue, 7, 340
- Error, writ of, 7, 869
- Fornication, 9, 644
- Husband and wife:
 - Allegation of marriage in suits by husband and wife, 10, 237
 - Alleging marriage in actions against husband and wife, 10, 258
 - Effect of marriage on suits pending against *feme sole*, 10, 257
 - Effect of marriage pending suit, 10, 234
- Incest, see INCEST.
- Issues to the jury, 11, 652
- Penalties and penal actions:
 - Issuing marriage license to or marrying minor, 16, 277
- Personal injuries:
 - Instructions on elements of damage not pleaded or proven, 16, 427
 - Instructions on marriage prospects, 16, 427
 - Loss to a woman of a prospect to marriage, 16, 384
- Survival of actions:
 - Fraud in procuring marriage, 21, 353

MARRIAGE (ANNULMENT), 13 969

- See DIVORCE.
- Abatement of actions, 13, 882
- Actions under the codes, 13, 871
- Affinity, 13, 877
- Alimony (see ALIMONY):
 - Permanent alimony, 13, 885
 - Temporary alimony, 13, 884
- Answers, 13, 880
- Codes, 13, 871
- Complaint, see *infra*, Petition or complaint.
- Consanguinity, 13, 877
- Court, 13, 882
- Coverture, 13, 873
- Cross-bills, 13, 881
- Decrees, 13, 887
- Divorce:
 - Petition for annulment compared with petition for divorce, 13, 874
 - Similarity of nullity suit to divorce suit, 13, 870
- Duress:
 - Allegation of duress, 13, 876
- Ecclesiastical practice, 13, 871
- Equity proceedings, 13, 871

MARRIAGE (ANNULMENT), *cont'd.*

- Fraud:
 - Allegations of fraud, 13, 876
- Guardians, 13, 874
- Impotency, 13, 877
 - Inspection of the person, 13, 882
- Infants, 13, 873
- Insane persons, 13, 873
- Insanity:
 - Allegation of insanity, 13, 877
 - Inspection of the person, 13, 882
 - Impotency, 13, 882
 - In general, 13, 882
 - Order for inspection, 13, 884
 - When refused, 13, 883
- Joinder of counts and causes:
 - Joinder of causes for ancillary relief, 13, 878
- Judgments, 13, 887
- Juries:
 - Trial by court or jury, 13, 882
- Miscegenation, 13, 878
- Nature of nullity suit, 13, 870
- Notice, 13, 879
- Parent and child:
 - Custody and maintenance of children, 13, 886
- Parties, 13, 871
 - Coverture, 13, 873
 - Defendants, 13, 872
 - Guardian and ward, 13, 874
 - Infancy, 13, 873
 - Insane persons, 13, 873
 - Intervention, 13, 872
 - Plaintiffs, 13, 871
 - State as party, 13, 874
 - Statutory restrictions, 13, 872
- Petition or complaint, 13, 874
 - Allegation of causes for annulment, 13, 875
 - Allegation of facts for ancillary relief, 13, 878
 - Allegation of marriage, 13, 875
 - Ancillary relief, 13, 878
 - Compared with petition for divorce, 13, 874
 - Consanguinity and affinity, 13, 877
 - Duress, 13, 876
 - Fraud, 13, 876
 - Impotence, 13, 877
 - Insanity, 13, 877
 - Joinder of causes for ancillary relief, 13, 878
 - Miscegenation, 13, 878
 - Nature of, 13, 874
 - Physical incapacity, 13, 877
 - Prayer, 13, 879
 - Showing jurisdiction, 13, 875
 - Threats of violence or arrest, 13, 876
 - Verification, 13, 879
 - Want of lawful age, 13, 878

MARRIAGE (ANNULMENT), *cont'd.*

Prayer, 13, 879
Process, 13, 879
Publication, 13, 879
State, 13, 874
Summons, 13, 879
Threats:

Allegations of threats, 13, 876
Trial, 13, 882
By court or jury, 13, 882
Inspection of the person, 13, 882
Verification, 13, 879

MARRIED WOMAN'S ACTS, see

HUSBAND AND WIFE.

MARRIED WOMEN, see **HUSBAND AND WIFE.**

MARSHAL:

Admiralty:
Duty of marshal, 1, 261

MARSHALING ASSETS, 13, 888

Corporation cannot have its own
assets marshaled, 13, 890
Cross-bills, 5, 637; 13, 889
Executions:

Levy, 8, 510

Judgments:

Equitable relief against judgments, 11, 1175

Judicial sales, 12, 56

Jurisdiction, 13, 888

Parties, 13, 889

When suit maintainable, 13, 888

MASTER AND SERVANT, 13, 891

Actions against master for injuries to servant (see *infra*, Plea or answer), 13, 892

Declaration, petition, or complaint, see infra, Declaration, petition, or complaint.

Parties, 13, 892

Replications and replies, 13, 893

Rights and remedies for injuries occurring in another state, 13, 892

Actions by master for personal injuries to servant, 13, 920

Declaration and complaint, 13, 920

Form of action, 13, 920

Actions for injuries by servant, 13, 921

Declaration and complaint, 13, 922

Form of action, 13, 921

Parties, 13, 921

Plea or answer, 13, 923

Actions for wages, 13, 918

Declaration, 13, 918

Form of action, 13, 918

Plea or answer, 13, 918

Actions for wrongful discharge, 13,

915

Declaration and complaint, 13,

915

MASTER AND SERVANT, *cont'd.*

Actions for wrongful discharge, *con.*

Justifying discharge, 13, 917

Misconduct of employee, 13, 917

Obtaining work elsewhere, 13, 916

Plaintiff's sobriety, 13, 917

Pleading damages, 13, 917

Plea or answer, 13, 917

Remedy and form of action, 13, 915

Answers, see infra, Plea or answer.

Assumption of risk:

Ignorance of defects, 13, 903

Instructions, 13, 926

Matter of defense, 13, 904

Plea or answer, 13, 914

Burglary, 3, 764, 767

Averment of ownership in master, 3, 767

Averment of ownership in servant, 3, 768

Servant in possession of part only of the building, 3, 767

Carriers:

Action against servant, 3, 839

Civil damage acts, see **CIVIL DAMAGE ACTS.**

Complaint, see infra, Declaration, petition, or complaint.

Conditions precedent, 4, 636

Conflict of laws:

Plea or answer that there was no cause of action in state where injury occurred, 13, 915

Rights and remedies for injuries occurring in another state, 13, 892

Contributory negligence:

Instructions, 13, 929

Negativling, 13, 901

Plea or answer, 13, 913

Criminal procedure:

Enticing away, harboring, and intimidating servants, 13, 919

Indictment for working employees overtime, 13, 924

Damages:

Injuries to infants, 5, 759

Death by wrongful act, see **DEATH BY WRONGFUL ACT.**

Declaration, petition, or complaint:

Actions against master for injuries to servant, 13, 893

Alleging duty to furnish safe machinery and appliances, 13, 895

Alleging excuse for remaining in employment, 13, 904

Alleging failure to provide suitable rules and regulations, 13, 900

MASTER AND SERVANT, *cont'd.*Declaration, petition, or complaint, *cont'd.*Actions against master for injuries to servant, *cont'd.*

Alleging master's knowledge of defective machinery or appliances, 13, 896

Alleging master's knowledge of defective machinery under Alabama statute, 13, 898

Alleging master's negligence, 13, 834

Alleging negligence in employing or retaining negligent or incompetent fellow-servants, 13, 899

Alleging notice of injury, 13, 910

Alleging promise to repair, 13, 897

Alleging relationship of master and servant, 13, 839

Alleging that injury was not caused by fellow-servant, 13, 906

Alleging that plaintiff could not have known, 13, 904

Alleging that servant was acting within scope of employment, 13, 893

Alleging youth or inexperience of servant, 13, 900

Assumption of risk, 13, 904

Charging employer with negligence of other servants, 13, 907

Defective appliances, 13, 894

Describing defects in works, machinery, etc., 13, 908

Description of injuries, 13, 910

Equivalent averment of knowledge, 13, 897

Excuse for remaining in service, 13, 906

Fellow-servant acting within scope of his employment, 13, 894

Hazard assumed by servant, 13, 903

Imputed knowledge, 13, 904

Injury without fault, 13, 904

Joinder of causes of action, 13, 911

Negating contributory negligence, 13, 901

Negating knowledge of defective machinery or appliances, 13, 902

MASTER AND SERVANT, *cont'd.*Declaration, petition, or complaint, *cont'd.*Actions against master for injuries to servant, *cont'd.*

Negating knowledge of fellow-servant's incompetency, 13, 905

Servant not informed, 13, 904

Variance, 13, 910

Actions by master for personal injuries to servant, 13, 920

Actions for injuries by servant, 13, 922

Actions for wages, 13, 918

Actions for wrongful discharge, 13, 915

*Defective appliances, see infra, Declaration, petition, or complaint.**Discharge, see infra, Actions for wrongful discharge.*

Ejection:

Who may be sued, 7, 303

Embezzlement, see EMBEZZLEMENT.

Enticing away, harboring, and intimidating servants, 13, 918

Declaration and complaint, 13, 919

Form of action, 13, 918

Indictment, 13, 919

Excuse for remaining in service, 13, 906

Fellow-servant:

Allegation in complaint that fellow-servant acted within scope of his employment, 13, 894

Alleging negligence in employing or retaining negligent or incompetent fellow-servant, 13, 899

Alleging that injury was not caused by fellow-servant, 13, 906

Instructions, 13, 928

Negating knowledge of fellow-servant's incompetency, 13, 905

Plea or answer, 13, 913

Harboring servants, 13, 918

Indictment:

Enticing away, harboring, and intimidating servants, 13, 919

Working employees overtime, 13, 924

Injunctions:

Defendant, 10, 915

Disobedience of injunction, 10, 1102

Instructions, 13, 924

Argumentative, obscure, or contradictory instructions, 13, 928

Assumption of risk, 13, 926

MASTER AND SERVANT, *cont'd.***Instructions, *cont'd.***

- Fellow-servants, 13, 926
- Giving undue prominence to evidence, 13, 929
- Harmless error, 13, 930
- Ignoring issues and evidence, 13, 928
- Improper assumption of facts, 13, 927
- Improper instructions as to duties in providing suitable machinery, 13, 926
- Limiting instructions to pleadings and evidence, 13, 924
- Requests for instructions, 13, 929

Intimidating servants, 13, 918**Joinder of counts and causes:**

- Actions for injuries to employees, 13, 911

Joinder of parties:

- Torts, 15, 560

Knowledge of defective machinery, see *infra*, Declaration, petition, or complaint.**Knowledge of fellow-servant's incompetency, 13, 905****Negligence, see *infra*, Declaration, petition, or complaint; Instructions. Notice of injury, alleging, 13, 910****Parties to actions:**

- Actions against master for injuries to servant, 13, 892
- Actions *ex delicto*, 15, 518
- Actions for injuries by servant, 13, 921

Passengers:

- Acts and authority of servants, 15, 1132
- Charging torts of agents, 15, 1132
- In general, 15, 1132
- Negligence of servants in charge of train, 15, 1133
- Negligence, 15, 1132

Penalties and penal actions:

- Acts of servants, 16, 264

Petition, see *infra*, Declaration, petition, or complaint.**Plea or answer, 13, 913**

- Actions against master for injuries to servant, 13, 913
- Assumption of risk, 13, 914
- Contributory negligence, 13, 913
- Disregard of rules and regulations, 13, 914
- Negligence of fellow-servant, 13, 913
- That there is no cause of action in state where injury occurred, 13, 915

MASTER AND SERVANT, *cont'd.***Plea or answer, *cont'd.***

- Actions for injuries by servant, 13, 923
- Actions for wages, 13, 918
- Actions for wrongful discharge, 13, 917

Replications and replies:

- Actions against master for injuries to servant, 13, 915

Rules and regulations:

- Plea or answer, 13, 914
- Rules and regulations, alleging failure to provide suitable, 13, 900
- Scope of employment, 13, 893

Seduction:

- Alleging loss of service, 19, 410
- Alleging relationship, 19, 408
- Splitting causes of action, 1, 157

Trespass, 21, 787**Trover and conversion:**

- Parties defendant, 21, 1052
- Parties to actions, 21, 1048

Wages, actions for, 13, 918**MASTER IN CHANCERY (see****REFERENCE):****Amendments, 1, 500****Costs:**

- Exceptions to master's reports, 5, 187

Ministerial officer, 17, 982**Receivers:**

- Confirmation of master's report, 17, 759
- Exceptions to master's report, 17, 759
- Reference to master, 17, 758

References, see REFERENCES.**MASTER OF VESSEL:****Carriers:**

- Action against master of vessel, 3, 839

MATTERS IN DISPUTE, see AMOUNT IN CONTROVERSY.**MAYHEM, 13, 931****Allegations, 13, 933****Alleging act as feloniously done, 13, 936****Alleging time, 13, 935****Appeal of mayhem, 13, 931****Charging crime as mayhem, 13, 935****Common law, 13, 931****Common-law and statutory injuries, 13, 935****Conviction of lesser offenses, 13, 937****Coventry act, 13, 932****Definition, 13, 931****Duplicity, 13, 936****Indictment:**

- At common law, 13, 931

Instructions, 13, 938**Lying in wait, 13, 935****Maliciously, 13, 934**

MAYHEM, *cont'd.*

- Negativing averments, 13, 936
- On purpose, 13, 934
- Scope of statute, 13, 932
- Statutes, 13, 932
- Statutory words, 13, 933
- Surplusage, 13, 934
- Time, allegation of, 13, 935
- Verdict, 13, 936
- Wantonly, 13, 934

MECHANICS' LIENS, 13, 939

- Adding new parties, 13, 1007
 - Amendment, 13, 1007
 - Time of bringing suit as to new party added, 13, 1008
 - When permissible, 13, 1007
- Additional allowances of costs, 1, 213
- Agents:
 - Principal and agent as parties defendant, 13, 961
- Alleging demand for and refusal of payment, 13, 982
- Amendments, 13, 1006
 - Adding new parties, 13, 1007
 - Allegation, 13, 1009
 - Claims, 13, 1010
 - Description of contract, 13, 1010
 - Description of property, 13, 1009
 - Examples, 13, 1010
 - Not changing cause of action, 13, 1009
 - Notice of filing amendment, 13, 1011
 - Of lien claim, 13, 1006
 - Of petition or complaint, 13, 1007
 - Of process, 13, 1006
 - Parties, 13, 1007
 - Prayer, 13, 1010
 - Time of bringing suit as to new party added, 13, 1008
 - Time of making amendment, 13, 1011
 - Verification, 13, 1011
- Another suit pending, 13, 996
- Answers, see infra, Plea or answer.*
- Appeals, 13, 1051
 - Effect of appeal, 13, 1052
 - Harmless error, 13, 1054
 - Presumptions on appeal, 13, 1055
 - Review on appeal, 13, 1053
 - Right of appeal and parties thereto, 13, 1051
- Assignee:
 - Allegations in actions by assignee of claim, 13, 990
- Assignees and assignors:
 - Parties defendant, 13, 960
- Assignees of lien, 13, 951
- Attachment, 13, 1011
 - How attachment made, 13, 1013
 - Necessity for, 13, 1011
 - Requisites of affidavit, 13, 1012

MECHANICS' LIENS, *cont'd.*

- Attachment, *cont'd.*
 - Time of suing out attachment, 13, 1012
- Attacking foreclosure proceedings, 13, 1023
- Attorney's fees, 13, 1049
- Averments of contract, 13, 970
- Bill, see infra, Complaint, petition, or bill.*
- Bill of particulars, 13, 990
- Examples, 13, 991, 992
- Necessity for, 13, 990
- Verification, 13, 992
- Bonds:
 - Action on contractor's bond against liens, 13, 1021
 - Discharge of lien by payment of money into court or by giving bond, 13, 1020
 - Personal judgment when bond is given to discharge lien, 13, 1040
- Claim of lien (*see infra, Showing requisite steps to create lien*):
 - Amendment, 13, 1006
 - Variance between notice and claim of lien, 13, 1004
- Commencement of suit, 13, 946
- Complaint, petition, or bill, 13, 968
 - Allegations as to parties having unknown interests, 13, 989
 - Allegations in actions by assignee of claim, 13, 990
 - Alleging completion of performance, 13, 978
 - Alleging demand for and refusal of payment, 13, 982
 - Alleging that materials were furnished for use in construction of building, 13, 974
 - Alleging that materials were used in construction of building, 13, 976
 - Alleging that money is due, 13, 979
 - Alleging that money was due original contractor, 13, 980
 - Alleging that there are no other lien claimants, 13, 989
 - Alleging time and place of performance, 13, 978
 - Alleging time of furnishing materials, 13, 977
 - Alleging time of payment, 13, 981
- Amendments, see infra, Amendments.*
- Averments of contract, 13, 970
- Bill in equity, 13, 968
- Bill of particulars, see infra, Bill of particulars.*
- Charging married woman's property, 13, 989

MECHANICS' LIENS, *cont'd.*Complaint, petition, or bill, *cont'd.*Description of property, *see infra*,

Description of property.

How failure to allege contract cured, 13, 973

In general, 13, 968

Joinder of causes of action, 13, 992

Prayer, 13, 993

Setting out terms of contract, 13, 973

Showing compliance with statutory requirements, 13, 969

Showing defendant's interest in property sought to be charged, 13, 969

Showing requisite steps to create lien, *see infra*, Showing requisite steps to create lien.

Showing service of process, 13, 990

Showing that land is within statutory limit, 13, 988

Verification, 13, 993

Consolidation of actions, 13, 1024

Continuance, 13, 1025

Contracts (*see infra*, Performance):

How failure to allege contract cured, 13, 973

Scire facias, 13, 1015

Setting out terms of contract, 13, 973

Costs, 13, 1047

Attorney's fees, 13, 1049

Chargeable against property, 13, 1047

Depositing money, 13, 1048

Discretion of court, 13, 1047

Examples, 13, 1049

In general, 13, 1047

Payment out of proceeds of sale, 13, 1048

To avoid costs, 13, 1048

Court:

Discharge of lien by payment of money into court or by giving bond, 13, 1020

Cross-bill, 13, 999

Process, 13, 948

Cumulative remedy, 13, 946

Declaration, *see infra*, Complaint, petition, or bill.Decrees, *see* JUDGMENTS AND DECREES.

Defaults, 13, 1041

Defendant's interest in property sought to be charged, 13, 969

Definition, 13, 942

Demurrers, 13, 1000

Examples, 13, 1002

In general, 13, 1000

Objections not reached by demurrer, 13, 1001

When demurrer lies, 13, 1001

MECHANICS' LIENS, *cont'd.*

Description of property, 13, 982

Correcting amendment, 13, 1009

Description good in part and bad in part, 13, 984

How property described, 13, 983

Judgments or decrees, 13, 1031

Necessity for description, 13, 982

Scire facias, 13, 1016

Discharge of lien by payment of money into court or by giving bond, 13, 1020

Dismissal, discontinuance, and nonsuit:

Effect of nonsuit or dismissal, 13, 1033

Due:

Alleging that money is due, 13, 979

Equitable proceedings, 13, 944

Executions and sales, 13, 1045

Conformity to judgment, 13, 1045

Examples, 13, 1045, 1046

In general, 13, 1045

Special execution to foreclose, 8, 393

Stay of execution, 13, 1047

Executors and administrators:

Personal representatives as parties defendant, 13, 960

Findings, 13, 1026

Heirs:

Heirs parties defendant, 13, 960

Personal judgment against, 13, 1040

How suit commenced, 13, 946

Husband and wife:

Charging married woman's property, 13, 989

Parties defendant, 13, 965

Community property, 13, 966

Examples, 13, 965, 966

In general, 13, 965

Scire facias, 13, 1017

Information and belief, 13, 994

In rem or *in personam*, 13, 945

Instructions, 13, 1028

Intervention, 13, 967

Issues to the jury:

Setting aside or disregarding verdict, 11, 708

Joinder of counts and causes, 1, 205; 13, 992

Joint contractors, 13, 949

Joint tenants and tenants in common:

Tenants in common as parties defendant, 13, 964

Judgments and decrees, 13, 1029

Collateral attack, 13, 1042

Conclusiveness of judgment or decree, 13, 1033

Conformity to pleadings, 13, 1030

Conformity to statutes, 13, 1029

MECHANICS' LIENS, *cont'd.*Judgments and decrees, *cont'd.*

Conformity to verdict, 13, 1031
 Default judgment, 13, 1041
 Description of property, 13, 1031
 Distribution of proceeds, 13, 1042
 Effect of judgment or decree, 13, 1032

Effect of nonsuit or dismissal, 13, 1033

Effect of void or defective judgment, 13, 1034

Judgment against separate buildings, 13, 1041

Judgment in case of several claimants or defendants, 13, 1041

Judgment *in rem*, 13, 1034

Limiting to owner's interest, 13, 1032

Modification and correction of judgment, 13, 1042

Nature of judgment or decree 13, 1029

Personal judgments or decrees, 13, 1034

Against persons not personally served with process, 13, 1040

Against vendors and vendees of property subject to lien, 13, 1039

For deficiency, 13, 1039

Heirs, 13, 1040

Necessity of contract relations to sustain, 13, 1034

When bond is given to discharge lien, 13, 1040

When defendant on establishment of lien, 13, 1035

When not defendant on establishment of lien, 13, 1037

Requisites of judgment or decree, 13, 1029

Who are bound, 13, 1032

Jurisdiction, 13, 943

As affected by amount, 13, 943

Bankruptcy proceedings, 13, 944

In general, 13, 943

Residence of parties, 13, 943

Where the question of title is incidentally put in issue, 13, 944

Jury:

Right to jury trial, 13, 1025

Justice of the peace:

Practice in justice's courts, 13, 1023

Limitations of actions, 13, 1018

Lis pendens, 13, 1022

Methods of enforcing lien (see *infra*, Attachment; Scire facias), 13, 944

MECHANICS' LIENS, *cont'd.*Methods of enforcing lien, *cont'd.*

At law, 13, 944

Equitable proceedings, 13, 944

In general, 13, 944

Money due, 13, 979

Mortgages:

Mortgagees as parties defendant, 13, 963

Nature of proceedings to enforce lien, 13, 945

Proceedings *in rem*, 13, 945

Remedy cumulative, 13, 946

Nonsuit, 13, 1033

Notice of lien (see *infra*, Showing requisite steps to create lien):

Amendment, 13, 1006

Variance between pleading and notice of lien, 13, 1004

Parties, 13, 949, 1007

Adding new parties, see *infra*,

Adding new parties.

Correcting or striking out names of parties, 13, 1007

Defect of parties, 13, 967

Defendants, 13, 952

Assignees and assignors, 13, 960

Contractor, 13, 953

Heirs, 13, 960

Husband and wife, 13, 965

In general, 13, 952

Judgment and attaching creditors, 13, 954

Mortgages, 13, 963

Other claimants, 13, 957

Owner, 13, 953

Parties having no interest, 13, 958

Partners, 13, 964

Personal representatives, 13, 960

Principal and agent, 13, 961

Principal contractor, 13, 953

Purchasers of property subject to lien, 13, 958

Receivers, 13, 964

Sureties, 13, 965

Tenants in common, 13, 964

Trustee and *cestui que trust*, 13, 961

Vendors of property subject to lien, 13, 960

Interveners, 13, 967

Plaintiffs, 13, 949

Assignees of lien, 13, 951

Copartners, 13, 950

In general, 13, 949

Joint contractors, 13, 949

Lien claimants, 13, 950

Partners, 13, 950

Parties defendant, 13, 964

MECHANICS' LIENS, *cont'd.***Payment:**

- Alleging demand for and refusal of payment, 13, 982
- Alleging time of payment, 13, 981
- Discharge of lien by payment of money into court or by giving bond, 13, 1020

Plea of payment, 13, 996

Performance:

- Alleging completion of performance, 13, 978
- Alleging time and place of performance, 13, 978

Petition, see *infra*, Complaint, petition, or bill.

Place of performance, 13, 978

Plea or answer, 13, 993

Another suit pending, 13, 996

Answer as evidence, 13, 998

General issue or general denial, 13, 993

Information and belief, 13, 994

Necessity for, 13, 993

Nil debet, 13, 994

Non assumpsit, 13, 994

Plea for payment, 13, 996

Pleas in bar and in abatement, 13, 996

Scire facias, 13, 1017

Set-off, counterclaim, and recoupment, 13, 997

Special pleas, 13, 995

Time of filing, 13, 998

Prayer, 13, 993, 1010

Process, 13, 947

Publication, 13, 949

Questions of law and fact, 13, 1028

Receivers:

Receivers as parties defendant, 13, 964

Rem., see JUDGMENTS AND DECREES.

Replications and replies, 13, 999

Sales, 13, 1045

Scire facias, 13, 1014; 19, 320

How defects in writ taken advantage of, 13, 1018

Nature and office of writ, 13, 1014

Pleas, 13, 1017

Examples of plea, 13, 1017, 1018

In general, 13, 1017

Limitations, 13, 1018

Service and return of writ, 13, 1018

To enforce lien, 13, 1014

To revive lien, 13, 1019

Trial, 13, 1019

What writ must show, 13, 1015

Completion of work, 13, 1016

Description of property, 13, 1016

MECHANICS' LIENS, *cont'd.***Scire facias, *cont'd.*****What writ must show, *cont'd.***

In general, 13, 1015

Married woman's property, 13, 1017

Name, 13, 1015

Work done and materials furnished, 13, 1015

Service of process, 13, 947

Notice of claim of lien, 13, 984

Personal judgment, 13, 140

Scire facias, 13, 1018

Showing service of process, 13, 990

Set-off, counterclaim, and recoupment, 13, 997

Showing requisite steps to create lien, 13, 984

Alleging service of notice or claim of lien, 13, 984

Alleging verification, 13, 988

Filing of notice or claim of lien, 13, 986

Service of notice or claim of lien, 13, 984

Setting forth contents, 13, 985

Showing that filing was in time, 13, 988

Showing that notice was filed within statutory period, 13, 987

Statutes:

Conformity to statute, 13, 1029

Statutory requirements, alleging compliance with, 13, 969

Supersedeas and stay of execution, 13, 1047

Suretyship:

Sureties on bond to discharge lien, 13, 965

Survival of actions, 21, 337

Time of filing answer, 13, 998

Time of furnishing materials, 13, 977

Time of payment, 13, 981

Time of performance, 13, 978

Trial, 13, 1024

Trusts and trustees:

Trustee and *cestui que trust*, 13, 961

Unknown interests, 13, 989

Use in construction of building:

Alleging that materials were furnished for use in construction of building, 13, 974

Alleging that materials were used in construction of building, 13, 976

Variance, 13, 1002

Between findings and evidence, 13, 1006

Between pleading and notice or claim of lien, 13, 1004

MECHANICS' LIENS, *cont'd.*Variance, *cont'd.*

Between pleading and proof, 13, 1002

Vendor and purchaser:

Personal judgment against vendors and vendees of property subject to lien, 13, 1039

Vendors of property subject to lien, 13, 960

Verification, 13, 988, 1011

Bill of particulars, 13, 992

Complaint, petition, or bill, 13, 993

MEDIUM OF PAYMENT, *see* PAYMENTS.**MEETINGS:**

Disturbing meetings, see DISTURBING MEETINGS.

MEMORANDUM, *see* EXAMINATION OF WITNESSES.**MERGER:**

Appeals, 2, 202

Partnership, see PARTNERSHIP.

Survival of actions:

Merger in verdict or judgment, 21, 351

MERITS, AFFIDAVIT OF, *see* AFFIDAVITS OF MERITS OR DEFENSE.**MESNE PROCESS (see EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES; SUMMONS AND PROCESS):**

Admiralty, 1, 260

Survival of actions, 21, 336

MILITARY LAW:

Continuances:

Party in military service, 4, 843

Habeas corpus:

State and federal courts 9, 1007

MILLS AND MILLDAMS, 14, 1

Ad quod damnum, 14, 2

Parties, 14, 6

Verdict and judgment, 14, 12

Writ of, 14, 10

Amendments, 14, 8

Appeals, 14, 14

Application, 14, 8

Allegations, 14, 9

Amendments, 14, 8

Complaint for increased damages, 14, 9

In general, 14, 8

Oath and signature to application, 14, 9

Certiorari, 14, 15

Commissioners for assessment of damages, 14, 11

Complaint, 14, 9

Costs, 14, 13

Criminal procedure, 14, 15

Damages:

Inquisition, 14, 14

MILLS AND MILLDAMS, *cont'd.*

Declaration and complaint, 14, 9

Diversion of water, 14, 5

Exclusiveness of common-law remedies, 14, 5

Exclusiveness of statutory proceedings, 14, 3

Exclusiveness of statutory remedy, 14, 12

Diversion of water, 14, 5

Exclusiveness of common-law remedies, 14, 5

Highway flooded, 14, 5

Increasing height of dam, 14, 4

Injuries not permitted by statute, 14, 4

Negligent use of dam, 14, 5

Proceedings by landowner, 14, 3

Proceedings by millowner, 14, 3

Remedy under private acts, 14, 4

Flowage, see infra, Parties.

Flowage acts, 14, 3

Highway flooded, 14, 5

Increasing height of dam, 14, 5

Injuries not permitted by statute, 14, 4

Inquisition, 14, 13

Issues, 14, 10

Before court, 14, 10

Before sheriff's jury, 14, 10

Commissioners for assessment of damages, 14, 11

Title to land, 14, 11

Joinder of parties, 14, 7, 8

Judgment, 14, 12

Exclusiveness of statutory remedy, 14, 12

Height of dam, 14, 12

Under *ad quod damnum* proceedings, 14, 12

Under flowage acts, 14, 12

Jurisdiction, 14, 6

Negligent use of dam, 14, 5

Notice to adverse parties, 14, 13

Oath, 14, 9

Parties, 14, 6

Ad quod damnum, 14, 6

Flowage acts, 14, 6

Joinder of parties complainant under flowage acts, 14, 7

Joinder of parties defendant under flowage acts, 14, 8

Parties complainant under flowage acts, 14, 6

Parties defendant under flowage acts, 14, 7

Petition, 14, 9

Proceedings by landowner, 14, 3

Proceedings by millowner, 14, 3

Process, 14, 9

Ex parte proceedings, 14, 10

Separate warrants, 14, 10

To adverse parties, 14, 9

MILLS AND MILLDAMS, *cont'd.*

- Process, *cont'd.*
 - To the sheriff, 14, 10
 - Waiver, 14, 10
 - Writ of *ad quod damnum*, 14, 10
 - Records, 14, 13
 - Amending record, 14, 13
 - In general, 14, 13
 - Inquisition, 14, 13
 - Notice to adverse parties, 14, 13
 - Ownership of land, 14, 13
 - Showing compliance with statute, 14, 13
 - Remedy under private acts, 14, 4
 - Repair of mills, 14, 15
 - Scope of article, 14, 2
 - Signature, 14, 9
 - Supersedes, 14, 15
 - Title to land, 14, 11, 13
 - Trial *de novo*, 14, 14
 - Venue, 14, 6
 - Verdict, 14, 12
 - Exclusiveness of statutory remedy, 14, 12
 - Height of dam, 14, 12
 - In *ad quod damnum* proceedings, 14, 12
 - Under flowage acts, 14, 12
 - Verification, 14, 9
- MINAS, see DURESS.**
- MINERALS, see MINES AND MINING CLAIMS.**
- MINES AND MINING CLAIMS:**
- Admissions, 14, 20
 - Adverse suit, 14, 17
 - Action at law, 14, 18
 - Action at law or in equity, 14, 18
 - Action in equity, 14, 18
 - Admissions in pleading, 14, 20
 - Allegations, 14, 19
 - Answer, 14, 22
 - Character of the action, 14, 17
 - Citizenship of corporations, 14, 20
 - Complaint, 14, 19
 - Defendant's pleading, 14, 20
 - Description of premises, 14, 22
 - General rules of pleading, 14, 20
 - Judgment, 14, 21
 - Relation between the land office proceedings and the adverse suit, 14, 19
 - Verdict, 14, 21
 - Where allegations govern by mining acts, 14, 19
 - Answers, 14, 20, 22
 - Answers in code pleading, 1, 851
 - Citizenship:
 - Allegations of, 14, 21
 - Corporations, 14, 20
 - Complaint, 14, 19
 - Consideration, failure of, 14, 24
 - Corporations, 14, 25
 - Citizenship, 14, 25

MINES AND MINING CLAIMS, *con.*

- Description of premises, 14, 22
 - Ejectment, 7, 272
 - Incorporeal privilege, 7, 273
 - In general, 7, 272
 - Oil and oil wells, 7, 273
 - Where grant a mere license, 7, 272
 - Failure to do annual work, 14, 21
 - Federal questions, 14, 17
 - Injunctions, 14, 25
 - Inspection of mines, 14, 23
 - Judgment, 14, 21
 - Jurisdiction of state and federal courts, 14, 16
 - Adverse suits, 14, 16
 - Federal questions, 14, 17
 - Suits concerning mines, 14, 17
 - Miscellaneous matters, 14, 24
 - Parties, 14, 25
 - Verdict, 14, 21
- MINISTERIAL ACTS, see MANDAMUS.**
- MINISTERIAL ERRORS:**
- Coram nobis* and *coram vobis*, 5, 29
- MINORS (see GUARDIANS; INFANTS, and references there given):**
- Personal injuries*, see PERSONAL INJURIES.
- MINUTES, 10, 401; 14, 27**
- Amendments, 14, 29
 - Bills of exceptions, 3, 404
 - Clerical mistake, 14, 30
 - Contents, 14, 28
 - Definition, 14, 27
 - Nature, 14, 27
 - New trial:
 - In support of motion for new trial, 14, 914
 - Hearing on minutes limited to jury trials, 14, 915
 - In general, 14, 914
 - Other available evidence considered, 14, 914
 - Time of hearing on minutes, 14, 916
 - Records (see RECORDS).
 - As basis for record, 17, 907
 - Judge's minutes, 17, 908
 - Relation to record, 17, 908
 - Sentence, 19, 473
 - Signing minutes, 14, 29
 - Stipulations, 20, 651
- MISCEGENATION, 14, 31**
- Criminal procedure, 14, 31
 - Indictment, 14, 31
- MISDEMEANOR (see CRIMINAL PROCEDURE):**
- Bail and recognizance, 3, 203
- MISDIRECTION, see INSTRUCTIONS.**
- MISFEASANCE, see PUBLIC OFFICERS**

MISJOINDER (see **ABATEMENT IN PLEADING**; **COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS**; **JOINDER OF ACTIONS**; **JOINDER OF COUNTS AND CAUSES**; **JOINDER OF PARTIES**; **MULTIPARTIOUSNESS**), 22, 1263
Abatement in pleading, 1, 13
Arrest of judgment, 2, 803
Defaults:
 Whether cured by default, 6, 122
Demurrers, 6, 340
Executors and administrators, see **EXECUTORS AND ADMINISTRATORS**.
MISNOMER, see **NAMES**.
MISREPRESENTATION (see **FALSE REPRESENTATIONS AND DECEIT**):
 False personation, see **FALSE PERSONATION**.
 Siles, see **SALES**.
MISTAKE, 14, 32
 Accord and satisfaction, 1, 78
 Accounts, see **ACCOUNTS AND ACCOUNTING**.
 Agency, 16, 922
 Allegations, 14, 39
 Sufficient and insufficient, 14, 41
 Amendments (see **AMENDMENTS**), 1, 498, 600
 Answer, 14, 40
 Answers in code pleading, 1, 851
 Appeals, see **APPEALS**.
 Assumpsit, see **ASSUMPSIT**.
 Awards, see **AWARDS**.
 Bill in equity, 14, 40
 Decrees:
 Amendment or modification of decrees, 5, 1056
 Opening orders and decrees *pro confesso*, 5, 1012
 Defaults (see **DEFAULTS**):
 Application for relief, 6, 165
 Ignorance of law, 6, 167
 Directing verdict, 6, 705
 Dismissal, discontinuance, and nonsuit:
 Want of prosecution, 6, 916
 Election of remedies:
 Ignorance of material facts, 7, 366
 Mistaken remedy, 7, 366
 Elections:
 Petition, complaint, or notice, 7, 382
 Eminent domain, 7, 592, 610
 Executions against the body and arrest in civil cases:
 Second arrest, 8, 621
 Forthcoming and delivery bonds, 9, 653
 Fraud and mistake, alleging both, 14, 40

MISTAKE, cont'd.
 How mistake set up, 14, 39
 Alleging both fraud and mistake, 14, 40
 Bill or answer, 14, 40
 Issue to jury, 14, 40
 Must be alleged, 14, 39
 Pointing out mistake, 14, 42
 Inquests and inquiries, see **INQUESTS AND INQUIRIES**.
 Intention, 14, 39
 Showing real intention, 14, 43
 Issues to the jury, 14, 40
 Judgments, see **JUDGMENTS**.
 Jurisdiction, 14, 33
 Courts of law, 14, 35
 Equitable power, 14, 33
 Materiality of mistake, 14, 37
 Mistake of fact, 14, 37
 Mistake of law, 14, 35
 Mutuality of mistake, 14, 38
 Negligence, 14, 39
 New contract will not be made, 14, 34
 Requisites for exercise of jurisdiction, 14, 37
 Unintentional mistake, 14, 39
 Laches, see **LACHES**.
 Limitations, see **LIMITATIONS**.
 Materiality, 14, 37
 Pleading, 14, 41
 Misnomer, see **NAMES**.
 Motions, see **MOTIONS**.
 Mutuality, 14, 38
 Mutuality of mistake:
 Allegations, 14, 44
 Negligence, 14, 39
 Alleging freedom from, 14, 42
 Negotiable instruments (see **NEGOTIABLE INSTRUMENTS**), 14, 651
 New trial, see **NEW TRIAL**.
 Opening, amending, and vacating judgments, 15, 245
 Parties, 14, 45
 Partnership, see **PARTNERSHIP**.
 Payment:
 Evidence under plea of payment, 16, 212
 Pleading, 14, 41
 Freedom from negligence, 14, 42
 How mistake occurred, 14, 43
 In general, 14, 41
 Materiality of mistake, 14, 41
 Mutuality of mistake, 14, 44
 Pointing out mistake, 14, 42
 Prayer for relief, 14, 45
 Showing real intention, 14, 43
 Prayer for relief, 14, 45
 Proof, 14, 45
 Public lands, see **PUBLIC LANDS**.
 Rehearing, 18, 45
 Release, see **RELEASE**.

MISTAKE, *cont'd.*

Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.

Satisfaction and discharge of judgments, 19, 147

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Specific performance, see SPECIFIC PERFORMANCE.

Statute of limitation, see LIMITATIONS.

Unintentional, 14, 39

Variance, 14, 45

Vendor's liens, 22, 733

Wills, see WILLS.

MISTRIAL, see JURY; NEW TRIALS; TRIALS.

MITIGATION OF DAMAGES (see ANSWERS IN CODE PLEADING; DAMAGES; LIBEL AND SLANDER; PLEAS AT LAW):

Payment, see PAYMENT.

MITTIMUS (see COMMITMENTS):

Sentence, 19, 406

MIXED ACTION, see EJECTMENT; REAL PROPERTY.

MOBS, see COUNTIES; MUNICIPAL CORPORATIONS.

MONEY:

Counterfeiting, see COUNTERFEITING, Embezzlement:

Description of property, 7, 426

Larceny, see LARCENY.

Trover and conversion, 21, 1021

Variance, 22, 595

MONEY COUNTS, 14, 47

Allegations, 14, 51

Allegations of time, 14, 51

Averments common to all the counts, 14, 51

Demand, 14, 51

Indebtedness, 14, 51

Money had and received, 14, 53

Money lent, 14, 52

Money paid, 14, 53

Promising to pay, 14, 51

Refusal, 14, 51

Codes, 14, 49

Common law, 14, 49

Joinder in single count or with special count, 14, 49

Effect on trial, 14, 50

Joinder with special counts, 14, 50

Single count, 14, 49

Theory of the case, 14, 50

Whether permissible, 14, 49

Loans, see *infra*, Money lent.

Money had and received, 2, 1016; 14, 53

Actual receipt of money, 2, 1021

MONEY COUNTS, *cont'd.*

Money had and received, *cont'd.*

Benefit received, 2, 1022

Compulsory payments, 2, 1020

Defective title, 2, 1019

Embezzlement, 2, 1023

Factors, 2, 1017

Finality of election, 2, 1023

Forgery, 2, 1023

Fraud, 2, 1023

Illegal contracts, 2, 1019

Judgment subsequently reversed, 2, 1020

Money paid by mistake, 2, 1018

Money paid under claim of right, 2, 1018

Money received by defendant, 2, 1021

Money stolen, 2, 1023

Nature of consideration to be shown, 2, 1016

Necessity of contractual relation, 2, 1022

Partial failure of consideration, 2, 1019

Payment under protest, 3, 1020

Privity necessary, 2, 1021

Property converted into money, 2, 1022

Stockbrokers, 2, 1023

Tenants in common, 2, 1023

Usury, 2, 1020

Void contracts, 2, 1019

Waiver of tort, 2, 1022

Money lent, 2, 1015

Benefit of defendant, 2, 1016

Defendant's promise collateral, 2, 1016

Loan for illegal purpose, 2, 1016

Money promised to be loaned, 2, 1016

Nature of loan, 2, 1015

What is necessary to sustain the count, 2, 1015

Money paid, 2, 1012; 14, 53

Allegation and proof of request, 2, 1012

Contribution, 2, 1014

Duress, 2, 1013

Request implied, 2, 1013

Sureties, 2, 1014

Voluntary officious payments, 2, 1013

When the count will not lie, 2, 1014

Plea or answer, 14, 49

Scope of article, 14, 48

Set-off, recoupment, and counterclaim, 14, 49

Special allegations unnecessary, 14, 48

Theory of the case, 14, 50

MONEY COUNTS, *cont'd.*

Use and utility of money counts, 14, 48

Variance:

Avoiding peril of variance, 14, 48

MONEY IN COURT, see FUNDS AND DEPOSITS IN COURT.**MONOPOLIES, 14, 55**

Actions for damages for conspiracies to control trade, 14, 55

At common law, 14, 55

Averments in actions under state laws, 14, 56

Averment that act was that of corporation, 14, 57

Citizenship, 14, 60

Complaint under United States statutes, 14, 58

Conspiracy to refuse to sell, 14, 55

Judgment, 14, 57

Jurisdiction of United States courts, 14, 58

Parties under state laws, 14, 56

State laws, 14, 56

Sufficiency of complaint under state laws, 14, 56

Under United States statutes, 14, 58

Actions to vacate charters, 14, 68

Charters, vacation of, 14, 68

Complaint, 14, 56, 58

Declaration and complaint, 14, 56, 58

Indictment for violating state anti-trust statutes, 14, 60

Averments, 14, 60

Effect of trusts, 14, 60

Formation of trusts, 14, 60

Instruction, 14, 62

Laying time, 14, 60

Venue, 14, 60

Indictment under United States statute, 14, 62

Injunctions against combinations in restraint of trade, 14, 66

Jurisdiction, 14, 66, 68

Suits by individuals, 14, 66

Suits by the government, 14, 67

To restrain violation of state laws, 14, 67

To restrain violation of United States statutes, 14, 67

Intent, 14, 63

Interstate commerce, 14, 63

Judgments:

Actions for damages for conspiracies to control trade, 14, 57

Jurisdiction, 14, 66, 68

Jurisdiction of United States courts, 14, 58

United States courts, 14, 58

MONUMENTS:

Cemeteries, 3, 911

MORTALITY TABLES:

Personal injuries, 16, 404, 461

MORTGAGES (see CHATTEL MORTGAGES; EXECUTIONS; FORECLOSURE OF MORTGAGES; REDEMPTION):

Dower, 7, 193

Ejectment, 7, 325

Mortgagor and mortgagee, 7, 312

Eminent domain:

Appeals, 7, 636

Notice, 7, 489

Parties, 7, 508

Examples, 7, 508, 509

Mortgagee releases his right, 7, 509

Mortgagor, 7, 509

Mortgagor and mortgagee, 7, 508

Whether mortgagee is a necessary party, 7, 508

Equitable assignments, 7, 744

Exceptions and objections, 8, 300

Executions, 8, 545

Special executions, 8, 393

Forgery, 9, 565

Description of instrument, 9, 568

Guardians, 10, 839

Infants, 10, 839

Amount, 10, 841

Condition postponing foreclosure, 10, 843

Defenses, 10, 842

Foreclosure, 10, 842

Form of mortgage, 10, 842

Implied restriction, 10, 841

In general, 10, 839

Interest, 10, 841

Ordering sale of property, 10, 734

Power of sale, 10, 842

Proceedings to obtain an order of mortgage, 10, 840

Redemption, 10, 842

Time, 10, 841

Insane persons, 10, 1238

Insurance:

Who may sue upon policy, 11, 394

Issues to the jury, 11, 639

Mechanics' liens:

Mortgagees as parties defendant, 13, 963

Partition:

Mortgagees as parties defendant, 15, 795

Mortgagees as parties plaintiff, 15, 787

Redemption, see REDEMPTION.

Rescission, cancellation, and reformation of contracts:

Declaring deed absolute to be mortgage, 18, 787

MORTGAGES, *cont'd.*

Survival of actions, 21, 318

Taxation, 21, 403

Trover and conversion:

Mortgagor and mortgagee as parties to actions, 21, 1047

Trusts and trustees, see TRUSTS AND TRUSTEES.**MOTIONS, 14, 70**

Abandonment, 14, 145

Abuse of legal process, 14, 77

Actions:

Motion or action, 14, 81, 84
 Exclusiveness of remedy by motion, 14, 87
 General rule, 14, 84
 Proper method of attacking a final judgment, 14, 96
 Relief against judgments and orders, 14, 85
 Where a motion raises doubtful and difficult questions, 14, 85

Adjournment, 14, 165

Admiralty, 1, 286

Admissions, 14, 148

Affidavits (see *infra*, Compulsory affidavits):

Additional affidavits, 14, 161

Admissibility, 14, 148

Affidavits in support of, 14, 158

Amendment, 14, 160

Entitling affidavits, 14, 169

Ex parte motions, 14, 158, 159

Form and sufficiency, 14, 159

Information and belief, 14, 160

Necessity, 14, 158

Signature, 14, 159

Sufficiency, 14, 158

Waiver of objections, 14, 161

Compulsory affidavits, see *infra*, Compulsory affidavits.

Counter-affidavits, 14, 162

Filing affidavits, 14, 156

Notice of motion, 14, 139, 140

Rebutting affidavits, 14, 161

Scandalous matter, 14, 157

Serving affidavits, 14, 156

Suppressing affidavits, 14, 157

Taking affidavits, 14, 149

Affidavit made in another state, 14, 150

Affidavits of merits or defense, 14, 150

Compulsory affidavits, 14, 150

In general, 14, 149

Notice, 14, 149

Affidavits of merits or defense, 1, 356

Suing twice, 14, 150

MOTIONS, *cont'd.*

Amendments (see AMENDMENTS):

Affidavits, 14, 160

Defeat of intervening motion, 1, 631

Notice of motion, 14, 132

Answer, 14, 80

Appeals (see APPEALS):

Appeal as affected by renewal proceedings, and *vice versa*, 14, 191

Appeal as a bar to renewal, 14, 192

Waiver of leave to renew, 14, 192

Waiver of right to appeal, 14, 191

Motion as a prerequisite to review on appeal, 14, 89

Motion or appeal, 14, 87

Alternative remedies, 14, 87

In general, 14, 87

Motion to vacate appealable orders, 2, 95

Place of moving, 14, 104

Presumption, 2, 446

Rehearing, 2, 382, 384

Rehearing when there is a remedy by appeal, 14, 175

Reinstatement, 2, 359

Appearances:

Attorney in want of authority, 2, 681

Making a motion as general appearance, 2, 637

Unauthorized appearance of attorney, 2, 693

Arguments of counsel, 14, 167

Arrest in civil cases, see EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES.*Arrest of judgment*, see ARREST OF JUDGMENT.

Assignment of errors, 2, 952

Attachment, see ATTACHMENT.

Attorneys:

Notice of motion, 14, 139

Signature, 14, 139

Audita querela:Motion as a substitute for *audita querela*, 14, 77*Bills of exceptions*, see BILLS OF EXCEPTIONS.*Bills of particulars*, see BILLS OF PARTICULARS.

Burden of proof, 14, 167

Calendars and trial dockets, 3, 805

Certainty and definiteness in pleadings, 14, 93

Certiorari (see CERTIORARI), 2, 310

Clerical errors, 14, 113

MOTIONS, *cont'd.*

- Compulsory affidavits, 14, 150
 - Effect of subsequent tender of affidavit, 14, 156
- Power to compel, 14, 150
 - Ex parte* motions, 14, 151
 - In the absence of statute, 14, 150
 - Rights of parties under statute, 14, 151
 - Statutory provisions, 14, 150
 - When statute is not applicable, 14, 151
- Proceedings to compel, 14, 152
 - Application for order, 14, 152
 - Drafting and submitting affidavit, 14, 152
 - Fishing examination, 14, 153
 - Objections at hearing, 14, 153
 - Order, 14, 154
 - Preliminary essentials, 14, 152
 - Refusal of voluntary affidavit, 14, 152
 - Supporting affidavits, 14, 153
 - Waiver, 14, 152
- Proceedings under order, 14, 155
- Specifying irregularity, 14, 154
- Use of affidavit, 14, 156
- Vacating order, 14, 154
- Waiver, 14, 155
- Computation of time:
 - Notice of motion, 14, 144
- Conditional granting of order, 14, 170
 - Renewal of motion granted on conditions not performed, 14, 185
- Consolidation of actions, 4, 681
 - At what stage motion should be made, 4, 682
 - By whom motion to be made, 4, 681
 - Motion in general, 4, 681
 - Proof, 4, 682
- Consolidation of motions, 14, 167
- Constructive notice, 14, 124
- Contempt:
 - Party in contempt, 14, 96
- Contested or litigated motions, 14, 95
- Continuance, 14, 165
- Contributory negligence*, see CONTRIBUTORY NEGLIGENCE.
- Coram nobis* and *coram vobis*, 5, 33
- Costs*, see COSTS.
- Counter-affidavits, 14, 146, 162
 - Formalities, 14, 163
 - Information and belief, 14, 163
 - In general, 14, 162
 - Service, 14, 163
- Countermanding, 14, 145
- Courts*, see *infra*, Leave of court to renew.

MOTIONS, *cont'd.*

- Damages*, see *infra*, Motion as a substitute for plea or demurrer.
- Decisions*, see *infra*, Determination.
- Defaults (see DEFAULTS), 14, 172
 - At what term default may be taken, 6, 70
 - Of moving party, 14, 172
 - Of party moved against, 14, 173
- Definition, 14, 73
- Demurrer (see *infra*, Motion as a substitute for plea or demurrer), 14, 80
 - Striking out demurrer, 14, 82
- Determination (see *infra*, Hearing), 14, 169
 - Character of act, 14, 169
 - Conditional granting of order, 14, 170
 - Defaults of moving party, 14, 172
 - Defaults of party moved against, 14, 173
 - Express determination, 14, 170
 - Implied determination, 14, 171
 - Mode of, 14, 170
 - Necessity of, 14, 169
 - Pro forma* determination, 14, 171
 - Rules of decision, 14, 172
 - Time of, 14, 169
- Difficult questions, 14, 81, 85
- Directing verdict*, see DIRECTING VERDICT.
- Discharge of judgments*, see SATISFACTION AND DISCHARGE OF JUDGMENTS.
- Dismissal, discontinuance, and nonsuit*, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
- Division of opinion, 7, 47
- Docket, entry on, 14, 121
 - Constructive notice, 14, 124
- Enlargement of remedial scope, 14, 76
- Entitling affidavits, 14, 159
- Entitling papers, 14, 116
 - Disregarding mistake, 14, 117
 - In general, 14, 116
 - Motion affecting several actions, 14, 116
 - Where there is no suit pending, 14, 116
- Entry on docket, 14, 121
 - Constructive notice, 14, 124
- Enumerated and non-enumerated motions:
 - Enumerated motions, 14, 95
 - General or special term, 14, 106
- Evidence, 14, 147
 - Admissions, 14, 148
 - Affidavits*, see *infra*, Affidavits.
 - Depositions, 14, 148

MOTIONS, *cont'd.*

Evidence, *cont'd.*

Impeaching credit of affiant, 14, 148

Nature of evidence and proof admissible, 14, 147

Oral or written evidence, 14, 148

Ordinary rules of evidence, 14, 147

Support of motion, 14, 147

Exceptions and objections, see EXCEPTIONS AND OBJECTIONS.

Executions, see EXECUTIONS.

Executions against the body and arrest in civil cases, see EXECUTIONS

AGAINST THE BODY AND ARREST IN CIVIL CASES.

Ex parte motions, 14, 94

Affidavits in support of, 14, 159

Compelling affidavits, 14, 151

Extending time, 14, 103

Feigned issues, 14, 168

Filing (see *infra*, Entry on docket):

Constructive notice, 14, 124

Filing affidavits, 14, 156

Findings, see infra, Determination.

Form, see infra, Manner of moving.

Formal requisites, 14, 113

Former adjudication:

Decision of motions as *res judicata*, 14, 176

Former conviction or acquittal, 9, 631

Forthcoming and delivery bonds, see FORTHCOMING AND DELIVERY BONDS.

Grounds of rehearing, 14, 174

Grounds or reasons of motion, statement of, 14, 117

Designating grounds for relief in notice of motion, 14, 136

Grounds apparent of record, 14, 117

Grounds not assigned are waived, 14, 119

Grounds should be stated specifically, 14, 118

Sufficiency of statement, 14, 118

Whether motion must state the grounds, 14, 117

Hearing (see *infra*, Determination; Rehearing and reargument of motion), 14, 163

Argument, 14, 167

Burden of proof, 14, 167

Conclusiveness of findings, 14, 168

Consolidation of motions, 14, 167

Feigned issues, 14, 168

Place of, 14, 167

Province of court and jury, 14, 168

Reference, 14, 169

MOTIONS, *cont'd.*

Hearing, *cont'd.*

Renewal of motions, 14, 192

Hearing merits on application for leave to renew,

14, 193

Motion papers, 14, 192

Notice, 14, 192

Right to open and close, 14, 167

Time of, 14, 163

Adjournment, 14, 165

Continuance, 14, 165

Day noticed, 14, 163

Discretionary power to postpone, 14, 165

In general, 14, 163

Objections to the time of hearing, 14, 164

"Or as soon thereafter as counsel can be heard," 14, 164

Precedence between motions, 14, 166

Trial of issues, 14, 167

Information and belief:

Affidavits, 14, 160

Counter-affidavits, 14, 163

Injunctions, see INJUNCTIONS.

Interest, 14, 97, 98

Irrelevant matter, 14, 157

Issues to the jury, see ISSUES TO THE JURY.

Joinder of parties, 14, 96

Judgments (see *infra*, Determination; and see JUDGMENTS):

As to opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING

JUDGMENTS.

Relief against judgments by

motion or action, 14, 85

Judgments, relief against, 14, 76

Jurat:

Affidavits, 14, 159

Jurisdictional questions, 14, 81

Jury:

Issues to the jury, see ISSUES TO THE JURY.

Kinds of motions, 14, 93

Contested and litigated motions, 14, 95

Enumerated and nonenumerated motions, 14, 95

Ex parte motions, 14, 94

Motions not of course, 14, 94

Motions of course, 14, 93

Leave of court to renew, 14, 179, 181

Discretion of court, 14, 187

Effect of proceedings without leave, 14, 186

Effect on time of moving, 14, 191

Facts essentially the same, 14, 189

MOTIONS, *cont'd.*

- Leave of court to renew, *cont'd.*
 - Granting by implication, 14, 191
 - Granting by original order, 14, 190
 - Implication, 14, 191
 - Independent order, 14, 191
 - Manner of granting, 14, 190
- Necessity, 14, 181
 - Cumulative evidence, 14, 183
 - Renewal after default, 14, 186
 - Renewal of motion denied for irregularity, 14, 185
 - Renewal of motion granted on conditions not performed, 14, 185
 - Renewal on different grounds, 14, 183
 - Renewal on same facts, 14, 181
 - What are new facts within rule, 14, 182
- New facts, 14, 181, 189
- Power to grant, 14, 186
- Proceedings to obtain, 14, 186
- Renewal on new facts, 14, 189
- Rules governing allowances, 14, 187
- Waiver by appeal, 14, 192
- When leave will be granted, 14, 188
- Lost instruments and records:
 - Application for restoration of judicial records, 13, 381
- Mandamus*, see **MANDAMUS**.
- Manner of moving, 14, 113
 - Entitling papers, 14, 116
 - Entry on docket, 14, 121
 - Formal requisites, 14, 113
 - In general, 14, 113
 - Motions affecting several actions, 14, 121
 - Oral, 14, 114
 - Prayer for relief, 14, 119
 - Statement of grounds or reasons of motion, 14, 117
 - Written, 14, 114
- Misnomer, 14, 79, 296
- Mistake:
 - Disregarding mistake not entitled, 14, 117
- Motion affecting several actions:
 - But one set of papers necessary, 14, 121
 - Entitling papers, 14, 116
- Motion as a substitute for plea or demurrer, 14, 89
 - Formal defects, 14, 92
 - Infancy of the plaintiff, 14, 90
 - Matters of substance, 14, 91
 - Objecting to pleadings, 14, 90
 - Raising defenses, 14, 89

MOTIONS, *cont'd.*

- Motion as a substitute for plea or demurrer, *cont'd.*
 - Surplusage, 14, 93
 - Uncertainty and indefiniteness, 14, 93
 - Want of authority to bring an action, 14, 90
 - Want of jurisdiction, 14, 90
 - Where suit is brought in wrong court, 14, 90
- Motions not of course, 14, 94
- Motions of course, 14, 93
- Multifariousness, 14, 211
- Nature, 14, 73
- New trial*, see **NEW TRIAL**.
- New York*, see *infra*, Place of moving.
- Non-enumerated motions, 14, 95
- Notice of motion:
 - Definition, 14, 121
 - Nature, 14, 121
 - Necessity of notice, 14, 122
 - Constructive notice by filing motion, 14, 124
 - Cured by error, 14, 128
 - Effect of failure after expiration of term, 14, 127
 - Effect of failure to give notice, 14, 127
 - Examples of motions not requiring notice, 14, 126
 - Examples of motions requiring notice, 14, 125
 - General principles, 14, 122
 - General rule, 14, 122
 - Illustrative applications, 14, 125
 - Motion for discretionary order, 14, 123
 - Motions of course, 14, 124
 - Overruling motion for failure, 14, 127
 - Rules of court, 14, 122
 - Statutes, 14, 122
 - Void or voidable, 14, 127
 - Waiver of notice, 14, 127
- Papers on which motion is based, 14, 139
 - Copy of affidavits or other papers, 14, 139
 - Copy of pleadings and proceedings, 14, 140
 - Papers already served, 14, 140
 - Returning papers for irregularity, 14, 141
 - Rules of court, 14, 141
 - Specifying, 14, 139
 - Sufficiency of copy served, 14, 140
 - Supplemental papers and affidavits, 14, 140

MOTIONS, *cont'd.*

Notice of motion, *cont'd.*

- Place where motion must be made upon notice, 14, 107
- Place where motion must be made when without notice, 14, 108

Service of notice, 14, 122, 142

- Before commencement of action, 14, 142

- Computation of time, 14, 144

- Effect of too short notice, 14, 144

- Limitation of time, 14, 142

- Mode and proof of, 14, 144

- Shortening notice, 14, 143

- Time of, 14, 142

- Where there is no statute or rule, 14, 143

To whom given, 14, 128

- Amendment, 14, 132

- Attorney or party, 14, 129

- Defendants who do not appear, 14, 129

- Designating grounds for relief, 14, 136

- Designating place, 14, 133

- Designating relief sought, 14, 134

- Designating time, 14, 132

- Essentials in general, 14, 130

- Form, 14, 130

- For what day, 14, 129

- Grounds for relief stated in accompanying affidavit, 14, 138

- Motion based upon irregularities, 14, 138

- Papers on which motion is based, 14, 139

- Prayer for relief, 14, 134

- Signature by party or attorney, 14, 139

- Sufficiency, 14, 130

- Sufficiency of excuse, 14, 130

- Summary statement of essentials, 14, 130

- Test of sufficiency, 14, 132

Of course, 14, 93

- Motions not of course, 14, 94

- Notice, 13, 124

Official bonds, 15, 156

Open and close, 14, 167; 15, 185

Opening, amending, and vacating judgments, see **OPENING, AMENDING, AND VACATING JUDGMENTS.**

Opinion of court, to obtain, 14, 82

Opposing papers, 14, 146

- Cross or counter motions, 14, 146

- In general, 14, 146

- Issues framed without pleadings, 14, 146

Oral application, 14, 74

MOTIONS, *cont'd.*

Oral motions, 14, 114

Orders (see *infra*, Conditional granting of order; and see **ORDERS**):

- Application to vacate or modify orders, 15, 357

- Relief against orders by motion or action, 14, 85

- Vacating improvident orders, 14, 77

Parties to actions:

- Striking out parties, 14, 79

- Substitution of parties*, see **SUBSTITUTION OF PARTIES.**

Parties to motion, 14, 96

- Joinder of parties, 14, 96

- Party in contempt, 14, 96

- Person having no interest, 14, 98

- Persons interested, 14, 97

- Who may be moved against, 14, 98

- Who may move, 14, 96

Petitions:

- Petitions and motions distinguished, 16, 503

- In general, 16, 503

- Viva voce* or in writing, 16, 503

- When petition is preferable, 16, 503

- Petitions distinguished from, 14, 74

Place of hearing, 14, 167

Place of moving, 14, 104, 114

- Court of appeals, 14, 104

- Designating place, 14, 133

- General rule, 14, 104

- New York, 14, 104

- Caption and direction, 14, 105

- Contested motions, 14, 105, 106

- County or district, 14, 110

- Court orders, 14, 112

- Court or judge, 14, 104, 110

- Exceptional rules, 14, 110

- Ex parte* motions, 14, 105

- General term, 14, 106

- Motion in several actions, 14, 110

- Motions without notice, 14, 108

- Non-enumerated motion, 14, 106

- Order of judge, 14, 111

- Place designated by law, 14, 111

- Remedy for irregular vacation, 14, 112

- Rules as to vacating or modifying orders, 14, 111

- Rules in first district, 14, 110

- Special term, 14, 106

MOTIONS, *cont'd.*

- Place of moving, *cont'd.*
 - New York, *cont'd.*
 - Statute, 14, 104
 - What county, 14, 107
 - What judge, 14, 107
 - Whether order in wrong county void or voidable, 14, 107
- Plea, 14, 80
- Pleadings, objecting to, 14, 79, 90
- Pleas at law:
 - Propriety of motion or demurrer, 16, 582
 - Questions of form or irregularity, 16, 621
- Possession, writ of, 16, 748
- Prayer for relief, 14, 119
 - Alternative papers, 14, 120
 - Examples, 14, 119
 - General prayer for relief, 14, 120
 - In general, 14, 119
 - Motion may have several objects, 14, 119
 - Motion too broad, 14, 120
 - Notice of motion:
 - Designating relief sought, 14, 134
 - Prayer for general relief, 14, 135
 - Prayer for special relief, 14, 134
 - Objections by motion, 16, 792
- Premature suits:
 - Manner of raising objection, 16, 878
- Privilege from arrest*, see PRIVILEGE.
- Proofs*, see *infra*, EVIDENCE.
- Questions of law and fact, 14, 168
- Questions triable by motion limited, 14, 75
- Reargument*, see *infra*, REHEARING and reargument of motion.
- Reasons of motion*, see *infra*, Grounds or reasons of motion, statement of.
- Receivers*, see RECEIVERS.
- References, 14, 169
- Rehearing and reargument of motion (see *infra*, Renewal of motions; and see REHEARING), 14, 173
 - Discretion of court, 14, 173
 - Grounds, 14, 174
 - Hearing, 14, 175
 - How obtained, 14, 175
 - Rehearing on new facts, 14, 175
 - Remedy by appeal, 14, 175
 - Time, 14, 175
 - When granted, 14, 173
- Relief not obtainable, 14, 18
- Relief obtainable by motion, 14, 77
- Remedy by motion, 14, 76
- Index Pl. & Pr. — 44

MOTIONS, *cont'd.*

- Renewal of motions (see *infra*, Rehearing and reargument of motion), 14, 176
- Appeal as affected by renewal proceedings and *vice versa*, 14, 191
- Appeal as a bar to renewal, 14, 192
- Waiver of leave to renew, 14, 192
- Waiver of right to appeal, 14, 191
- Decisions of motions as *res judicata*, 14, 176
- Hearing, 14, 192
 - Hearing merits on application for leave to renew, 14, 193
 - Motion papers, 14, 192
 - Notice, 14, 192
 - Leave of court*, see *infra*, Leave of court to renew.
- Power to disregard rule against renewals, 14, 180
- Rule against renewals, 14, 178
- Statement of rule against renewals, 14, 178
- What amounts to a renewal, 14, 181
- Res adjudicata*, 14, 176
- Restitution*, see RESTITUTION.
- Returns*, see RETURNS.
- Revival of judgments, 18, 1074
- Revival on motion and notice, 18, 1089
- Revivor of suits and actions*, see REVIVOR OF SUITS AND ACTIONS.
- Satisfaction and discharge of judgments*, see SATISFACTION AND DISCHARGE OF JUDGMENTS.
- Scandal and impertinence*, see SCANDAL AND IMPERTINENCE.
- Scope of article, 14, 73
- Security for costs*, see SECURITY FOR COSTS.
- Sequestration*, see SEQUESTRATION.
- Service of counter-affidavits, 14, 163
- Service of notice (see *infra*, Notice of motion), 14, 142
- Rules of court, 14, 141
- Service of process:
 - Service on motion, 14, 122
- Serving affidavits, 14, 156
- Sham and frivolous pleadings (see SHAM AND FRIVOLOUS PLEADINGS), 20, 50
- Sheriffs and constables*, see SHERIFFS AND CONSTABLES.
- Sheriffs' sales*, see SHERIFFS' SALES.
- Signature:
 - Affidavits, 14, 159
 - Signature of notice of motion by party or attorney, 14, 139

MOTIONS, *cont'd.*

Special interrogatories to juries, see
SPECIAL INTERROGATORIES TO JURIES.

Stipulations:

Relief against stipulations, 20,
666

Stock and stockholders, see STOCK AND STOCKHOLDERS.

Striking out (see STRIKING OUT):

To strike out motion or demurrer, 14, 82

Striking out evidence, see WITHDRAWING AND STRIKING OUT EVIDENCE.

Striking out pleadings, 14, 80

Summary proceedings, 20, 1087

Suppressing affidavits, 14, 157

Surplusage, 14, 93

Technical exactness, 14, 113

Time of determination, 14, 169

Time of hearing, see infra, Hearing.

Time of moving, 14, 99, 114

Apt time, 14, 99

Designating time, 13, 132

Extending time, 14, 103

General and special term in New York, 14, 106

Leave to renew, 14, 191

Motion to quash, 14, 102

Notice of motion for what day, 14, 129

Pending action, 14, 99

Promptness, 14, 101

Qualification of rule, 14, 102

Rules of court, 14, 103

Statutes, 14, 103

Vacation, 14, 104

Waiver by proceeding in cause, 14, 102

Time of rehearing, 14, 175

Time to plead, see TIME TO PLEAD.

Use and scope of motions, 14, 75

In general, 14, 75

Motion as a prerequisite to review on appeal, 14, 89

Motion as a substitute for plea or demurrer, 14, 89

Motion or action, 14, 84

Motion or appeal, 14, 87

Relief not obtainable by motion, 14, 81

Relief obtainable by motion, 14, 77

Usury, see USURY.

Variance, 14, 80

Verification:

Affidavits, 14, 158, 160

Withdrawal, 14, 145

Witnesses, see infra, Evidence.

Written:

Waiver, 14, 116

Written motions, 14, 114

Written statement, 14, 74

MOTION TO QUASH:

Forcible entry and detainer, 9, 70

MULTIFARIOUSNESS, 14, 194

Amendments, 1, 494; 14, 215

Leave to amend, 14, 215

Answers, 14, 212

Objection raised in answer, 14, 210

Appeals:

Objection cannot be raised on appeal, 14, 208

At what stage of proceedings objection may be raised, 14, 209

Objection too late at hearing, 14, 209

Raised in answer, 14, 210

Bill in equity, 14, 202

Bills of peace, 3, 558

Bills to impeach decrees and judgments, 3, 614

Code, multifariousness under, 14, 206

Doctrine preserved, 14, 206

Terminology preserved, 14, 207

Consequences of multifariousness, 14, 214

Correction, 14, 214

Court *sua sponte*, 14, 213

Creditors' bills, 5, 559, 579

Declaration and complaint, 14, 202

Definition, 14, 195

Formulae of multifariousness, 14, 196

In general, 14, 195

No inflexible rule as to multifariousness, 14, 195

Tests of multifariousness, 15, 197

Demurrer, 14, 210

Demurrers in chancery:

Waiver of defects, 6, 434

Dismissal, discontinuance, and nonsuit, 6, 930; 14, 216

Equitable attachment, 7, 793

Exceptions and objections, 8, 201

Executions:

Injunction, 8, 483

Executors and administrators, 8, 697

Foreclosure of mortgages, 9, 367

Demurrer, 9, 370

How objection should be raised, 9, 370

In general, 9, 367

Objection at the hearing or appeal, 9, 371

Plea or answer, 9, 370

When foreclosed bill is multifarious, 9, 368

When foreclosed bill is not multifarious, 9, 369

Forms of multifariousness, 14, 199

Formulae of multifariousness, 14, 196

Indictments, 10, 535

MULTIFARIOUSNESS, *cont'd.*

- Injunctions, 10, 970
 - Defendant, 10, 910
 - In general, 10, 970
 - Pendency of action at law for damages, 10, 973
 - Suit for injunction and damages, 10, 972
 - What constitutes multifariousness, 10, 971
- Joinder of counts and causes, 1, 189
- Leave to amend, 14, 215
- Method of raising the objection, 14, 210
- Misjoinder distinguished from, 14, 200
- Motions, 14, 211
- Multifariousness as to matters, 14, 199
- Nature, 14, 195
- Parties to actions:
 - Joinder of complainants, 15, 667
 - Multifariousness as to, 14, 200
- Partition, 15, 802
- Partnership, 15, 997
 - Bill or complaint for accounting, dissolution, and settlement, 15, 1087
- Patents:
 - Demurrer, 16, 118
- Plea, 14, 212
- Plea in equity, 14, 203
- Prayer for relief as determining multifariousness, 14, 203
 - Alternative prayer, 14, 204
 - Asking impossible or improper relief, 14, 205
 - Inconsistent prayer, 14, 205
 - In general, 14, 203
- Reason for the rule against multifariousness, 14, 201
- Removal of causes, 18, 219
- Rescission, cancellation, and reformation of contracts, 18, 794, 804
- Specific performance, 20, 436
- Stock and stockholders, 20, 821, 828
- Terminology and distinctions, 14, 201
- Tests of multifariousness, 14, 197
- To what pleadings applicable, 14, 202
- Trade-marks and trade names, 21, 762
- Trusts and trustees, 22, 102
 - Actions between trustees and beneficiaries or their representatives, 22, 147
 - Establishment and enforcement of trusts, 22, 129
- Usury, 22, 471
- Vendor's liens, 22, 720
- When and where objection may be raised, 14, 208
- Who may raise the objection, 14, 212
 - Court *sua sponte*, 14, 213
 - Prejudiced party, 14, 212

MULTIFARIOUSNESS, *cont'd.*

- Wills, 22, 1204
- Winding up corporations, 22, 1263
- MULTIPLICITY OF SUITS**, 14, 217
 - See **BILLS OF PEACE**.
 - Bill in equity, 14, 219
 - Declaration and complaint, 14, 219
 - Each case judged by itself, 14, 218
 - Equity, 14, 217
 - Nuisances, 14, 1126
 - Waste, 22, 1118
 - Where the court has once acquired jurisdiction, 14, 218
- MUNICIPAL AID**, see **RAILROADS**.
- MUNICIPAL CORPORATIONS**, 14, 221
 - See **COUNTIES**.
 - Actions against municipal corporations, 14, 228
 - Complaint*, see *infra*, Declaration, petition, or complaint.
 - Declaration*, see *infra*, Declaration, petition, or complaint.
 - Jurisdiction and venue*, see *infra*, Jurisdiction and venue.
 - Parties, 14, 230
 - Petition*, see *infra*, Declaration, petition, or complaint.
 - Process against municipal corporations*, see *infra*, Service of process.
 - Service of process against municipal corporations*, see *infra*, Service of process.
 - Venue*, see *infra*, Jurisdiction and venue.
- Actions and suits generally, 14, 222
 - Corporate existence*, see *infra*, Corporate existence.
 - Form of action, 14, 222
 - Judicial notice of public act, 14, 223
 - Pleading charter, 14, 223
 - Special act must be pleaded, 14, 223
 - Use of corporate name*, see *infra*, Corporate name.
- Amendments, 1, 518
- Answer, 14, 243
- Appeal bonds and undertakings, 1, 968
- Appearances:
 - Corporate existence, 14, 226
- Attachment:
 - Bond, 3, 35
 - Averment of corporate existence*, see *infra*, Corporate existence.
- Averment of presentation of claim, 14, 235
 - Amendment, 14, 238
 - Demurrer, 14, 236
 - How defects taken advantage of, 14, 236

- MUNICIPAL CORPORATIONS,**
cont'd.
 Averment of presentation of claim,
cont'd.
 Lapse of time since presentation,
 14, 236
 Motion to dismiss, 14, 237
 Necessity of averring, 14, 235
 Waiver, 14, 237
 When to be taken advantage of,
 14, 237
 Burglary, 3, 768
 Certiorari (see CERTIORARI):
 Assessments, 4, 115, 120
 Illegality or irregularity, 4, 104
 Change of name, 14, 225
 Change of venue, 13, 229
 Charter:
 Judicial notice of public act, 14,
 223
 Pleading, 14, 223
 Special act must be pleaded, 14,
 223
 Claim, see *infra*, Averment of pre-
 sentation of claim.
 Collateral attack upon corporate ex-
 istence, 14, 227
 Conditions precedent:
 Notice of injuries and statement
 of claim, 4, 659
 Contract, see *infra*, Declaration, pe-
 tition, or complaint.
 Corporate existence, 14, 225
 Admission by the plaintiff, 14, 226
 Admission of, 14, 226
 Appearance as admission, 14, 226
 Averment of, 14, 225
 Collateral attack upon, 14, 227
 Date of incorporation, 14, 226
 Defending as admission, 14, 226
 General rule as to necessity of
 averment, 14, 225
 Necessity of quo warranto, 14,
 227
 Sufficient averment of corporate
 existence, 14, 226
 Corporate name, 14, 224
 Action in new name, 14, 225
 Change of name, 13, 225
 In action on obligation executed
 in wrong name, 14, 225
 Names of officers, 14, 224
 Names of officials, 14, 224
 Suit against municipal corpora-
 tion, 14, 224
 Use of corporate name, 14, 224
 Costs, 5, 151
 Creditors' bills, 5, 540
 Date of incorporation, 14, 226
 Declaration and complaint, 14, 235
 Averment of presentation of claim,
 see *infra*, Averment of pre-
 sentation of claim.
- MUNICIPAL CORPORATIONS,**
cont'd.
 Declaration, petition, or complaint:
 Actions on contract, 14, 241
 Averment of authority, 14,
 241
 Averment of promise to pay,
 14, 242
 Contract executed pursuant
 to statute, 14, 242
 Generally, 14, 241
 In actions arising from torts, 14,
 238
 Actions for injuries by
 mobs, 14, 240
 Averment of corporate duty,
 14, 238
 Averment of corporate duty
 in particular instances, 14,
 239
 Averment of means to per-
 form duty, 14, 240
 Variance, 14, 241
 Demurrer:
 Presentation of claim, 14, 236
 Ejectment, 7, 280
 Against county or city, 7, 282
 Examples, 7, 280, 282
 In general, 7, 280
 Lands improperly taken by cor-
 poration, 7, 282
 Overseers of the poor, 7, 281
 When corporation may maintain
 ejectment, 7, 280
 Embezzlement, 7, 437
 Executions, 14, 244
 Authorities holding all property
 exempt and that execution
 cannot issue, 14, 245
 Levy on property used for
 public purposes, 14, 245
 Levy upon corporate property,
 14, 244
 Injunctions:
 Defendant, 10, 914
 Judgments, 14, 243
 Authorities holding all property
 exempt and that execution
 cannot issue, 14, 245
 Enforcement, 14, 244
 Execution, 14, 244
 Jurisdiction of federal courts, 14,
 249
 Levy on property used for pub-
 lic purposes, 14, 245
 Levy upon corporate property,
 14, 244
 Mandamus, 14, 248
 Rendition and form, 14, 243
 Judicial notice:
 Charter, 14, 223
 Jurisdiction and venue, 14, 228
 Change of venue, 14, 229

MUNICIPAL CORPORATIONS,
cont'd.

- Jurisdiction and venue, *cont'd.*
 - In general, 14, 228
 - Jurisdiction as affected by change of corporation, 14, 230
 - Municipality in two counties, 14, 229
 - Venue, 14, 228
- Mandamus, 13, 647
 - Against municipal corporations, 14, 251
 - Discretion, 14, 253
 - Enforcement of judgment, 14, 248; 11, 1083
 - Jurisdiction of federal courts, 14, 249
 - Levy need not have been demanded, 14, 251
 - No remedy by execution, 14, 248
 - Order in which judgments should be paid, 14, 254
 - Remedy in nature of execution, 14, 251
 - General principles, 14, 251
 - Joinder of municipal corporations and officers, 13, 657
 - Proceedings relating to debts and obligations of municipal corporations, 13, 648
 - Respondents, 13, 647
 - Return or answer to claims against public corporations, 13, 740
 - Excuse necessary, 13, 742
 - Fraud, 13, 742
 - In general, 13, 740
 - Payment, 13, 741
 - Taxation, see TAXATION.
- Mobs, 14, 240
- Municipal securities, see MUNICIPAL SECURITIES.
- Names, see *infra*, Corporate name.
- Negligence, see *infra*, Declaration, petition, or complaint.
- New name, 14, 225
- Nuisances:
 - Declaration and complaint, 14, 1115
 - Indictment against officers of municipal corporations, 14, 1102
- Officers, see *infra*, Corporate name; Service of process.
- Ordinances, see ORDINANCES.
- Parties, 14, 230
 - Individual inhabitants not parties, 14, 230
 - Right of individual inhabitants to appear and defend, 14, 230
- Presentation of claim, see *infra*, Averment of presentation of claim.

MUNICIPAL CORPORATIONS,
cont'd.

- Quo warranto*, see QUO WARRANTO.
 - Attack upon corporate existence, 14, 227
 - Return, 14, 234
 - Riot, 14, 240
 - Scire facias, 19, 320
 - Securities, see MUNICIPAL SECURITIES.
 - Security for costs, 19, 357
 - Service of process, 14, 231
 - By whom served, 14, 234
 - Defective service not void, 14, 234
 - Delivery of copy of process, 14, 234
 - Manner of service, 14, 234
 - Mayor or other city officer, 14, 232
 - Necessity of, 14, 231
 - Return, 14, 234
 - Statute and charter of corporation, 14, 232
 - Statutory method must be followed, 14, 232
 - Time of service, 14, 234
 - Upon whom served, 14, 232
 - Waiver, 14, 231
 - Streets, see STREETS AND HIGHWAYS.
 - Taxation:
 - Mandamus to compel levy of taxes, see TAXATION.
 - Torts, see *infra*, Declaration, petition, or complaint.
 - United States courts:
 - Mandamus to enforce payment of judgment, 14, 249
 - Use of corporate name, see *infra*, Corporate name.
 - Variance, 14, 241
 - Venue (see *infra*, Jurisdiction and venue), 22, 808
- MUNICIPAL SECURITIES, 14, 255**
- Actions on municipal bonds and coupons, 14, 261
 - Against whom brought, 14, 262
 - Answer, 14, 266
 - Corporate existence, 14, 262
 - Declaration, petition, or complaint, see *infra*, Declaration, petition, or complaint.
 - Enforcement of judgment, 14, 267
 - Holder's right of action, 14, 262
 - When brought, 14, 261
 - Actions on municipal orders or warrants, 14, 255
 - Action by assignee in his own name, 14, 258
 - Action by assignee in name of original owner, 14, 258
 - Action regardless of want of funds, 14, 256

MUNICIPAL SECURITIES, *cont'd.*

Actions on municipal orders or warrants, *cont'd.*

Answer, 14, 261

Declaration, petition, or complaint, see *infra*, Declaration, petition, or complaint.

Defenses which may be interposed, 14, 259

Enforcement of judgment, 14, 261

Holder of negotiable warrant, 14, 258

Orders payable out of special fund, 14, 257

Presentment for payment, 14, 255

When brought, 14, 255

Who may maintain, 14, 258

Answer, 14, 261, 266

Denial of plaintiff's ownership, 14, 266

Nil debet and non est factum, 14, 266

Noncompliance with statutory formalities, 14, 267

Authorized purpose, issuance for, 14, 264

Bill in equity:

Bill in equity to cancel orders or warrants, 14, 269

Bonds, see *infra*, Actions on municipal bonds and coupons.

Complaint, see *infra*, Declaration, petition, or complaint.

Corporate existence, 14, 262

Maker of bond, 14, 262

Coupons, see *infra*, Actions on municipal bonds and coupons.

Declaration, petition, or complaint:

Actions on municipal bonds and coupons, 14, 263

Allegation of execution, 14, 263

Averment of authority, 14, 263

Averment of name of bonds, 14, 265

Averment of registration, 14, 265

Averment that bond was taken at par, 14, 266

Identification of coupon, 14, 266

Issuance for authorized purpose, 14, 264

Negation of overissue, 14, 266

When special authority should be alleged, 14, 263

Actions on municipal orders or warrants, 14, 259

Averment of authority to issue, 14, 259

MUNICIPAL SECURITIES, *cont'd.*

Declaration, petition, or complaint, *cont'd.*

Actions on municipal orders or warrants, *cont'd.*

Averment of funds with which to pay, 14, 260

Averment of indorsement or assignment, 14, 260

Averment of presentation, 14, 260

Description of security sued on, 14, 260

Injunctions to restrain issue of warrants, 14, 269

Judgments:

Enforcement by mandamus, 14, 261

Enforcement of judgment by mandamus, 14, 267

Jurisdiction, federal, 14, 267

Mandamus:

Enforcement of judgment, 14, 261, 267

Federal jurisdiction, 14, 268

Name of bond, averment of, 14, 265

Petition, see *infra*, Declaration, petition, or complaint.

Registration, averment of, 14, 265

Rescission and cancellation, 14, 269

United States courts:

Federal jurisdiction in actions on municipal securities, 14, 267

MURDER (see HOMICIDE):

Assault and battery:

Assault with intent to murder, 2, 851

Feloniously, 2, 853

Instruments, 2, 852

Intent without qualifications, 2, 852

Malice, 2, 853

Minor offenses, 2, 851

Person intended, 2, 854

Setting out the assault, 2, 851

Statutory language, 2, 852

The intent, 2, 851

Wilfully, 2, 853

Bail and recognizance, 3, 201

Conspiracy, 4, 731

MUTUAL ACCOUNTS, see ACCOUNTS AND ACCOUNTING.**MUTUAL BENEFIT ASSOCIATIONS, see INSURANCE; MUTUAL INSURANCE.****MUTUAL INSURANCE, 11, 380, 381**

Equitable assignments, 7, 761

Mandamus, 11, 382

NAMES, 14, 270

See TRADE-MARKS AND TRADE NAMES.

Abatement in pleading:

Misnomer, 1, 12

NAMES, *cont'd.**Abbreviations*, see ABBREVIATIONS.

Additions, 14, 288; 22, 573

Alias dictus, 14, 281

Amendments, 14, 304

Fictitious names, 14, 280

Appeal bonds and undertakings:

Variance, 1, 1012

Assignment of errors, 2, 958

Assumed names, see *infra*, Names in common use and assumed names.

Attachment, 3, 41

Affidavit, 3, 14

Briefs, see BRIEFS.

Burglary, 3, 760

Change of name, 14, 293

Discretion of court, 14, 294

Effect of change, 14, 293

Proceedings for change of name, 14, 294

Statutory provisions, 14, 294

Christian name and surname distinguished, 14, 271

Code pleading, 4, 592

Christian names, 4, 593

Fictitious names, 4, 593

Idem sonans, 4, 593

Middle name, 4, 594

Remedy for mistake in name, 4, 594

Specifying names of parties in complaint or petition, 4, 592

Common use, see *infra*, Names in common use and assumed names.

Consistency throughout proceedings, 14, 293

Constructive notice, 14, 302

Corporations, see CORPORATIONS.

Covenant, 5, 362

Deed signed in wrong name, 5, 363

Names of parties, 5, 362

Defendant's name, 14, 272

Definiteness and certainty in pleadings, 6, 257

Definition, 14, 271

Depositions:

Name of commissioner, 6, 493

Designation by title of office, 6, 494

In general, 6, 493

Sufficient designation, 6, 494

Names of witnesses, 6, 494

Designation of names, 14, 272

Actions on judgments, 14, 293

Additions, 14, 288

Alias dictus, 14, 281

Consistency throughout proceedings, 14, 293

Defendant's name, 14, 272

Fictitious name, 14, 279

Foreign names, 14, 291

Full name, 14, 273

NAMES, *cont'd.*Designation of names, *cont'd.**Idem sonans*, 14, 288

Identity of names, 14, 292

Initials, 14, 273

Married women, 14, 292

Middle name, 14, 275

Middle name or initial, 14, 275

Misnomer in written instruments, 14, 281

Names in common use and assumed names, 14, 277

Names of same original derivation, 14, 288

Name unknown, 14, 279

Necessity to designate names, 14, 272

Repetition, repugnancy, and variance, 14, 284

Effect of misnomer, 14, 295

How and when objections made, 14, 295

Constructive notice, 14, 302

Demurrer, 14, 295

Dilatory objection, 14, 296

Effect of misnomer when defendant does not appear, 14, 300

In general, 14, 295

Motion, 14, 296

Plea in abatement, 14, 295

Province of court and jury, 14, 302

Statutory provisions, 14, 296

Variance between writ and declaration, 14, 297

Waiver of objection, 14, 298

Waiver of objection after verdict or in appellate court, 14, 298

Waiver of objection in criminal cases, 14, 299

Exceptions and objections (see *infra*, Effect of misnomer), 8, 192

Executions:

Christian names, 8, 419

Description of defendant, 8, 418, 419

Direction in name of sovereign or state, 8, 389

False pretenses:

Names of parties defrauded, 8, 869

Fictitious name, 14, 279

Civil actions, 14, 280

Criminal procedure, 14, 279

Effect of amendment, 14, 280

Foreclosure of mortgages:

Notice of sale, 9, 174

Foreign names, 14, 291

Full name, 14, 273, 283

Initials, 14, 274

Gaming, see GAMING.

NAMES, *cont'd.**Homicide*, see **HOMICIDE**.

Husband and wife, 14, 292

Identity:

Identity of names, 14, 292

Junior and senior, 14, 290

Misnomer, 14, 282

Province of court and jury, 14, 302

Variance, 14, 287

Indictments, 10, 504

Common name, 10, 505

Defendant, 10, 504

Name in fact known, 10, 508

Name unknown, 10, 507

Persons other than defendant, 10, 505

Unknown of third persons, 10, 508

Initials, 14, 273

Common law, 14, 273

Court accepting initials as full name, 14, 274

Description of written instrument, 14, 272

Designation of woman by husband's name, 14, 278

Middle name or initial, 14, 275

No part of name, 14, 273

United States, 14, 274

Intoxicating liquors, see **INTOXICATING LIQUORS**.

Judgments:

Christian name or initials, 11, 953

Declaration and complaint in actions on judgments, 11, 1126

Descriptio personæ, 11, 952

Designation of parties, 11, 948

Failure to plead misnomer, 11, 954

Necessity of designating party by name, 11, 950

Junior, 14, 289

Married women, 14, 292

Middle name, 14, 275

Middle name or initial, 14, 275

Law knows but one name, 14, 275

Omission or incorrect statement of middle name, 14, 275

When first name is not given, 14, 277

Misnomer:

Abatement in pleading, 1, 12

Amendments, 1, 535; 14, 304

Attachment, 1, 685

Common law, 1, 535

Indictments, 1, 691, 693

Modern statutes, 1, 536

Process, 1, 663

Appearances, 2, 646, 647

Arrest of judgment, 2, 797

NAMES, *cont'd.*Misnomer, *cont'd.*

Assignment of errors, 2, 958

Attachment, 3, 41

Burglary, 3, 760

Corporations, see **CORPORATIONS**.

Demurrer, 14, 295

Effect of misnomer, see *infra*,
Effect of misnomer

Embezzlement, 7, 436, 437

Exceptions and objections, 8, 192

Motions, 14, 296

Parties to actions, see **PARTIES TO ACTIONS**.

Replication and plea of misnomer, 14, 278

Sufficiency of plea of misnomer, 14, 303

Written instruments, 14, 181

Identity, 14, 181

Name of defendant, 14, 283

Name of plaintiff, 14, 283

Satisfactory showing of identity, 14, 281

Motions, 14, 79

Mrs., 14, 292

Names in common use and assumed names, 14, 277

Designation of assumed name sufficient, 14, 277

Designation of woman by initials of husband's name, 14, 278

Fictitious name, 14, 279

Predominant name, 14, 279

Replication to plea of misnomer, 14, 278

Name unknown (see *infra*, Fictitious name), 14, 279

Nature, 14, 271

Necessity to designate names, 14, 272

Negotiable instruments, see **NEGOTIABLE INSTRUMENTS**.Objections, see *infra*, Effect of misnomer.Official bonds (see **OFFICIAL BONDS**):
Variance, 15, 129

Parties to actions, 15, 478

Equity, 15, 479

Individual or representative capacity, 15, 480

In general, 15, 478

Misnomer cured by amendment, 15, 478

Parties must be designated by name and not by mere description, 15, 478

Rule at common law, 15, 478

Statement of rule, 15, 478

Unknown parties, 15, 479

Partnership, see **PARTNERSHIP**.*Plea in abatement*, see *infra*, Effect of misnomer.

NAMES, *cont'd.*

- Poor debtor acts:
 - Misnomer in notice or citation to creditor, 16, 710
- Publication*, see PUBLICATION.
- Questions of law and fact, 14, 302
- Rape, 17, 648
- Receiving stolen goods*, see RECEIVING STOLEN GOODS.
- Reference from one count to another, 14, 284
- Religious societies, 18, 104
 - Corporate name, 18, 101
- Repetition, 14, 284
- Repugnancy, 14, 284
- Riot:
 - Designation of defendants, 18, 1198
- Same original derivation, 14, 288
- Seduction, 19, 418
- Senior, 14, 289
 - Father intended in absence of addition, 14, 291
 - Identity, 14, 290
 - Need not be proved, 14, 290
 - No part of name, 14, 289
- Summons and process*, see SUMMONS AND PROCESS.
- Surplusage, irrelevant or redundant matter:
 - Descriptio personæ*, 21, 294
- Variances, 14, 284; 22, 569, 573
 - Averment as to ignorance of name, 22, 582
 - Clerical error, 14, 284
 - Identity, 14, 287
 - Middle names, 22, 591
 - Name of third person, 14, 286
 - Slight variances, 14, 285
 - Variance between pleading and proof, 14, 286
- Verdict*, see VERDICT.
- Warrants, 22, 1077
 - Alteration of name, 22, 1079
 - Christian name, 22, 1077
 - Filling out blanks, 22, 1079
 - Legality of arrest by wrong name, 22, 1078
 - Name of accused not known, 22, 1077
 - Warrant naming only one of several defendants, 22, 1078

NAMES OF COUNSEL:

- Affidavits of merits or defense, 1, 365

NATIONAL BANKS, see BANKS AND BANKING.**NATURALIZATION, 14, 307**

- Amendments:
 - Records, 14, 314
- Criminal procedure, 14, 316
 - Alleging fraud, 14, 316
 - False swearing, 14, 316
 - In general, 14, 316

NATURALIZATION, *cont'd.*

- Declaration of intention, 14, 310
 - Recording, 14, 312
 - Fees of clerk, 14, 315
 - Final proceedings, 14, 311
 - Judgment and record, 14, 312
 - Absence of jurisdiction, 14, 315
 - Amendments, 14, 314
 - Collateral attack upon judgment, 14, 314
 - Direct attack upon judgment, 14, 314
 - Formal judgment should be entered, 14, 312
 - Form of judgment immaterial, 14, 313
 - In general, 14, 312
 - Judicial character of proceedings, 14, 311
 - Jurisdiction of courts, 14, 307
 - Attacks upon judgment for absence of jurisdiction, 14, 315
 - Constitutional provision, 14, 307
 - Court must have clerk and seal, 14, 310
 - Exclusiveness of power conferred on Congress, 14, 307
 - State court of record, 14, 308
 - State courts not compelled to entertain jurisdiction, 14, 308
 - Of proceedings, 14, 310
 - Declaration of intention, 14, 310
 - Final proceedings, 14, 311
 - In general, 14, 310
 - Parties, 14, 310
 - Parties, 14, 310
 - Petition, requisite allegations of, 14, 312
 - Records*, see *infra*, Judgment and record.
- NAVIGABLE WATERS, see WATERS AND WATERCOURSES.**
- NAVIGATION, see SHIPPING; WATERS AND WATERCOURSES.**
- NECESSARY PARTIES, see PARTIES.**
- NE EXECUT, 14, 318**
- Action on bond, 14, 328
 - Damages, 14, 328
 - Pleading, 14, 328
 - Affidavit, 14, 323
 - Avoiding jurisdiction of court, 14, 325
 - By whom made, 14, 323
 - Certainty as to debt, 14, 323
 - Endangerment of debt, 14, 325
 - Intention to depart, 14, 324
 - Necessary allegations, 14, 323
 - Alimony, 1, 410, 440, 445
 - Affidavit, 1, 441
 - Before issue, 1, 441
 - Husband giving security, 1, 441

NE EXEAT, *cont'd.*

Alimony, cont'd.

Necessary allegation, 1, 441

Time granted, 1, 441

Amendment of application, 14, 322

Application, 14, 321

Amendment, 14, 322

Mode, 14, 321

Notice, 14, 322

Presence of defendant within state, 14, 322

Time, 14, 321

Bail, 14, 325

Amount of bail, 14, 325

Condition of bond, 14, 326

Leave of absence, 14, 326

Bond, action on, 14, 328

Definition, 14, 320

Discharge of writ, 14, 326

Denial of debt or intention to depart, 14, 328

Grounds of discharge, 14, 327

Issuance for greater sum than due, 14, 328

Mode of application, 14, 326

Notice of application, 14, 327

Time of application, 14, 327

History, 14, 319

Intention to depart, 14, 324

Intention to depart, denial of, 14, 328

Jurisdiction, 14, 321

Marking of writ, 14, 325

Nature of writ, 14, 319

Notice of application, 14, 322

Notice of application for discharge, 14, 327

Payment into court, 14, 327

Presence of defendant within state, 14, 322

Return of writ, 14, 325

Seal, 14, 325

Service of writ, 14, 325

Signature, 14, 325

Time of application, 14, 321

Writ, 14, 325

NEGATIVES PREGNANT (see ANSWERS IN CODE PLEADING):

Pleas at law, 16, 567

Replications and replies, 18, 664

NEGATING EXCEPTIONS:

Ordinances, 15, 428

NEGLIGENCE, 14, 329

See DEATH BY WRONGFUL ACT;

LACHES; RAILROADS.

Answer, see infra, Plea or answer.

Answers in code pleading:

General denials, 1, 824

Appeals, 2, 406

Officials, 2, 246

Attorneys:

Actions against attorneys, 3, 107

Bills of particulars, 3, 550

NEGLIGENCE, *cont'd.*

Bridges, see BRIDGES.

Carriers, see CARRIERS.

Certainty, 14, 340

Contributory negligence, see CONTRIBUTORY NEGLIGENCE.

Crossings, see CROSSINGS.

Dangerous or defective premises, 14, 339

Allegation as to character of defect, 14, 340

Allegation as to ownership or possession, 14, 339

Allegation as to right to be on premises, 14, 339

Allegation that premises were unguarded, 14, 340

Knowledge of defective condition, 14, 340

Death by wrongful act, see DEATH BY WRONGFUL ACT.

Declaration and complaint, 14, 331

Allegation as to breach of duty, 14, 332

Allegation as to injuries, 14, 337

Allegation as to place of accident, 14, 337

Allegation of duty, 14, 331

Allegation of negligence in terms, 14, 337

Allegation that negligence was cause of injury, 14, 336

Alleging acts not negligence, 14, 335

Breach of statutory duty, 14, 336

Dangerous or defective premises, see infra, Dangerous or defective premises.

Degree of negligence, 14, 338

Degree of particularity, 14, 335

Fact of negligence, 14, 336

Gross negligence, 14, 338

Knowledge, 14, 335

Making definite and certain, 14, 340

Manner of negligence, 14, 336

Necessity of allegation of duty, 14, 331

Negligent performance of contract, 14, 340

Prayer for relief, 14, 340

Statement of acts constituting negligence, 14, 333

Sufficiency of allegation, 14, 332

Sufficiency of averments, 14, 334

Want of knowledge of facts, 14, 335

Wilful negligence, 14, 338

Defective premises, see infra, Dangerous or defective premises.

Definiteness and certainty in pleadings, 6, 265

NEGLIGENCE, *cont'd.*

- Degree of negligence, 14, 338
- Pleading and proof, 14, 344
- Demurrers, 14, 341
- Factors and brokers:
 - Actions against, 8, 839
- Fires*, see **FIRES**.
- General denial*, see *infra*, Pleading and proof.
- Injury, allegation that negligence was cause of, 14, 336
- Knowledge, 14, 335, 340
- Malpractice*, see **MALPRACTICE**.
- Master and servant*, see **MASTER AND SERVANT**.
- Municipal corporations*, see **MUNICIPAL CORPORATIONS**.
- Nuisances*, see **NUISANCES**.
- Passengers*, see **PASSENGERS**.
- Personal injuries*, see **PERSONAL INJURIES**.
- Place of accident, 14, 337
- Pleading and proof, 14, 342
 - Conformity of proof to pleadings, 14, 342
 - In general, 14, 342
 - In respect to injuries, 14, 343
 - Prevalence of familiar rule, 14, 342
 - Proof of negligence not alleged, 14, 343
- Degree of negligence, 14, 344
- Proof admissible under general denial, 14, 344
 - Affirmative defense, 14, 344
 - Exercise of care, 14, 344
 - Negligence of third person, 14, 344
- Proof of all acts pleaded, 14, 345
- Variance, 14, 345
- Waiver of variance, 14, 346
- Wilful negligence, 14, 345
- Plea or answer, 14, 341
 - General denial and contributory negligence, 14, 342
 - In general, 14, 341
 - Making definite and certain, 14, 342
 - Particularity, 14, 341
- Postmasters*, see **POSTMASTERS**.
- Proximate cause*, see **PROXIMATE CAUSE**.
- Railroads*, see **RAILROADS**.
- Proof*, see *infra*, Pleading and proof.
- Scope of article, 14, 331
- Surplusage, 14, 338
- Telegraphs and telephones*, see **TELEGRAPHS AND TELEPHONES**.
- Trespassing, vicious, and diseased animals*, see **TRESPASSING, VICIOUS, AND DISEASED ANIMALS**.
- Trover and conversion, 21, 1020

NEGLIGENCE, *cont'd.*

Variance, see *infra*, Pleading and proof.

Wilful negligence, 14, 338

Pleading and proof, 14, 345

NEGOTIABLE INSTRUMENTS,

14, 347

Affidavits (see *infra*, Denial of execution of instrument):

Denial of plaintiff's title, see *infra*, Denial of plaintiff's title.

Agency (see *infra*, Officers, agents, and principals as parties plaintiff):

Averment as to name of payee, 14, 511, 512

Declaration and complaint:

Action against agent, 14, 470

Authority of agent, 14, 469

Instrument executed by agent, 14, 468

Denial of authority of agent to transfer instrument, 14, 676

Denial of plaintiff's title:

Indorsements by agents, 14, 668

Plea or answer in actions on instruments executed by agents, 14, 615

Denial of execution of instrument, 14, 616

Denial of individual liability of agent, 14, 617

General issue, 14, 615

Plea or answer under oath, 14, 616

Special denial of agent's authority, 14, 615

Alteration of instrument, 14, 656

Burden of proof, 14, 660

Denial of execution of instrument, 14, 657

Necessity of plea or answer, 14, 656

Plea or answer under oath, 14, 659

Special plea alleging alteration, 14, 658

Admission of execution in instrument, 14, 659

Appropriateness of plea, 14, 658

Requisite allegations, 14, 658

Sufficiency of general issue, 14, 657

Amendments, 14, 582

Denial of plaintiff's title, 14, 686

Plea or answer, 14, 624, 686

By filing affidavit, 14, 625

In general, 14, 624

Amount due, 14, 501

Amount in controversy, 14, 363

Amount of interest, 14, 499

NEGOTIABLE INSTRUMENTS,

*cont'd.**Answer, see infra, Plea or answer.*

Answers in code pleading:

Allegations admitted by failure to deny, 1, 794

General denials, 1, 820

Knowledge of contents of notes, 1, 814

Suits on notes, 1, 787

Assignee as party plaintiff, 14, 404

Action for assignee in name of payee, 14, 384

Assignment of part of claim, 14, 408

Beneficial ownership, 14, 406

In general, 14, 404

Interest of assignee, 14, 406

On what instruments, 14, 408

Time of assignment, 14, 405

Transfer by what assignors, 14, 410

Under what assignments, 14, 406

Whether writing necessary, 14, 407

Assignment (see *infra*, Indorsement;

Indorsement or assignment;

Transferee by delivery only

as party plaintiff; Transferrer

as party plaintiff):

*Assignee as party plaintiff, see infra, Assignee as party plaintiff.**Bearer, see infra, Bearer.*

Debt, 14, 374

Denial of plaintiff's title, see infra, Denial of plaintiff's title.

Jurisdiction at law or in equity, 14, 362

Action by assignee, 14, 362

As affected by indorsement

or assignment, 14, 362

Assignee for benefit of creditors, 14, 363

Remote indorser, 14, 362

Legal owner, see infra, Legal title.

United States courts, 14, 364

Assignment for benefit of creditors:

Jurisdiction at law or in equity, 14, 363

Assumpsit, 14, 369

Account stated, 14, 371

Against whom action lies, 14, 369

In general, 14, 369

On what instruments action lies, 14, 370

Attachment:

Affidavit, 3, 18

Attorney's fees, stipulation in note for, 14, 557

Allegation of stipulation, 14, 558

NEGOTIABLE INSTRUMENTS,

*cont'd.*Attorney's fees, stipulation in note for, *cont'd.*

General allegation of damages, 14, 559

Recovery in action on note, 14, 557

Separate counts, 14, 558

Bad faith, 14, 641

Bearer, 14, 492, 525

Actions in name of payee, 14, 384

Intermediate assignments, 14, 526

Necessity and sufficiency of allegations where instrument is payable to bearer, 14, 525

Bearer as party plaintiff, 14, 393

Beneficial ownership not material, 14, 395

In general, 14, 393

Instrument payable in blank to bearer or to fictitious person, 14, 413

Instruments treated as payable to bearer, 14, 397

Interest of bearer, 14, 395

On what instruments, 14, 396

Personal representatives, 14, 396

Title necessary at time of suit, 14, 395

Transfer after maturity, 14, 395

Transfer without indorsement, 14, 394

Beneficial ownership, 14, 427

Action in name of payee for another's use, 14, 382

Action in the name of person having no interest, 14, 427

Assignee as party plaintiff, 14, 406

Bearer as party plaintiff, 14, 395

Holder of blank indorsement as party plaintiff, 14, 401

Indorsee as party plaintiff, 14, 388

Legal title, see infra, Legal title.

Necessity to maintain action, 14, 427

Parties plaintiff, 14, 427

Real party in interest, 14, 428

Right of beneficial owner to sue, 14, 427

Bill of particulars, 3, 532, 14, 570

Blank indorsement (see *infra*, Holder of blank indorsement as party plaintiff), 14, 524

Averment as to payee, 14, 508

Indorser suing in his own name where he reacquires ownership of instrument, 14, 419

Bona fide holder:

Denial of plaintiff's title, 14, 680

NEGOTIABLE INSTRUMENTS,

*cont'd.**Bona fide holder, cont'd.*

Necessity of plea or answer, 14, 680

Replications and replies, 14, 689

Requisite allegations, 14, 680

Burden of proof:

Alteration of instrument, 14, 660

Denial of plaintiff's title, 14, 686

Collateral security, see infra, Denial of plaintiff's title.

Common and special counts, 14, 561

Application to other than original parties, 14, 563

Character of evidence of instrument under common counts, 14, 566

Check, 14, 562

Effect of admission of instrument under common counts, 14, 569

Exceptions to rule permitting recovery under common counts, 14, 566

Extent of rule, 14, 563

Joinder of special and common counts, 14, 568

Necessity of common counts, 14, 569

Non-negotiable notes, 14, 567

Note payable to bearer, 14, 566

Proof of execution and consideration, 14, 569

Rule established by weight of authority, 14, 565

Statutes requiring copies, 14, 562

Use of common counts generally, 14, 561

Complaint, see infra, Declaration and complaint.

Conditions precedent, 4, 649

Action against indorser, 4, 650

Action against maker, 4, 649

Declaration and complaint, 14, 529

Allegation of performance in general, 14, 529

Condition in promissory note, 14, 530

Examples, 14, 531

Demand and notice in actions on commercial paper, 4, 649

Conflict of laws, 14, 463

Consideration (see *infra, Declaration and complaint*):

Denial of consideration for transfer, 14, 682

Illegality in consideration, see infra, Illegality in consideration.

Proof of, 14, 569

NEGOTIABLE INSTRUMENTS,

*cont'd.*Consideration, *cont'd.*

Want or failure of consideration, 14, 626

Availability as a defense, 14, 626

Breach of warranty, 14, 637

Facts to be particularly stated, 14, 634

Frame of plea or answer, 14, 637

Fraud, 14, 638

General averment, 14, 629

Insufficient averments, 14, 631

Necessity of specially pleading failure of consideration, 14, 632

Necessity of specially pleading want of consideration, 628

Nonperformance of express or implied contract, 14, 635

Partial failure of consideration, 14, 627

Pleading failure of consideration, 14, 632

Pleading want of consideration, 14, 628

Precision in framing plea or answer, 14, 633

Rescission or offer to rescind, 14, 640

Stating the circumstances, 14, 631

Sufficiency of plea or answer, 14, 634

Total failure of consideration, 14, 627

Want of consideration, 14, 626

Consolidation of actions, 14, 368, 695

Contribution:

Joinder of parties, 14, 445

*Copies, see infra, Pleading under statutory regulations.*Corporations (see *infra, Officers, agents, and principals as parties plaintiff*):

Judgments, 14, 703

Counts:

Counts on separate notes for same consideration, 14, 584

Several counts or paragraphs, 14, 579

Several notes in one count, 14, 587

Use of several counts, 14, 583

Covenants, 14, 372

Credits, 14, 490

Damages (see *infra, Inquests and inquiries*):

Declaration and complaint, 14, 500

NEGOTIABLE INSTRUMENTS, *cont'd.*

Date, 14, 495
 Date of making, 14, 495
 Date of transfer, 14, 497
 Debt, 5, 899; 14, 372
 Against whom the action lies, 14, 372
 Assignee, 14, 374
 Executors and administrators, 14, 374
 For value received, 14, 373
 In general, 14, 372
 On what instruments, 14, 375
 Declaration and complaint, 4, 926; 14, 462, 463, 485
 Anticipating defense, 14, 559
 Attorney's fees, see *infra*, Attorney's fees, stipulation in note for.
 Bill of particulars, 14, 570
 Common counts, see *infra*, Common and special counts.
 Conditions precedent, 14, 529
 Allegation of performance in general, 14, 529
 Condition in promissory note, 14, 530
 Examples, 14, 531
 Consideration, 14, 480
 Consideration for transfer, 14, 485
 For value received, 14, 483
 Guaranty, 14, 483
 Instrument payable in property, 14, 483
 Instrument payable on contingency, 14, 483
 Necessity of alleging, 14, 480
 Non-negotiable note, 14, 481
 Surety, 14, 483
 Counts, see *infra*, Common and special counts; Counts.
 Defense, anticipating, 14, 559
 Delivery, 14, 463, 473
 Acceptance by two, 14, 475
 Equivalent allegations, 14, 474
 Irregular indorsement before delivery to payee, 14, 475
 Necessity of alleging, 14, 473
 Redelivery of acceptance, 14, 475
 Demand, see *infra*, Demand, nonpayment, and protest.
 Description of instrument, 14, 486
 Amount, 14, 498
 Bearer, 14, 492
 Collection charges, 14, 501
 Consideration expressed, 14, 488

NEGOTIABLE INSTRUMENTS, *cont'd.*

Declaration and complaint, *cont'd.*
 Description of instrument, *con.*
 Credits, 14, 491
 Damages, 14, 500
 Date, 14, 495
 Date of making, 14, 495
 Date of transfer, 14, 497
 Demand for interest, 14, 500
 Devices, 14, 490
 Due bill, 14, 490
 Exchange, 14, 499
 Instrument in foreign language, 14, 491
 Instrument payable in specific articles, 14, 490
 Interest, 14, 499
 Legal effect, 14, 490
 Letters, 14, 490
 Manner of payment, 14, 492
 Memoranda, 14, 491
 Naming payee, 14, 491
 Nature of instrument, 14, 488
 Non-negotiable instrument, 14, 489
 Numbers, 14, 490
 Order, 14, 492
 Payable on a contingency, 14, 489
 Place, 14, 493
 Promissory note, 14, 488
 Protest fees, 14, 500
 Sealed instrument, 14, 489
 Sufficiency of description, 14, 486
 Transfers, 14, 493
 True description necessary, 14, 486
 Variance as to place, 14, 493
 Diligence under statutory provisions, 14, 553
 Execution, 14, 463
 Guarantor, actions against, 14, 555
 Irregular indorsement before delivery to payee, 14, 475
 Joint and several instruments, 14, 477
 Joint instrument, 14, 478
 Joint liability, 14, 476
 Jurisdiction, 14, 462
 Maturity, 14, 526
 Allegation that instrument is due, 14, 528
 No time of payment stated, 14, 527
 Time of payment, 14, 526
 Names, 14, 470
 Addition to maker's name, 14, 471
 Christian name, 14, 471

NEGOTIABLE INSTRUMENTS,

*cont'd.*Declaration and complaint, *cont'd.*Names, *cont'd.*

Initials, 14, 472

Name used in signing, 14, 470

True name, 14, 470

Variance, 14, 471

Wrong spelling, 14, 473

Necessity and sufficiency of allegation of execution, indorsement, etc., 14, 463

Alleging indorsement, 14, 466

Bill of exchange, 14, 465

Delivery, 14, 473

Designation of names, 14, 470

Name, 14, 470

Power to execute, 14, 467

Promissory note, 14, 463

Signing, 14, 467

Signing by agent, 14, 468

Stamping, 14, 467

Writing, 14, 467

Nonpayment, see *infra*, Demand, nonpayment, and protest.

Partnership, 14, 476

Partnership of makers, 14, 479

Pleading under statutory regulations, see *infra*, Pleading under statutory regulations.

Promise, 14, 501

Equivalent allegations, 14, 502

Liability, conclusion of law, 14, 503

Necessity of allegation, 14, 501

New promise to avoid laches, 14, 503

Protest, see *infra*, Demand, nonpayment, and protest.

Signing, 14, 467

Agent, 14, 468

Authority of agent, 14, 469

By whom signed, 14, 468

Necessity, 14, 467

Stamping, 14, 467

Stipulation in note for attorney's fees, see *infra*, Attorney's fees, stipulation in note for.

Suretyship, actions against, 14, 557

Title and ownership, see *infra*, Title and ownership.

Trove, 14, 582

Variance, 14, 485

Venue, 14, 462

What law governs, 14, 463

Writing, 14, 467

Default:

Judgments, 14, 704

NEGOTIABLE INSTRUMENTS,

cont'd.

Definiteness and certainty in pleadings, 14, 687

Denial of execution of instrument, 14, 606

Denial of plaintiff's title, 14, 670

Delivery, see *infra*, Declaration and complaint; Denial of delivery; Transferee by delivery only as party plaintiff.

Demand, nonpayment, and protest, 14, 531

Nonacceptance, 14, 541

Nonacceptance, notice of, 14, 547

Nonpayment, 14, 542

Averring that instrument is due, 14, 543

Inferential allegation, 14, 544

Instrument payable in property, 15, 544

Necessity of alleging, 14, 542

Negating payment to persons not parties, 14, 545

Nonpayment of interest, 14, 544

Nonpayment to plaintiff's transferrer, 14, 545

Refusal at particular place, 14, 545

Sufficient allegations of nonpayment, 14, 544

Notice of demand, nonpayment, and protest (see *infra*, Notice of demand, nonpayment, and protest), 14, 548

Notice of nonacceptance, 14, 547

Presentment and demand, see *infra*, Presentment and demand.

Protest, 14, 546

"Duly protested," 14, 547

Necessity of alleging, 14, 546

Pleading matter of excuse, 14, 547

Protest for nonacceptance, 14, 546

Demurrer:

Plea or answer, 14, 624, 686

Denial of delivery, 14, 618

Admission of delivery, 14, 619

Denial under oath, 14, 620

Express denial of delivery, 14, 619

General issue, 14, 618

Sufficiency of denial of execution, 14, 619

Denial of execution of instrument, 14, 589

Affidavits, 14, 590, 622

Affidavits, amendments by filing, 14, 625

NEGOTIABLE INSTRUMENTS,

*cont'd.*Denial of execution of instrument,
*cont'd.*Affidavits, by whom made, 14,
623

Affidavits, forms of, 14, 623

Affidavits, general issue without,
14, 600

Alteration of instrument, 14, 657

Amendments by filing affidavits,
14, 625Amendments in matters of sub-
stance, 14, 624

Construction of statute, 14, 594

Defenses not embraced in stat-
utes, 14, 599Definiteness and certainty, 14,
606Demurrer to plea or answer, 14,
624*Denial of delivery*, see *infra*, De-
nial of delivery.Denial of genuineness of signa-
ture or of execution, 14, 617Denial of new promise, 14, 596
Effect of denial under oath, 14,
603Effect of failure to deny execu-
tion under oath, 14, 599Executors and administrators,
14, 598General denial under the code,
14, 609General issue at common law,
14, 608General issue without affidavit,
14, 600Genuineness of signature, 14,
617In actions against partners, 14,
612Denial of execution of instru-
ment, 14, 613Denial of partnership, 14,
612

General issue, 14, 612

Necessity of plea or answer,
14, 612Plea or answer under oath,
14, 614Special pleas and denials, 14,
612In actions on instruments exe-
cuted by agents, 14, 615Denial of individual liability
of agent, 14, 617

General issue, 14, 615

Plea or answer under oath,
14, 616Special denial of agent's au-
thority, 14, 615

Inconsistent defenses, 14, 622

NEGOTIABLE INSTRUMENTS,

*cont'd.*Denial of execution of instrument,
cont'd.

Indorsement, 14, 675

Indorser's denial of indorsement,
14, 620

Denial under oath, 14, 621

General issue, 14, 620

Necessity of plea or answer,
14, 620

Information and belief, 14, 607

Instrument not declared on, 14,
598Introducing instrument before
proof of execution, 14, 626

Issues not raised, 14, 610

Justices' courts, 14, 597

Legal conclusions, 14, 607

Motion to strike out, 14, 624

Necessary allegations where
statute requires denial under
oath, 14, 611Necessity of plea or answer, 14,
599

Oath, 14, 590, 599, 614

Denial of delivery, 14, 620

Effect of denial under, 14,
603In actions against partners,
14, 612In actions on instruments
executed by agents, 14, 615Indorser's denial of indorse-
ment, 14, 621Waiver of denial under, 14,
605

Order of proof, 14, 625

Place of execution, 14, 608

Pleadings and instruments to
which statutes apply, 14, 595Plea must be appropriate to ac-
tion, 14, 610

Replication, 14, 596

Requisites and sufficiency of alle-
gations, 14, 606

Rules of court, 14, 590

Special denial surplusage, 14,
610Statutes and rules of court, 14,
590Statutes requiring denial under
oath, 14, 611

Statutory provisions, 14, 590

Suits in equity, 14, 597

United States courts, 14, 593

Verification, 14, 590, 622

Waiver of denial under oath by
defendant, 14, 605Waiver of denial under oath by
plaintiff, 14, 605

Denial of plaintiff's title, 14, 661

Availability of defense, 14, 661

NEGOTIABLE INSTRUMENTS, NEGOTIABLE INSTRUMENTS,

cont'd.

Denial of plaintiff's title, *cont'd.*
 Definiteness and certainty, 14, 670
 Denials under oath, 14, 663
 Agents' indorsement, 14, 668
 Denial of transfer not in writing, 14, 667
 Effect of denial under oath, 14, 670
 Effect of failure to deny under oath, 14, 669
 Indorsements by agents, 14, 668
 In general, 14, 663
 In the absence of statute, 14, 663
 Justices' courts, 14, 669
 Pleadings and transfers to which statutes apply, 14, 666
 Purpose of statutes, 14, 665
 Statutes requiring denial of execution of instrument, 14, 65
 Frivolous answer, 14, 661
 Information and belief, 14, 672
 Allegation of substantial defense, 14, 682
 Amendments, 14, 686
 Bona fide holding, 14, 680
 Burden of proof, 14, 686
 Demurrer to plea or answer, 14, 686
 Denial of authority of agent to transfer instrument, 14, 676
 Denial of consideration for transfer, 14, 682
 Denial of indorsement or assignment to plaintiff, 14, 675
 Denial of title of payee, 14, 674
 Dilatory plea, 14, 678
 Fraud in procurement of transfer, 14, 681
 Fraudulent transfer to oust court of jurisdiction, 14, 680
 Fraud upon assignor, 14, 681
 Fraud upon assignor's creditors, 14, 682
 General issue at common law, 14, 683
 General issue under statutes requiring denial under oath, 14, 685
 Inconsistent defenses, 14, 686
 Indorsement or assignment to plaintiff, 14, 675

cont'd.

Denial of plaintiff's title, *cont'd.*
 Information and belief, *cont'd.*
 Motion to strike out, 14, 686
 Partial ownership of third persons, 14, 673
 Plaintiff's *bona fide* holding, 14, 680
 Special plea, 14, 684
 Transfer of instrument as collateral security by plaintiff, 14, 680
 Transfer of instrument as collateral security to plaintiff, 14, 679
 Transfer of instrument by plaintiff after institution of action, 14, 677
 Transfer of instrument by plaintiff before commencement of action, 14, 677
 Transfer of instrument for collection by plaintiff, 14, 679
 Transfer of instrument for collection to plaintiff, 14, 679
 Legal conclusion, 14, 670
 Denial of plaintiff's conclusions as to ownership, 14, 671
 Necessity to allege facts, 14, 670
 Necessity of plea or answer, 14, 662
 Requisites and sufficiency of allegations, 14, 670
 Rules of court, 14, 663
 Statutes, 14, 663
 Departure, 14, 688
Description of instrument, see infra
 Declaration and complaint.
Descriptio personæ, 14, 510
 Contract made for principal, 14, 512
 Generally, 14, 510
 Name of payee not designated, 14, 512
 Devices, 14, 490
 Diligence:
 Assent of, 14, 649
 Avoiding effect of notary's certificate, 14, 650
 Notice of demand, nonpayment, and protest, 14, 548
 Diligence under statutory provisions, 14, 553
 Diligence in suing out execution, 14, 555
 Insolvency of maker, 14, 554
 Suit against maker, 14, 553
 Directing verdict, 6, 706

NEGOTIABLE INSTRUMENTS, NEGOTIABLE INSTRUMENTS,

*cont'd.*Dishonor, see *infra*, Notice of demand, nonpayment, and protest.

Dismissal, discontinuance, and nonsuit, 14, 693

Examples, 14, 693, 694

Generally, 14, 693

Distributee as party plaintiff, 14, 436

Drawer as party plaintiff, 14, 440

Due bill, 14, 490

"Due notice," 14, 551

Dishonor, 14, 549

"Duly presented," 14, 536, 547

Duplicity, 14, 689

Duress, 14, 652

Equity, see *infra*, Jurisdiction.

Evidence:

Burden of proof, see *infra*, Burden of proof.

Order of proof where execution of instrument is in issue, 14, 625

Exchange, 14, 499

Excusing notice of dishonor, 14, 549

Excusing presentment and demand, 14, 537

Excusing protest, 14, 547

Execution, see *infra*, Declaration and complaint.Execution of instrument (see *infra*, Denial of execution of instrument):

Proof of, 14, 569

Executors and administrators:

As parties plaintiff, 14, 436

Action for another's benefit, 14, 438

Death of executor or administrator, 14, 437

Foreign executor and administrator, 14, 439

Instrument payable to decedent, 14, 437

Instrument payable to executor or administrator, 14, 436

Revivor, 14, 439

Denial of execution of instrument under oath, 14, 598

Descriptio personae, 14, 511

Joinder of survivor and personal representative of deceased party, 14, 460

Action against personal representative alone, 14, 461

Death pending action, 14, 460

Representatives of maker and indorser, 14, 461

Whether joinder necessary, 14, 461

Whether joinder proper, 14, 460

*cont'd.*Executors and administrators, *cont'd.*

Personal representatives suing on negotiable instruments payable to bearer, 14, 396

Exhibits, see *infra*, Pleading under statutory regulations.

Extension of time as a defense, 14, 652

General issue, 14, 653

In actions against indorser or surety, 14, 653

In actions against maker, 14, 652

Special plea, 14, 653

Failure of consideration, see *infra*, Consideration.

Fictitious payee, 14, 513

Fictitious payee as party plaintiff, 14, 441

Holder suing in his own name where instrument is payable in blank to bearer or to fictitious person, 14, 413

Filling blanks, 14, 402

Filing indorsements, 14, 521

Findings, 14, 698

Forgery:

Description of instrument, 9, 569

Form of action, 14, 369

Assumpsit, 14, 369

At common law, 14, 369

Covenant, 14, 372

Debt, 14, 372

Statutory actions, 14, 377

Trove, 14, 376

Fraud:

Fraud in obtaining execution of instrument, 14, 655

As a defense, 14, 655

General issue, 14, 655

Sufficiency of special plea or answer, 14, 656

Fraudulent transfer to oust court of jurisdiction, 14, 680

Denial of plaintiff's ownership, 14, 681

Fraud in procurement of transfer, 14, 681

Fraud upon assignor, 14, 681

Fraud upon assignor's creditors, 14, 682

Want of failure of consideration, 14, 638

General issue (see *infra*, Denial of execution of instrument), 14, 688

Actions against partners, 14, 612

Actions on instruments executed by agents, 14, 615

Alteration of instrument, 14, 657

Denial of delivery, 14, 618

- NEGOTIABLE INSTRUMENTS, cont'd.**
- General issue, *cont'd.*
 - Denial of execution of instrument, 14, 608, 611
 - Denial of plaintiff's title, 14, 683
 - At common law, 14, 683
 - Necessity of special plea, 14, 684
 - Statutes requiring denial under oath, 14, 685
 - Extension of time, 14, 653
 - Fraud, 14, 655
 - Indorser's denial of indorsement, 14, 620
 - Guaranty (see **GUARANTY**):
 - Actions against guarantor and surety, 14, 555
 - Consideration, 14, 483
 - Guardians:
 - Guardian as party plaintiff, 14, 439
 - Heir as party plaintiff, 14, 436
 - Holder by blank indorsement as party plaintiff, 14, 398
 - Beneficial interest or ownership, 14, 401
 - Filling blank, 14, 402
 - Holder for collection or as collateral, 14, 402
 - In general, 14, 398
 - Interest of holder, 14, 401
 - Mala fides*, 14, 401
 - Necessity of filling blank, 14, 402
 - Suit in his own name, 14, 398
 - Suit in name of any person consenting, 14, 401
 - Time of filling blank, 14, 403
 - Holder by blank indorsement as payee:
 - Holder suing in his own name where instrument is payable in blank to bearer or to fictitious person, 14, 413
 - Husband and wife:
 - Joinder of parties, 14, 445
 - Parties plaintiff, 14, 440
 - Identification, 14, 580
 - Illegality in consideration, 14, 645
 - Averment of notice, etc., in action by indorsee, 14, 649
 - Code pleading, 14, 646
 - Compounding felony, 14, 646
 - Election wager, 14, 647
 - Necessity of specially pleading, 14, 645
 - Sufficiency of averment, 14, 646
 - Impersonal payee, 14, 513
 - Inconsistent defenses, 14, 622
 - Denial of plaintiff's title, 14, 686
 - Indorsee:
 - Actions in name of payee, 14, 383
- NEGOTIABLE INSTRUMENTS, cont'd.**
- Indorsee as party plaintiff, 14, 385
 - Beneficial ownership, 14, 388
 - By indorsement from what persons, 14, 392
 - Indorsee for collection, 14, 389
 - Indorsement after maturity, 14, 386
 - Indorsement for collateral security, 14, 389
 - In general, 14, 385
 - Interest of indorsee, 14, 388
 - On what instruments, 14, 390
 - Particular forms of indorsement, 14, 389
 - Special indorsee, 14, 388
 - Indorsement (see *infra*, Assignment; Bearer as party plaintiff; Declaration and complaint; Denial of execution of instrument; Indorsee as party plaintiff; Transferee by delivery only as party plaintiff; Transferor as party plaintiff):
 - Blank*, see *infra*, Blank indorsement.
 - Blank indorsement*, see *infra*, Bearer as party plaintiff.
 - Denial of plaintiff's title*, see *infra*, Denial of plaintiff's title.
 - Indorser's denial of indorsement, 14, 620
 - Denial under oath, 14, 621
 - General issue, 14, 620
 - Necessity of plea or answer, 14, 620
 - Jurisdiction at law or in equity, 14, 362
 - Action by assignee, 14, 362
 - As affected by indorsement or assignment, 14, 362
 - Assignee for benefit of creditors, 14, 363
 - Remote indorser, 14, 362
 - Indorsement or assignment, 14, 515
 - Action by another than payee, 14, 515
 - Action by assignee, 14, 515
 - Action by indorser upon instrument payable to order, 14, 518
 - Action for use of assignee, 14, 518
 - Allegation of indorsement, 14, 516
 - Assignment by indorsement, 14, 517
 - Averment of ownership, 14, 519
 - Blank indorsements, 14, 524
 - Copy, 14, 579
 - Declaration and complaint, 14, 515

NEGOTIABLE INSTRUMENTS, NEGOTIABLE INSTRUMENTS,

cont'd.

- Indorsement or assignment, *cont'd.*
 - Effect of right of assignee to sue, 14, 516
 - Effect of statutory form, 14, 520
 - General averment of assignment, 14, 516
 - Immaterial transfers, 14, 521
 - Indorsement by procuration, 14, 521
 - Necessity of alleging assignment, 14, 515
 - Notice of indorsement, 14, 519
 - Passing over intermediate indorsements, 14, 523
 - Possession after indorsement, 14, 522
 - Striking out and filling indorsements, 14, 521
 - Sufficiency of allegation of indorsement, 14, 520
- Indorser's denial*, see *infra*, Denial of execution of instrument.
- Information and belief:
 - Affidavit that plea is true, 14, 623
 - Denial of plaintiff's title, 14, 672
 - Denial on information and belief, 14, 607
- Inquests and inquiries:
 - Assessment of damages by court, 10, 1145
 - Bills of exchange, 10, 1148
 - Illustrations, 10, 1147
 - Intervention of jury not necessary, 10, 1146.
 - Note payable in currency of another state, 10, 1146
 - Promissory notes, 10, 1145
 - When jury necessary, 10, 1146
- Instructions, 14, 697
- Interest, 14, 499
- Joinder of causes of action, 14, 585
 - In general, 14, 585
 - Several notes in one count, 14, 587
- Joinder of counts and causes, 14, 568
 - Effect of admission of instrument under common counts, 14, 569
 - Joinder of special and common counts in general, 14, 568
 - Necessity of common counts, 14, 569
- Joinder of parties, 14, 442
 - Action for contribution, 14, 445
 - Beneficial owner, 14, 444
 - Husband and wife, 14, 445
 - Joint payees, indorsees, or assignees, 14, 442

cont'd.

- Joinder of parties, *cont'd.*
 - Parties defendant, 14, 445
 - Discontinuance as to maker or surety, 14, 450
 - Discontinuance as to one or more defendants, 14, 449
 - Drawer and acceptor, 14, 458
 - Indorser, 14, 159
 - Indorser and guarantor, 14, 459
 - Joint and several makers, 14, 448
 - Joint indorsers, 14, 459
 - Maker and guarantor, 14, 451
 - Maker and surety, 14, 449
 - Maker, drawer or acceptor, and indorser or assignor, 14, 452
 - Assignment or indorsement, 14, 456
 - Discontinuance as to one or more defendants, 14, 457
 - Whether joinder necessary, 14, 455
 - Whether joinder proper, 14, 452
 - Person not a party to instrument, 14, 461
 - Person refusing to join as plaintiff, 14, 461
 - Persons severally liable, 14, 447
 - Statutory provisions as to joint and several makers, 14, 449
 - Successive indorsers, 14, 459
 - Survivor and personal representative of deceased party, 14, 460
 - Two or more makers, 14, 447
 - Survivor, 14, 443
 - Transfer of interest of one joint payee, 14, 443
 - Transferrer and transferee, 14, 444
- Joint interest*, see *infra*, Title and ownership.
- Joint liability, 14, 476
- Judgments, 14, 699
 - Against corporations, 14, 703
 - Amount, 14, 701
 - By default, 14, 704
 - Form, 14, 699
 - Joint defendants, 14, 700
 - Judgment as an entirety, 14, 706
 - Maker and guarantor, 14, 701
 - Parties, 14, 700
 - Requisites, 14, 702
 - Satisfaction on payment of one of two judgments, 14, 704

NEGOTIABLE INSTRUMENTS, NEGOTIABLE INSTRUMENTS,

cont'd.

- Jurisdiction, 14, 357
 - Amount involved, 14, 363
 - At law and in equity, 14, 357
 - Amount involved, 14, 363
 - Assignment, 14, 362
 - Generally, 14, 357
 - Indorsement, 14, 362
 - Partnership cases, 14, 359
 - Payee and maker same person, 14, 358
 - Where payee is maker or *vice versa*, 14, 358
- Declaration and complaint, 14, 462
- Jury:
 - Proceedings after issues joined with or without intervention of jury, 14, 690
 - Examples, 14, 690, 692
 - Upon withdrawal of plea after appearance, 14, 690
 - When jury unnecessary, 14, 690
- Legal conclusions, 12, 1034
 - Allegation and denial of legal conclusions in plea or answer, 14, 607
 - Denial of plaintiff's title, 14, 670
 - Denial of plaintiff's conclusions as to ownership, 14, 671
 - Examples, 14, 670, 672
 - Necessity of alleging facts, 14, 670
 - Liability, 14, 503
- Legal title, 14, 421
 - Legal owner may sue, 14, 422
 - Legal title as a prerequisite to indorsement, 14, 421
 - Right of legal owner to sue, 14, 421
 - Who is legal owner, 14, 425
- Legatee as parties plaintiff, 14, 436
- Letters, 14, 490
- Maturity, 14, 526
 - Allegations that instrument is due, 14, 528
 - Averments of taking after maturity, 14, 641
 - No time of payment stated, 14, 527
 - Time of payment, 14, 527
- Memoranda, 14, 491
- Mistake, 14, 651
 - Name of payee, 14, 381
- Names (see *infra*, Holder by blank indorsement as party plaintiff; Payee as party plaintiff), 14, 470
 - Addition to maker's name, 14, 471

cont'd.

- Names, *cont'd.*
 - Averment as to payee:
 - Action in name of payee for use of another, 14, 510
 - Agent, 14, 511
 - Contract made for principal, 14, 512
 - Descriptio persona*, 14, 510
 - Incorrect name of payee in instrument, 14, 506
 - Initials, 14, 506
 - Mistake in spelling, 14, 507
 - Name of payee not designated, 14, 512
 - Christian name, 14, 471
 - Initials, 14, 472, 506
 - Mistake in spelling, 14, 507
 - Name used in signing, 14, 470
 - True name, 14, 470
 - Variance, 14, 471
 - Wrong spelling, 14, 473
- New promise:
 - Denial of new promise, 14, 596
- Nonacceptance, 14, 541
 - Notice of nonacceptance, 14, 547
- Non est factum*, 16, 545
- Nonpayment, see *infra*, Demand, nonpayment, and protest.
- Notary public:
 - Avoiding effect of notary's certificate, 14, 650
- Notice of demand, nonpayment, and protest, 14, 548
 - Averments of notice of defense, 14, 641
 - Diligence, 14, 548
 - Due notice of dishonor, 14, 549
 - Due notice of presentment and demand, 14, 551
 - Excusing notice of nonpayment, 14, 552
 - Notice of dishonor generally, 14, 548
 - Notice of nonpayment, 14, 551
 - Notice of presentment and demand, 14, 550
 - Notice of protest, 14, 553
 - Pleading matter excusing notice of dishonor, 14, 549
 - Time of notice of dishonor, 14, 549
- Notice of nonacceptance, 14, 547
- Oath (see *infra*, Denial of execution of instrument):
 - Alteration of instrument, 14, 659
 - Denial of plaintiff's title, see *infra*, Denial of plaintiff's title.
- Officers, agents, and principals as parties plaintiff, 14, 428
 - Action by agent when instrument is payable to corporation, 14, 431

NEGOTIABLE INSTRUMENTS,
*cont'd.*Officers, agents, and principals as parties plaintiff, *cont'd.*

Action by corporation, 14, 430

Action by officer, 14, 428

Action by person when instrument is payable to agent, 14, 431

Action by state or United States, 14, 431

Instrument payable to agent, 14, 431

Instrument payable to corporation, 14, 431

Instrument payable to officer, 14, 428

Instrument payable to principal, 14, 434

Successor, 14, 429

Open and close, 14, 694

Order, 14, 492

Action by indorsee or upon instrument payable to order, 14, 518

Averment of ownership, 14, 519

Indorsement by procuration, 14, 521

Necessity of alleging indorsement, 14, 518

Striking out and filling indorsements, 14, 521

Sufficiency of allegation of indorsement, 14, 520

Averment as to payee, 14, 509

Ownership, see *infra*, Beneficial ownership; Denial of plaintiff's title; Title and ownership.Parties defendant (see *infra*, Joinder of parties'), 15, 494

Judgment, 14, 700

Parties plaintiff (see *infra*, Joinder of parties; Payee as party plaintiff), 14, 380; 15, 494Assignee, see *infra*, Assignee as party plaintiff.Bearer, see *infra*, Bearer as party plaintiff.

Beneficial ownership, 14, 427

Distributee, 14, 436

Drawer, 14, 440

Executors and administrators, 14, 436

Fictitious payees and plaintiffs, 14, 441

Guardian, 14, 439

Heir, 14, 436

Holder by blank indorsement, see *infra*, Holder by blank indorsement as party plaintiff.

Husband and wife, 14, 440

NEGOTIABLE INSTRUMENTS,
*cont'd.*Parties plaintiff, *cont'd.*Indorsee, see *infra*, Indorsee as party plaintiff.

Judgments, 14, 700

Legal title, 14, 421

Legatee, 14, 436

Officers, agents, and principals, see *infra*, Officers, agents, and principals as parties plaintiff.

Pledgee, 14, 435

Pledgor, 14, 436

Transferee by delivery only, see *infra*, Transferee by delivery only as party plaintiff.

Transfer pending suit, 14, 441

Transferrer, see *infra*, Transferrer as party plaintiff.

Parties to actions, 15, 494; 14, 380, 700

Partnership, see PARTNERSHIP.

Actions against partners, 14, 612

Denial of execution of instrument, 14, 613

Denial of partnership, 14, 612

General issue, 14, 612

Necessity of plea or answer, 14, 612

Plea or answer under oath, 14, 614

Declaration and complaint, 14, 476

Denial of execution of instrument, 14, 612

Jurisdiction at law or in equity, 14, 359

Action by indorsee, 14, 361

After dissolution, 13, 362

In general, 14, 359

One partner against another, 14, 360

Two firms with common members, 14, 360

Where the firm and one of its members are parties adversely interested, 14, 359

Partnership of makers, 14, 479

Right against all, 14, 476

Payee, see *infra*, Title and ownership.

Payee and maker same person, 14, 358

Payee as party plaintiff, 14, 380

Action by payee in his own name, 14, 380

Action for assignee, 14, 384

Action for bearer, 14, 384

Action for holder for delivery only, 14, 385

Action for indorsee, 14, 383

Action in name of payee for another's use, 14, 382

NEGOTIABLE INSTRUMENTS, *cont'd.*

Payee as party plaintiff, *cont'd.*
 Action in name of payee for what holders, 14, 383
 Discount by another person than payee, 14, 383
 Mistake in payee's name, 14, 381
 Necessity of indorsement, 14, 381
 Necessity of possession, 14, 382
 Payee not the real owner, 14, 380
 Transferee by delivery only as party plaintiff:
 Where payee is not a real party, 14, 414
 Payment, 16, 194, 209
 Manner of, 14, 492
 Payment as a defense, 14, 655
Personal representative, see *infra*, Executors and administrators.
 Place, 14, 493
 Place of presentment and demand, 14, 541
 Place where payable, 14, 494
 Pleading under statutory regulations, 14, 571
 Amendment of copy, 14, 582
 Character of instrument necessary to be filed, 14, 578
 Character of statutes, 14, 572
 Complaint alleging amount claimed upon copy, 14, 574
 Concise statement of cause, 14, 572
 Copies, 14, 571
 Copy of indorsement or assignment, 14, 579
 Declaration with copy annexed or inserted, 14, 575
 Effect of exhibit or copy, 14, 580
 Exhibit, 14, 571, 577
 Exhibit or copy part of pleading, 14, 580
 Identification, 14, 508
 In general, 14, 571
 Instrument copied in declaration, 14, 575
 Note filed as substitute for declaration, 14, 573
 Permissive statutes, 14, 572
 Petition and copy, 14, 576
 Requirement of exhibits, 14, 577
 Several counts or paragraphs, 14, 579
 Statement instead of declaration, 14, 574
 Sufficiency of copy, 14, 576
 Sufficiency of statutory form, 14, 571
 Summary proceedings, 14, 572
 Plea or answer, 14, 588
Alteration of instrument, see *infra*, Alteration of instrument.

NEGOTIABLE INSTRUMENTS, *cont'd.*

Plea or answer, *cont'd.*
 Amendments, 14, 624
 Bad faith, 14, 641
Codes, see *infra*, Answers in code pleading.
Consideration, see *infra*, Consideration.
 Demurrer, 14, 624
 Demurrer to plea or answer, 14, 624
Denial of execution of instrument, see *infra*, Denial of execution of instrument.
 Denial of indebtedness, 14, 589
 Denial of plaintiff's title, 14, 661
 Denial of promise, 14, 589
 Diligence, 14, 649
 Extension of time, 14, 652
 Failure to proceed against principal at request of surety, 14, 654
 Fraud in obtaining execution of instrument, 14, 655
 General denial, 14, 588
 General issue, 14, 588
Illegality in consideration, see *infra*, Illegality in consideration.
 Inconsistent defenses, 14, 622
Indorser's denial, see *infra*, Denial of execution of instrument.
 Indorser's denial of indorsement, 14, 620
 Mistake, 14, 651
 Notice of defense, 14, 641
 Order of proof, 14, 625
 Payment, 14, 655
 Taking after maturity, 14, 541
 Tender, 14, 654
 Verification, 14, 622
Want of failure of consideration, see *infra*, Consideration.
 Pledgee as party plaintiff, 14, 435
 Pledges:
 Action on pledged note, 16, 639
 Answer, 16, 641
 In general, 16, 639
 Parties, 16, 640
 Pleadings, 16, 640
 Actions to enforce pledgee's rights, 16, 630
 When sale will be decreed, 16, 638
 Pledgor as party plaintiff, 14, 436
 Presentment and demand, 14, 531
 Allegation that payment was refused, 14, 539
 "Duly presented," 14, 536
 Necessity of alleging, 14, 531
 Necessity of alleging in action against acceptor, 14, 533

NEGOTIABLE INSTRUMENTS,

cont'd.

- Presentment and demand, *cont'd.*
 - Necessity of alleging in action against drawer, 14, 534
 - Necessity of alleging in action against guarantor, 14, 534
 - Necessity of alleging in action against indorser, 14, 534
 - Necessity of alleging in action against maker, 14, 531
 - Necessity of alleging where note payable on demand, 14, 532
 - Note payable at particular place, 14, 533
 - Note payable at special time or place, 14, 532
 - Place of presentment and demand, 14, 541
 - Pleading matter excusing presentment and demand, 14, 537
 - Proof of excuse under allegations of presentment and demand, 14, 538
 - Sufficient allegations of demand, 14, 536
 - Time of presentment and demand, 14, 539
- Principals*, see *infra*, Officers, agents, and principals as parties plaintiff.
- Proceedings after issues joined (see *infra*, Jury):
 - Dismissal, discontinuance, and nonsuit, 14, 693
 - Findings of court, 14, 698
 - Instructions, 14, 697
 - Judgment*, see *infra*, Judgments.
 - Trial*, see *infra*, Trial.
- Production of instrument at trial, 14, 695
- Promise:
 - Declaration and complaint, 14, 501
 - Equivalent allegations, 14, 502
 - Liability, conclusion of law, 14, 503
 - Necessity of allegation, 14, 501
 - New promise to avoid laches, 14, 503
- Protest*, see *infra*, Demand, nonpayment, and protest.
- Protest fees, 14, 500
- Public officers*, see *infra*, Officers, agents, and principals as parties plaintiff.
- Replications and replies, 14, 606, 687
 - Bona fide* holder, 14, 689
 - Certainty, 14, 687
 - Departure, 14, 688
 - Duplicity, 14, 689
 - In general, 14, 687

NEGOTIABLE INSTRUMENTS,

cont'd.

- Replications and replies, *cont'd.*
 - Oath, 14, 596
 - Responsiveness, 14, 687
- Rescission:
 - Rescission or offer to rescind, 14, 640
- Rules of court*, see *infra*, Denial of execution of instrument; Denial of plaintiff's title.
- Schools, 19, 239
- Scope of article, 14, 357
- Separate counts and paragraphs, 14, 579, 583
- Signature:
 - Denial of signature, 14, 617
- Signing, 14, 467
 - Agents, 14, 468
 - Authority of agent, 14, 469
 - By whom signed, 14, 468
 - Necessity, 14, 467
- Simultaneous and successive suits, 14, 367
 - Actions for interest, 14, 367
 - Consolidation, 14, 368
 - Several instruments payable to same person, 14, 367
 - Statutory provisions as to separate suit, 14, 368
 - Where several parties liable, 14, 367
- Special counts*, see *infra*, Common and special counts.
- Stamping, 14, 467
- State:
 - As parties plaintiff, 14, 431
- Statutes*, see *infra*, Denial of execution of instrument; Denial of plaintiff's title.
- Statutory regulations*, see *infra*, Pleading under statutory regulations.
- Successive suits*, see *infra*, Simultaneous and successive suits.
- Suretyship:
 - Actions against guarantor and surety, 14, 555
 - Consideration, 14, 483
 - Failure to proceed against principal at request of surety, 14, 654
 - Joinder of maker and surety, 14, 449
- Survivorship, 14, 505
- Tender, 14, 554
- Time*, see *infra*, Extension of time as a defense.
- Time of presentment and demand, 14, 539
- Title (see *infra*, Beneficial ownership; Legal title):
 - Denial of plaintiff's title*, see *infra*, Denial of plaintiff's title.

NEGOTIABLE INSTRUMENTS, *cont'd.*

- Title and ownership, 14, 503
 - Affirmative showing of no title, 14, 504
 - Assignment, see *infra*, Indorsement or assignment.
- Averment as to payee, 14, 505
 - Action by payee against irregular indorser, 14, 510
 - Action by payee against maker, 14, 508
 - Action in name of payee for use of another, 14, 510
- Agent, 14, 511
- Contract made for principal, 14, 512
- Correct description, 14, 506
- Descriptio personæ*, 14, 510
- Executor or administrator, 14, 511
- Fictitious payee, 14, 513
- Generally, 14, 505
- Impersonal payee, 14, 513
- Incorrect name, 14, 506
- Initials, 14, 506
- Instrument payable to blank, 14, 508
- Manager, 14, 511
- Mistake in spelling, 14, 507
- Name of payee not designated, 14, 512
- Note payable to order, 14, 509
- Proof of identity, 14, 507
- Effect of particular title alleged, 14, 504
- Indorsement, see *infra*, Indorsement or assignment.
- Instruments payable to bearer, 14, 525
 - Intermediate assignments, 14, 526
 - Necessity and sufficiency of allegations, where instruments are payable to bearer, 14, 525
- Joint interest, 14, 513
 - Assignment, 14, 513
 - Generally, 14, 513
 - Husband and wife, 14, 514
- Necessity of showing title, 14, 503
- Survivorship, 14, 505
- Title by operation of law, 14, 505
- Transfer, 14, 493
- Transferee by delivery only as party plaintiff, 14, 410
 - General rule denying right of action, 14, 410
- Instrument payable in blank to bearer or fictitious person, 14, 413

NEGOTIABLE INSTRUMENTS, *cont'd.*

- Transferee by delivery only as party plaintiff, *cont'd.*
 - Non-negotiable instruments, 14, 413
 - Particular instruments, 14, 413
 - Payee not a real party, 14, 414
 - Principal and agent, 14, 413
 - Real owner, 14, 412
 - Statutes, 14, 411
 - Transfer after maturity, 14, 413
 - When an action lies, 14, 411
- Transfer pending suit:
 - Parties plaintiff, 14, 441
- Transferor as party plaintiff, 14, 414
 - Incomplete transfer, 14, 418
 - Indorsement in full or in blank, 14, 419
 - Ownership acquired, 14, 414
 - Payment necessary before action, 14, 417
 - Reassignment unnecessary, 14, 420
 - Striking out indorsement or assignment, 14, 421
 - Transferor taking up instrument, 14, 415
- Trial, 14, 694
 - In general, 14, 694
 - Production of instrument, 14, 695
- Trover, 14, 582; 21, 1021
 - Declaration and complaint, 14, 582
 - Finding, 14, 583
 - General sufficiency of allegations, 14, 582
 - Ownership, 14, 583
 - Value, 14, 583
- United States:
 - As parties plaintiff, 14, 431
- United States courts, 14, 364
 - Assignment, 14, 364
 - Corporations, 14, 365
 - Examples, 14, 365, 366
 - Foreign bills, 14, 365
 - Indorsee suing indorser, 14, 366
 - Jurisdiction of, 14, 364
 - Presumptions as to jurisdiction, 14, 366
 - Test of negotiability, 14, 365
- Value received, 14, 483
- Variance, 14, 493
 - For value received, 14, 484
- Venue:
 - County of defendant's residence, 14, 377
 - County of indorser's residence, 14, 378
 - Declaration and complaint, 14, 462
 - Party primarily liable, 14, 377

NEGOTIABLE INSTRUMENTS,*cont'd.***Venue, *cont'd.***

Waiving objections to venue, 14, 379

Where performance due, 14, 379

Verification (see *infra*, Denial of execution of instrument):*Denial of plaintiff's title*, see *infra*, Denial of plaintiff's title.

Want or failure of consideration:

Actions on sealed instruments, 14, 640

Writing, 14, 467

NE UNQUES EXECUTOR OR ADMINISTRATOR:

Executors and administrators, 8, 671

NEW ASSIGNMENT (see REPLICATION; REPLY; TRESPASS):

Departure, 6, 467

Official bonds, 15, 143

Payment:

Replication by way of new assignment, 16, 221

NEW HAMPSHIRE:

Agreed case, 1, 400

NEWLY DISCOVERED EVIDENCE (see BILLS OF REVIEW; NEW TRIAL):

Continuances, 4, 863

Affidavit, 4, 887

Judgments:

Equitable relief against judgments, 11, 1198

Rehearing, see REHEARING.*Review*, see REVIEW.**NEW MATTER, see ANSWERS IN CODE PLEADING; ANSWERS IN EQUITY PLEADING; DEPARTURE; REPLICATIONS AND REPLIES.****NEW PROMISE, see LIMITATIONS.****NEWSPAPERS (see PUBLICATION):**

Arguments of counsel:

Reading extracts from newspapers, 2, 741

Certiorari:

Selection of official newspaper for county, 4, 164

Obscenity, see OBSCENITY.

Reading newspaper to the jury, 2, 741

NEW TRIAL 14, 707

Abandonment, 14, 902

Abandonment of motion, see *infra*, Waiver of motion.

Abiding the event, 1, 59

Absence:

Absence of counsel, 14, 731

Absence of party, 14, 729

Circumstances excusing absence, 14, 729

Necessity of party's presence, 14, 729

Sickness, 14, 730

NEW TRIAL, *cont'd.*Absence, *cont'd.*

Discretion of lower court, 14, 980

Absence of attorney, 14, 980

Absence of parties, 14, 981

Witnesses, 14, 740

Abstract of evidence, 14, 923

Accident or surprise, 14, 722

Amendment or pleading, 14, 737

Assignment of errors, 14, 886

Costs, 14, 943

Criminal cases, 14, 839

Definitions, 14, 722

Accident, 14, 722

Surprise, 14, 722

Whether these terms synonymous, 14, 723

Discovered after term, 14, 723

Essential facts, 14, 723

Evidence of surprise, 14, 752

Affidavit in support of motion, 14, 752

Affidavit of merits, 14, 753

Affidavit of witness, 14, 753

Counter-affidavits, 14, 754

Evidence, surprise in, 14, 733

Accident destroying evidence, 14, 736

Accident preventing bill of exceptions, 14, 736

Exclusion of depositions, 14, 735

Exclusion of evidence, 14, 735

False but relevant testimony, 14, 733

Irrelevant testimony, 14, 734

Mistake in omitting testimony, 14, 736

Failure to avert consequences of surprise, 14, 748

By introducing available testimony, 14, 749

Failure to apply for continuance, 14, 749

Failure to apply for nonsuit, 14, 750

General rule, 14, 748

Failure to exercise ordinary prudence and diligence, 14, 724

Absence of counsel, 14, 731

Absence of party, 14, 729

Absence on account of sickness, 14, 730

Affidavits must show diligence, 14, 752

Circumstances excusing absence, 14, 729

Delays in travel, 14, 731

Discretion of trial court, 14, 724

Generally, 14, 724

NEW TRIAL, *cont'd.*

Accident or surprise, *cont'd.*

Failure to exercise ordinary prudence and diligence, *con.*
Irregular call of the docket,
14, 728

Lack of notice of time and place of trial, 14, 726

Misapprehension as to time when case may be called,
14, 727

Misunderstanding as to date and place, 14, 728

Necessity of party's presence, 14, 729

Negligence and incompetence of counsel, 14, 732

Special and irregular terms,
14, 727

General principles, 14, 723

Mistake, surprise due to, 14, 743

Mistake of fact, 14, 745

Mistake of law and fact, 14, 743

Mistakes of attorneys, 14, 743

Surprise by rulings of court,
14, 744

Probability that new trial will change result, 14, 746

Cumulative and impeaching evidence, 14, 747

Examination of pleadings and evidence, 14, 746

Harmless error, 14, 746

Prompt complaint of surprise,
14, 748

Suppressing evidence, 14, 742

Surprise occasioned by prevailing party, 14, 742

Witness, surprise occasioned by,
14, 737

Absence of witnesses, 14, 740

Applicant's own witness, 14, 737

Generally, 14, 737

Impeachment of witness, 14, 738

Intoxication or insanity of witness, 14, 740

Misled by former statements, 14, 738

Mistake of witness, 14, 739

Necessity of inquiry before trial, 14, 737

Perjury of witness, 14, 739

Admiralty, 1, 274

Admissions:

Newly discovered evidence, 14, 818

Verdict contrary to admissions,
14, 777

NEW TRIAL, *cont'd.*

Affidavits:

In support of motion, 14, 904

Affidavits of jurors, 14, 905

Conclusions of law, 14, 905

Contents, 14, 904

Generally, 14, 904

Hearsay, 14, 904

Hearsay evidence of declarations of juror, 14, 911

Information and belief, 14, 905

Misconduct of jury outside of jury room, 14, 910

Misconduct of parties or court officers, 14, 910

Misconduct or irregularity of jury, 14, 909

To show resort to chance,
14, 910

When necessary, 14, 904

Record on appeal, 14, 968

Showing newly discovered evidence, 14, 823

Affidavit of applicant, 14, 823

Affidavit of attorney for applicant, 14, 825

Affidavits of new witnesses,
14, 825

Excuse for not giving affidavits of witnesses, 14, 826

Stating the facts proving diligence, 14, 824

Surprise, 14, 752

Affidavit of merits, 14, 753

Affidavit of witness, 14, 753

Affidavits in support of motion, 14, 752

Affidavits showing diligence,
14, 752

Counter-affidavits, 14, 754

Affidavits in support of motion, 14, 911

Affidavits in rebuttal, 14, 913

Counter-affidavits, 14, 912

Time of filing affidavit, 14, 911

Affidavits of merits or defense:

Accident or surprise, 14, 753

Amendments:

Motion for new trial, 14, 894

Notice of intention to move for a new trial, 14, 880

Statement of case:

Adoption of amendments,
14, 925

Amendments by adverse party, 14, 925

Amendments for settlement,
14, 929

Surprise by amendment or pleading, 14, 737

Answer:

Petition for new trial after term,
14, 954

NEW TRIAL, *cont'd.*

Appeals:

Appeal from order granting or denying new trial, see infra,
Review of order.

Decisions on motion for new trial, 2, 137

Discretion of court, 2, 415

Motion pending appeal, 14, 864

On reversal on appeal, 11, 1075

Presumption in favor of granting a new trial, 2, 448

To obtain review by appellate court, see infra, Motion for new trial.

Use on appeal of statement on motion for new trial, 20, 557

Application, see infra, Motion for new trial.

Arguments of counsel:

Absence of trial judge, 2, 755

Abuses of argument, 2, 751

Bill of exceptions, 2, 755

By appellate courts, 2, 752

By the trial court, 2, 751

Comment of counsel on failure of the accused to testify in criminal cases, 2, 724

Comments on matters not in evidence, 2, 750

Exceptions, 2, 755

Ex parte affidavits, 2, 757

Objections for improper remarks, 2, 753

Prejudice cured by instruction, 2, 753

Prejudice cured by withdrawal of remarks, 2, 753

Rebuke and instruction, 2, 753

Time of making objections to improper remarks, 2, 753

When the point is sufficiently saved for review, 2, 757

Arraignment and plea, 2, 767

Arrest of judgment:

Motion in arrest as waiver, 2, 818

Waiver of motion for new trial by moving for arrest of judgment, 14, 899

Assignment of errors (*see infra*, Statement of case):

Motion for new trial, 14, 882

Accident or surprise, 14, 886

Argument, 14, 883

Assignment of error as to group of instructions, 14, 893

Effect of failure to state grounds, 14, 884

Error in admission or exclusion of evidence, 14, 890

Error in instructions, 14, 892

Error in the amount of recovery, 14, 887

NEW TRIAL, *cont'a.*Assignment of errors, *cont'd.*Motion for new trial, *cont'd.*

Error in the assessment, 14, 887

Errors of law occurring at the trial, 14, 889

Excessive or inadequate damages, 14, 886

Exclusion of evidence, 14, 890

In general, 14, 882

Instructions, 14, 892

Irregularity in the proceedings, 14, 885

Method of assignment, 14, 882

Misconduct of jury or prevailing party, 14, 885

Paragraphs, 14, 882

Rule as to specification of error, 14, 882

Stating reasons, 14, 883

Verdict not sustained by the evidence or contrary to the evidence, 14, 888

Verdict or decision contrary to law, 14, 888

Notice of intention to move for a new trial, 14, 875

In general, 14, 875

Specification of errors of law, 14, 876

Specification of evidence to sustain motion, 14, 876

Specification of insufficiency of evidence, 14, 876

Overruling motion for new trial, 2, 965

Precision, 2, 944

Review of errors assigned only, 14, 973

Attorney and client:

Absence of counsel, 14, 731

Affidavit of attorney as to newly discovered evidence, 14, 825

Mistakes of attorneys, 14, 743

Negligence and incompetence of counsel, 14, 722

Attorneys' fees:

Conditions, 14, 940

Bastardy, 3, 314

Bills of exceptions:

Accident preventing bill of exceptions, 14, 736

Evidence in support of new trial, 14, 916

Record on appeal, 14, 971

Showing newly discovered evidence, 14, 823

Waiver of bill by motion for new trial, 3, 516

NEW TRIAL, *cont'd.*

- Brief of evidence, 14, 917
- Burden of proof:
 - New trial, 14, 991
- Case made on appeal*, see *infra*, Statement of case.
- Certified cases:
 - Evidence in support of new trial, 14, 917
- Certiorari, 4, 73
 - Granting new trial, 4, 83
- Chambers and vacation, 4, 348; 14, 902
- Change of result*, see *infra*, Probability that new trial will change result.
- Code definitions, 14, 715
- Common law, 14, 717
- Compromise verdicts, 14, 774
- Condition:
 - Conditions of order granting new trial, 14, 939
 - Payment of costs as a condition precedent, 14, 946
- Conspiracy, 4, 736
- Continuance, 14, 897
 - Agreement of parties, 14, 897
 - Errors in granting or refusing continuance, 14, 831
 - Failure to apply for continuance in cases of accident or surprise, 14, 749
 - Hearing, 14, 898
 - In general, 14, 897
 - Operation of law, 14, 897
 - Order of court, 14, 898
- Contrary to evidence*, see *infra*, Verdict not sustained by the evidence or contrary to the evidence.
- Contrary to law*, see *infra*, Verdict contrary to law.
 - Decision contrary to law, 14, 789; 14, 782
- Costs, 14, 941
 - Accident or surprise, 14, 943
 - Discretion of court, 14, 941
 - Error in admission of evidence, 14, 944
 - Insufficient evidence, 14, 944
 - Items of costs taxable, 14, 942
 - New trial denied, 14, 943
 - Order silent as to costs, 14, 943
 - Payment taken as a condition precedent, 14, 946
 - Waiver by accepting costs, 14, 943
 - Where adverse party without fault, 14, 942
 - Where applicant not in fault, 14, 944
- Counsel*, see *infra*, Attorney and client.

NEW TRIAL, *cont'd.*

- Court (see *infra*, Discretion of court; Irregularity in the proceedings; Review of order):
 - Decision contrary to law, 14, 789
 - Decision not sustained by the evidence or contrary to the evidence, 14, 788
- Duties and functions of trial court as to weight of evidence, 14, 769
- Errors of law occurring at the trial*, see *infra*, Errors of law occurring at the trial.
- Motion for new trial*, see *infra*, Motion for new trial.
- Criminal cases, 14, 837
 - Accident or surprise, 14, 839
 - Application of the state, 14, 838
 - At common law, 14, 837
 - Discretion of trial courts, 14, 845
 - Error in admission or rejection of testimony, 14, 844
 - Error in instructions, 14, 844
 - Errors of law occurring at the trial, 14, 842
 - Felony cases, 14, 837
 - Greater latitude in criminal cases, 14, 845
 - Grounds for new trial, 14, 838
 - Harmless errors, 14, 843
 - Irregularity in procedure, 14, 839
 - Misconduct of jury or prevailing party, 14, 839
 - Modern law, 14, 838
 - Newly discovered evidence, 14, 842
 - New trial, 14, 992
 - Principles governing decision, 14, 845
 - Review limited to grounds in the motion assigned as error, 14, 973
 - Statutory right only, 14, 838
 - Verdict contrary to evidence or law, 14, 840
 - Where substantial justice has not been done, 14, 845
- Cumulative evidence (see *infra*, Newly discovered evidence):
 - Accident or surprise, 14, 747
 - Probability that new trial will change result, 14, 747
- Damages (see *infra*, Excessive or inadequate damages):
 - Nominal damages, 14, 934
- Death of judge, 14, 736
- Decision contrary to law:
 - Assignment of errors, 14, 888
- Decision of motion, 14, 930
 - Court may grant on its own motion, 14, 932

NEW TRIAL, *cont'd.*

- Decision of motion, *cont'd.*
 - Discretion limited by rules of law and procedure, 14, 930
 - Discretion of trial court, 14, 930
 - Failure to administer substantial justice, 14, 931
 - General principles governing, 14, 930
 - Granting for causes assigned in motion, 14, 932
 - Harmless errors, 14, 933
 - Nominal damages, 14, 934
 - Probability that new trial will change result, 14, 934
 - Refusal where both parties consent, 14, 933
 - Small amount involved, 14, 934
 - Technical errors, 14, 933
- Defaults, 14, 853
 - Application for relief from defaults, 6, 152
- Definitions, 14, 715
 - Accident, 14, 722
 - Contrary to law, 14, 782
 - Contrary to the evidence, 14, 768
 - Cumulative evidence, 14, 812
 - Surprise, 14, 722
- Demurrers:
 - Errors in decisions on demurrers, 14, 829
 - Overruling demurrer, 6, 369
 - Petition for new trial after term, 14, 954
- Demurrers to evidence, 6, 440
- Depositions, exclusion of, 14, 735
- Diligence*, see *infra*, Accident or surprise; Newly discovered evidence.
- Disbarment and suspension of attorneys, 6, 718
- Discretion of court, 2, 414; 14, 930
 - Abuse of discretion, 14, 932
 - Costs, 14, 941
 - Criminal cases, 14, 845
 - Cumulative evidence, 14, 821
 - Examples, 14, 931, 932
 - Excessive or inadequate damages, 14, 755
 - Failure to administer substantial justice, 14, 931
 - In general, 14, 930
 - Limited by rules of law and procedure, 14, 930
 - Number of new trials, 14, 773
 - Presumption as to abuse of discretion, 14, 976
- Review, 14, 978
 - Absence of attorney, 14, 980
 - Absence of parties, 14, 981
 - Accident or surprise, 14, 980
 - As to various grounds, 14, 978

NEW TRIAL, *cont'd.*

- Discretion of court, *cont'd.*
 - Review, *cont'd.*
 - Decision sustained unless an abuse of discretion clearly appears, 14, 978
 - In general, 14, 978
 - Insufficiency of evidence, 14, 982
 - Manifest abuse of discretion, 14, 979
 - Newly discovered evidence, 14, 980, 982
 - Order granting new trial, 14, 979
 - Order granting new trial rarely reversed, 14, 981
 - Order refusing new trial, 14, 982
 - Weight and sufficiency of evidence, 14, 983
 - Weight and sufficiency of evidence, 14, 768
- Discretion of jury where there is no legal measure of damages, 14, 756
- Dismissal, discontinuance, and nonsuit:
 - After new trial granted, 6, 842
 - Errors in granting a nonsuit, 14, 831
 - Want of evidence, 6, 950
 - Want of prosecution, 6, 913
- Divorce, 7, 140
 - Examples, 7, 140, 141
 - In general, 7, 140
 - When granted, 7, 140
- Drunkenness*, see *infra*, Intoxication.
- Due diligence*, see *infra*, Accident or surprise; Newly discovered evidence.
- Ejectment, 7, 355
 - Application, 7, 358
 - As a matter of right under statute, 7, 356
 - Entitled to demand, 7, 356
 - Form of application, 7, 358
 - Grounds, 7, 355, 356
 - In general, 7, 355
 - Notice of application, 7, 359
 - Order will not issue before judgment, 7, 358
 - Payment of costs as condition precedent, 6, 357
 - Payment of damages, 7, 357
 - Power of court to impose conditions, 7, 357
 - Procedure, 7, 358
 - When application must be made, 7, 358
 - When granted, 7, 357
- Elections, 7, 393
- Equitable relief against judgments*, see JUDGMENTS.

NEW TRIAL, *cont'd.*

Errors of law occurring at the trial,
14, 827

Appellate court, 14, 851

Error in evidence and in-
structions, 14, 851

Errors appearing in the rec-
ord, 14, 851

Necessity of presenting to
lower court for review, 14,
851

Assignment of errors, 14, 889

Assignment of error as to
group of instructions, 14,
893

Error in admission or exclu-
sion of evidence, 14, 890

Error in instructions, 14, 892

Generally, 14, 889

Change of rulings, 14, 835

Change of rulings during trial,
14, 836

Criminal cases, 14, 842

Decisions on demurrers, 14, 829

Decisions on motions, 14, 829

Decisions on motions before
trial, 14, 827

Decisions on motions pertaining
to conduct of trial, 14, 830

Errors in evidence, 14, 833

Errors in instructions, 14, 832

Errors in pleadings, 14, 828

Harmless errors of law, 14, 834

Motion before or after trial, 14,
830

Overruled cases, 14, 835

What errors may be included, 14,
827

Evidence (see *infra*, Accident or sur-
prise; Cumulative evidence;
Motion for new trial; Verdict
not sustained by the evidence
or contrary to the evidence),
13, 858

Assignment of errors in admis-
sion or exclusion of evidence,
14, 890

Costs:

Error in admission of evi-
dence, 14, 944

Insufficient evidence, 14, 944

Perverse verdict, 14, 945

Referee's report against evi-
dence, 14, 945

Decision not sustained by the
evidence or contrary to the
evidence, 14, 788

Errors in admitting and exclud-
ing evidence, 14, 833

Findings not sustained by the
evidence, 14, 788

Incorporation of evidence in mo-
tion, 14, 881

NEW TRIAL, *cont'd.*

Evidence, *cont'd.*

Insufficiency of evidence, 14, 782

Newly discovered evidence, see
infra, Newly discovered evi-
dence.

Number of new trials, 14, 993

Record on appeal, 14, 969

Review, see *infra*, Review of
order.

Showing newly discovered evi-
dence, 14, 822

Statement of case, see *infra*, State-
ment of case.

Suppressing evidence, 14, 742

Surprise occasioned by witness,
14, 737

Verdict against weight of evidence,
see *infra*, Verdict not sus-
tained by the evidence or con-
trary to the evidence.

Verdict contrary to law, 14, 782;
14, 789

Evidence in support of motion, 14,
903

Affidavits, 14, 904

Affidavits in rebuttal, 14, 912, 913

Affidavits of jurors, 14, 905

Bill of exceptions, 14, 916

Brief of evidence, 14, 917

Certified cases, 14, 917

Counter-affidavits, 14, 912

Hearing on minutes limited to
jury trials, 14, 915

Minutes of court, 14, 914

Oral testimony, 14, 903

Statement of case, see *infra*,
Statement of case.

Time of filing affidavits, 14, 911

Time of hearing on minutes, 14,
916

What evidence required, 14,
903

Evidence on appeal, see *infra*, Review
of order.

Exceptions and objections (see Ex-
CEPTIONS AND OBJECTIONS), 8,
296; 14, 963

Grounds of motion for new trial,
8, 296

Necessity for exceptions, 8, 296

Objections not presented to
lower court, 14, 974

Renewal of objections to evi-
dence in motion for new trial,
8, 252

Renewing exceptions in motion
for new trial, 8, 271

Renewing objections in motion
for new trial, 8, 168

Time of taking, 8, 297

What exceptions must show, 8,
288

NEW TRIAL, *cont'd.*

- Excessive or inadequate damages, 14, 755
 - Amount determined by fixed rule, 14, 761
 - Assignment of errors, 14, 886
 - Code provisions as to torts, 14, 766
 - Discretion of jury, 14, 756
 - Discretion of trial court, 14, 755
 - Disregard of instructions to award substantial damages, 14, 764
 - Error in assessment of amount of recovery, 14, 756
 - Excess of amount claimed, 14, 761
 - Excess of amount permitted by instructions, 14, 762
 - Excess of amount proved, 14, 762
 - General principles, 14, 755
 - Inadequate damages, 14, 763
 - Damages not equal to amount proved, 14, 763
 - Rule where there is a legal measure of damages, 14, 763
 - Rule where there is no legal measure of damages, 14, 759
 - Verdict for less than sum admitted, 14, 763
 - Inadequate damages for torts, 14, 764
 - Inadequate damages where there is no legal measure of damages, 14, 759
 - Increasing amount of verdict, 14, 755
 - Instructions disregarded, 14, 762
 - Miscalculation of damages, 14, 764
 - Passion or prejudice, 14, 759, 766
 - Passion or prejudice determined from amount of verdict, 14, 760
 - Rule where there is no legal measure of damages, 14, 756, 764
 - Smallness of damages for injuries to person or reputation, 14, 767
 - Torts, 14, 764
 - Unliquidated damages, 14, 756
 - Verdict against the weight of evidence, 14, 755
 - When verdict will be set aside, 14, 755
- Executions:
 - Motion for new trial, 8, 319
- Extension of time*, see *infra*, Motion for new trial.
- Extension of time for notice, 14, 879

NEW TRIAL, *cont'd.*

- Extension of time for settlement of statement of case, 14, 927
- Filing affidavit, time of, 14, 911
- Filing motion:
 - Waiver of motion for failure to file in time, 14, 899
- Filing petition for new trial after term, 14, 953
- Findings:
 - Decision contrary to law, 14, 789
 - Decision not sustained by the evidence or contrary to the evidence, 14, 788
 - Motion for new trial where finding is defective, 8, 951
 - Review of order granting or refusing, 14, 990
- Forcible entry and detainer, 9, 70
- Grounds for new trial, 14, 718
 - Accident or surprise*, see *infra*, Accident or surprise.
 - Common law, 14, 718
 - Criminal cases, 14, 838
 - Decision contrary to law, 14, 789
 - Decision not sustained by the evidence or contrary to the evidence, 14, 788
 - Errors of law occurring at the trial*, see *infra*, Errors of law occurring at the trial.
 - Excessive or inadequate damages*, see *infra*, Excessive or inadequate damages.
 - Irregularity in the proceedings*, see *infra*, Irregularity in the proceedings.
 - Misconduct*, see *infra*, Misconduct.
 - Newly discovered evidence*, see *infra*, Newly discovered evidence.
 - Special interrogatories to juries*, see SPECIAL INTERROGATORIES TO JURIES.
 - Statutory grounds, 14, 718
 - Verdict contrary to law*, see *infra*, Verdict contrary to law.
 - Verdict not sustained by the evidence or contrary to the evidence*, see *infra*, Verdict not sustained by the evidence or contrary to the evidence.
- Harmless error, 14, 834, 843, 863, 933
 - Review of order granting or refusing new trial, 14, 990
- Hearing of motion, 14, 901
 - Abandonment, 14, 902
 - Hearing after term, 14, 902
 - Hearing at chambers, 14, 902
 - Hearing in vacation, 14, 902
 - Presence of parties, 14, 903
 - Time of hearing, 14, 901

NEW TRIAL, *cont'd.*

Hearsay evidence, 14, 904, 911
 Impeaching evidence, 14, 807
Inadequate damages, see *infra*, Ex-
 cessive or inadequate damages.

Infants:

Necessity and propriety of suing
 by next friend:
 Guardian as representative,
 14, 1004
 Guardian or next friend, 14,
 1006

Information and belief:

Affidavits in support of motion,
 14, 905

Insane persons:

Insanity as a defense, 10, 1223

Instructions, 13, 860

Assignment of errors, 14, 892
 Criminal cases, 14, 844
 Errors in instructions as ground
 for new trial, 14, 832
 Errors in instructions in criminal
 cases, 14, 844
 Excess of amount permitted by
 instructions, 14, 762
 Instructions disregarded, 14, 762
 Record on appeal, 14, 969
 Review of errors, 14, 851
 Verdict contrary to instructions,
 14, 782, 786
 Jury cannot disregard in-
 structions, 14, 766
 Misunderstanding instruc-
 tions, 14, 787
 Verdict correct but contrary
 to instructions, 14, 787

Intention:

*As to notice of intention to move
 for a new trial*, see *infra*, Mo-
 tion for new trial.

Interrogatories, see SPECIAL INTER-
 ROGATORIES TO JURIES.

Intoxication:

Witness, 14, 740

**Irregularity in the proceedings, 14,
719**

Assignment of errors, 14, 885
 Criminal cases, 14, 839
 Irregularity of prevailing party,
 14, 721

Irregularity of the court, 14,
 719

Irregularity of the jury, 14, 721
 Orders of court constituting
 abuse of discretion, 14, 720
 Statement and explanation of
 irregularities, 14, 719

**Issues to the jury (see ISSUES TO THE
JURY), 11, 741**

Setting aside or disregarding
 verdict, 11, 708

Joint motions, 14, 871

Index Pl. & Pr. — 46

NEW TRIAL, *cont'd.***Judge:**

To what judge motion must be
 made, 14, 856
 Whether trial by same judge and
 jury, 14, 991

Judgments:

Appeal from order and appeal
 from judgment, 14, 964
Equitable relief against judgments,
 see JUDGMENTS.
 On reversal on appeal, 11, 1075
 Suspension of judgment, 14,
 899
 Vacation of, by order for new
 trial, 14, 935

Jurisdiction, 13, 858**Jury:**

Bias of jurors, 12, 563
 Communications with outsiders,
 12, 606, 608
Issues to the jury, see ISSUES TO
 THE JURY.
 Jurors reading newspapers, 12,
 622

Misconduct of jurors, 14, 905

Exceptions, 14, 910
 General rule, 14, 905
 Hearsay evidence of declara-
 tions of juror, 14, 911
 Misconduct of jury outside
 of jury room, 14, 910
 Misconduct of parties or
 court officers, 14, 910
 Misconduct or irregularity
 of jury must be estab-
 lished by other evidence,
 14, 909
 Showing resort to chance,
 14, 910

**Misconduct of jurors as ground
for new trial, 12, 557**

Affidavit for new trial, 12,
 558
 Ignorance of misconduct,
 12, 558
 Information and belief, 12,
 559
 In general, 12, 557
 Necessity of full proof, 12,
 559
 Specific objections, 12, 559
 Whether trial by same judge and
 jury, 14, 991

Justices of the peace, 12, 746, 819

Application must be seasonable,
 12, 747
 Notice of motion, 12, 748
 Power statutory, 12, 746
 When allowed, 12, 747
 Where trial by jury, 12, 747

Laches, see *infra*, Accident or sur-
 prise; Newly discovered evidence.

NEW TRIAL, *cont'd.*

Law (see *infra*, Verdict contrary to law):

Decision contrary to law, 14, 789

Errors of law occurring at the trial, see *infra*, Errors of law occurring at the trial.

Legal conclusions:

Affidavits in support of motion, 14, 905

Lost instruments:

Cumulative evidence, 14, 818

Newly discovered evidence, 14, 797

Mandamus, 13, 559

To act on motion for new trial, 13, 560

To compel granting of new trial, 13, 559

To set aside order for new trial, 13, 560

To settle statements, 13, 561

Mandate (see **MANDATE**), 13, 853

Defenses, 13, 857

Evidence, 13, 858

Instructions to jury, 13, 860

Issues determined, 13, 856

Issues triable, 13, 855

New notice, 13, 857

Objections to jurisdiction, 13, 858

Objections to pleadings or proof, 13, 858

Parties, 13, 857

Reading decision to jury, 13, 859

Remand generally, 13, 853

Remand with directions, 13, 854, 856

Time of new trial, 13, 855

Method of obtaining new trial, 14, 716

Appeal, 14, 716

Common law, 14, 717

Generally, 14, 716

Motion, 14, 717

Motion for *venire de novo*, 14, 716

Petition, 14, 717

Writ of error, 14, 716

Minutes:

In support of motion for new trial, 14, 914

Hearing on minutes limited to jury trials, 14, 915

In general, 14, 814

Other available evidence considered, 14, 914

Time of hearing on minutes, 14, 916

Misconduct, 14, 721

Assignment of errors, 14, 885

NEW TRIAL, *cont'd.*

Misconduct, *cont'd.*

Jurors:

Affidavits to show, 14, 905

Exceptions, 14, 910

General rule, 14, 905

Hearsay evidence of declarations of juror, 14, 911

Misconduct of jury outside of jury room, 14, 910

Misconduct of parties or court officers, 14, 910

Misconduct or irregularity of jury must be established by other evidence, 14, 909

Showing resort to chance, 14, 910

Misconduct of counsel, 14, 722

Misconduct of court officials, 14, 722

Misconduct of jury, 14, 721

Misconduct of prevailing party, 14, 721

Statement and definition of ground, 14, 721

What included, 14, 721

Mistake (see *infra*, Accident or surprise):

Verdict resulting from mistake, 14, 777

Witness, 14, 739

Motion for new trial, 14, 845

Abandonment of motion, see *infra*, Waiver of motion.

Amendments, 14, 894

Assignment of errors, see *infra*, Assignment of errors.

Courts of general jurisdiction, 14, 855

Courts of inferior jurisdiction, 14, 855

Courts, to which made, 14, 853

Decision of motion, see *infra*, Decision of motion.

Defaults, 14, 853

Evidence in support of motion, see *infra*, Evidence in support of motion.

Form of motion, 14, 880

Hearing of motion, see *infra*, Hearing of motion.

Incorporation of evidence, 14, 881

In what proceedings, 14, 853

Issue of fact, 14, 853

Joint and separate motions, 14, 871

Judge to whom motion must be made, 14, 856

NEW TRIAL, *cont'd.*Motion for new trial, *cont'd.*

- Notice of intention, 14, 874
 - Amendment of notice of intention, 14, 880
 - Assignment of errors, 14, 875
 - Extension of time for notice, 14, 879
 - Form and contents, 14, 874
 - Nature and object, 14, 874
 - Service and filing of notice, 14, 877
 - Time of serving and filing notice, 14, 877
 - Waiver of notice of intention, 14, 880
 - When the time commences to run, 14, 878
- Notice of motion, 14, 895
- Objects of motion, 14, 845
- Oral, 14, 880
- Parties to motion, 14, 870
- Purposes of motion, 14, 845
- Record on appeal, 14, 966
- Renewal of motion, 14, 947
- Second motion, 14, 895
- Time of making (see *infra*, Petition for new trial after term), 14, 857
- After affirmance of judgment, 14, 875
- Computation from end of term, 14, 866
- Computation of the time, 14, 865
- Extension of time, 14, 868
- Extension of time by agreement of parties, 14, 869
- Extension of time under statutes, 14, 868
- Extraordinary cases, 14, 861
- From or after certain day, 14, 865
- From performance of act, 14, 865
- Harmless error, 14, 863
- Motion after judgment is entered, 14, 863
- Motion during term, 14, 860
- Motion for modification of judgment, 14, 866
- Pending appeal, 14, 874
- Premature motion, 14, 862
- Rendition of verdict, 14, 865
- Rule at common law, 14, 857
- Sundays, 14, 866
- Time fixed by statute, 14, 858
- Waiver by neglect to file motion in time, 14, 809
- Waiver of objection to time of making motion, 14, 870
- When unavoidably prevented, 14, 861

NEW TRIAL, *cont'd.*Motion for new trial, *cont'd.*

- Title of motion, 14, 881
 - To obtain review by appellate court, 14, 846
 - Agreed statement of facts, 14, 850
 - Errors of law occurring at the trial, 14, 851
 - Necessity of motion, 14, 846
 - Necessity of ruling, 14, 846
 - Review of evidence, 14, 847
 - Sufficiency of evidence to support finding or decision of court, 14, 848
 - Taking case from jury, 14, 850
 - To obtain review by trial court, 14, 846
 - To what court motion must be made, 14, 853
 - Waiver of motion*, see *infra*, Waiver of motion.
 - Written, 14, 880
- Motions, 14, 717**
- Application by motion for new trial*, see *infra*, Motion for new trial.
 - Decisions on motion before trial, 14, 827
 - Errors in decisions on motion as ground for new trial, 14, 830
 - Before or after trial, 14, 830
 - In general, 14, 830
 - Motion for continuance, 14, 831
 - Motion to discharge attachment, 14, 830
 - Nonsuit, 14, 831
 - Motion for *venire de novo*, 14, 715
 - Rule to show cause, 14, 895
 - Waiver of motion*, see *infra*, Waiver of motion.
 - Negligence*, see *infra*, Accident or surprise.
 - Newly discovered evidence, 14, 790
 - Abuse of discretion, 14, 982
 - Application must be prompt, 14, 792
 - Application regarded with suspicion, 14, 790
 - Corroborative testimony, 14, 818
 - Criminal cases, 14, 842
 - Cumulative evidence insufficient, 14, 811
 - Admissions, 14, 818
 - Corroborative testimony, 14, 818
 - Cumulative evidence sufficient if decisive, 14, 821

NEW TRIAL, *cont'd.*Newly discovered evidence, *cont'd.*Cumulative evidence insufficient, *cont'd.*

Definition of cumulative evidence, 14, 812

Discretion of trial court, 14, 821

Flexibility of rule, 14, 820

General rule, 14, 811

Illustrations, 14, 817

Inflexible rule, 14, 820

Limitations of the rule, 14, 819

New and independent fact, 14, 818

Tending to establish same claim, 14, 819

Verdict unjust, 14, 820

Discretion of lower court, 14, 982

Discretion of trial court, 14, 980

Due diligence must have been used before trial, 14, 798

Degree of diligence required, 14, 799

Discovery of evidence on record, 14, 800

Effect of ruling of trial court on diligence, 14, 799

Failure to examine witness, 14, 803

Failure to introduce other or secondary evidence, 14, 802

Generally, 14, 798

Lack of diligence to obtain the new witness, 14, 803

Stating the facts proving diligence, 14, 824

Evidence admissible under the pleadings, 14, 807

General principles, 14, 790

Ground for new trial, 14, 790

Impeaching evidence, 14, 807

Materiality, 14, 806

Must be material, 14, 806

Must have been discovered since trial, 14, 796

Belief that new evidence exists, 14, 796

Discovery immaterial, 14, 797

Discovery of lost instruments, 14, 797

Evidence known to party but not to attorney, 14, 797

In general, 14, 796

Omission in testimony of witness, 14, 797

Testimony discovered before close of the trial, 14, 796

Petition for new trial after term, 14, 951

NEW TRIAL, *cont'd.*Newly discovered evidence, *cont'd.*

Probability that new trial will change result, 14, 792

Credibility of new witness, 14, 795

Impeaching new witness, 14, 795

Sufficiency of new evidence, 14, 792

Record evidence, 14, 800

Restrictions, 14, 791

Secondary evidence, failure to introduce, 14, 802

Showing newly discovered evidence, 14, 822

Affidavit, 14, 823

Affidavit of attorney for applicant, 14, 825

Affidavit of new witnesses, 14, 825

Case or bill of exceptions, 14, 823

Evidence in support of motion, 14, 822

Stating the facts proving diligence, 14, 824

Sufficiency of new evidence, 14, 791

Term, discovered after, 14, 951

Witness convicted of perjury, 14, 810

New trial, see infra, The new trial.

Next friend:

Failure to appoint or irregular appointment as raised on motion for new trial, 14, 1020

Nominal damages, 14, 934

Nonsuit:

Failure to apply for nonsuit in cases of accident or surprise, 14, 750

Motion for nonsuit as a condition precedent, 14, 785

Where nonsuit could have been granted, 14, 785

Notice (*see infra*, Motion for new trial), 13, 857

Petition for new trial after term, 14, 953

Notice of motion, 14, 895

Contents of notice, 14, 896

Record on appeal, 14, 967

When required, 14, 895

Notice of statement of the case, 14, 924

Notice of time of settlement, 14, 925

When settled without notice, 14, 924

Notice of trial, 21, 964

Number of new trials, 14, 992

For errors of law, 14, 993

NEW TRIAL, *cont'd.*

- Number of new trials, *cont'd.*
 - Generally, 14, 992
 - Insufficiency of the evidence, 14, 993
 - Number after reversal, 14, 995
 - Number restricted by statute, 14, 994
- Opening, amending, and vacating judgments:
 - Not substitute for new trial, 15, 213, 217
 - Void order granting new trial, 15, 294
- Oral motion, 14, 880
- Order granting or refusing, 14, 935
 - Appeals from order granting or denying new trial, see infra*, Review of order.
 - Attorneys' fees, 14, 940
 - Conditions of order granting new trial, 14, 939
 - Effect of order, 14, 935
 - Failure to state grounds, 14, 935
 - New trial as part of the issues, 14, 936
 - New trial as to some parties, 14, 938
 - Review of order, see infra*, Review of order.
 - Statement of grounds in the order, 14, 935
 - Vacating order, 14, 948
 - Vacation of judgment, 14, 935
 - Vacation of verdict, 14, 935
- Ordinary prudence, see infra*, Accident or surprise.
- Overruled cases, 14, 835
 - Change of rulings during trial, 14, 836
 - New trial to conform to later decisions, 14, 835
- Parol testimony, 14, 903
- Parties to action, 13, 857
 - New trial, 14, 991
- Parties to motion, 14, 870
- Passion or prejudice:
 - Excessive damages, 14, 759
 - Inadequate damages, 14, 766
 - Verdict not sustained by the evidence or contrary to the evidence, 14, 779
- Penalties and penal actions, 16, 302
- Perjury, 14, 739
 - Newly discovered evidence, 14, 810
 - Witness convicted of perjury as newly discovered evidence, 14, 810
- Petition, 14, 717

NEW TRIAL, *cont'd.*

- Petition for new trial after term, 14, 949
 - Allegations of newly discovered evidence, 14, 951
 - Answer, 14, 954
 - Demurrer, 14, 954
 - Grounds discovered after term, 14, 949
 - Materiality of new evidence, 14, 952
 - Nature of proceeding, 14, 949
 - Necessary allegations, 14, 950
 - Process, 14, 953
 - Summons, 14, 953
 - Time of filing petition, 14, 953
 - Trial, 14, 954
 - What grounds may be alleged, 14, 952
- Pleading, errors in, 14, 828
- Postponement, 14, 897
- Powers and duties:
 - Examples, 14, 1036
- Preliminary examination, 16, 870
- Probability that new trial will change result (see *infra*, Accident or surprise; Newly discovered evidence), 14, 934
- Verdict not sustained by the evidence or contrary to the evidence, 14, 773
- Probate and contest of wills, 16, 1059
- Questions of law and fact:
 - Credibility of witnesses in weight of evidence, 14, 772
- Quieting title, 17, 374
- Quo warranto, 17, 486
- Record on appeal (see *infra*, Review of order), 14, 966
 - Affidavits, 14, 968
 - Bill of exceptions, 14, 971
 - Decision on motion, 14, 971
 - Evidence, 14, 969
 - Evidence introduced on hearing of motion, 14, 968
 - Exceptions to the order, 14, 972
 - Instructions, 14, 969
 - Motion, 14, 966
 - Notice of motion, 14, 967
 - Order on motion, 14, 971
 - Recitals in motion, 14, 969
 - Statement of case, 14, 971
 - Statement of grounds, 14, 966
 - Sufficiency of record, 14, 966
 - Time of filing motion, 14, 967
- Rehearing, 14, 948
- Remittitur, see* REMITTITUR.
- Renewal of motion, 14, 947
- Res adjudicata*:
 - Renewal of motion, 14, 947
- Review, see* REVIEW.

NEW TRIAL, *cont'd.*

- Review of order, 14, 955
 - Appeal from final judgment, 14, 959
 - Appeal from order and appeal from judgment, 14, 964
 - Appeal from order granting or denying, 14, 956
 - Appeal, waiver of right, 14, 963
 - Assigning wrong reason for correct decision, 14, 975
 - At common law, 14, 955
 - Criminal cases, 14, 974
 - Discretion of lower court, 14, 978
 - Absence of attorney, 14, 980
 - Absence of parties, 14, 981
 - Accident or surprise, 14, 980
 - As to various grounds, 14, 978
 - Decision sustained unless an abuse of discretion clearly appears, 14, 978
 - In general, 14, 978
 - Insufficiency of evidence, 14, 982
 - Manifest abuse of discretion, 14, 979
 - Newly discovered evidence, 14, 980, 982
 - Order granting new trial, 14, 979
 - Order granting new trial rarely reversed, 14, 981
 - Order refusing new trial, 14, 982
 - Weight and sufficiency of evidence, 14, 983
 - Distinction between order during and after term, 14, 958
 - Distinction between order granting and order denying, 14, 960
 - Federal courts, 14, 955
 - Findings as to grounds for new trial, 14, 990
 - Grounds and reasons of lower court, 14, 975
 - Harmless error, 14, 990
 - Objections not presented to lower court, 14, 974
 - Presumptions, 14, 976
 - Abuse of discretion, 14, 976
 - As to reasons for granting new trial, 14, 977
 - As to reasons for refusing new trial, 14, 977
 - Where decision is correct, 14, 976
 - Where several grounds were included in motion, 14, 977
 - Questions of law, 14, 962
 - Review limited to grounds in the motion assigned as errors, 14, 973

NEW TRIAL, *cont'd.*

- Review of order, *cont'd.*
 - Review of errors assigned only, 14, 973
 - Review on appeal from final judgment, 14, 959
 - Review upon questions of law, 14, 962
 - Statutes, 14, 956
 - Under statutes, 14, 956
 - Waiver of right to appeal, 14, 963
 - Exceptions and objections, 14, 963
 - Taking part in new trial, 14, 963
 - Weight and sufficiency of evidence, 14, 983
 - Appellate court will not undertake to weigh the evidence, 14, 985
 - Approval of verdict by trial court, 14, 989
 - Conflicting evidence not weighed on appeal, 14, 985
 - Effect of approval of verdict, 14, 989
 - Evidence manifestly in favor of verdict, 14, 986
 - Grant of new trial, 14, 983
 - No evidence, 14, 989
 - Order refusing a new trial, 14, 983, 984
 - Preponderance of conflicting evidence, 14, 983
 - Review of evidence, 14, 987
 - Sufficiency of evidence, 14, 987
 - Verdict against the testimony of a majority of witnesses, 14, 984
- Right, new trial as of, 14, 837
- Rule to show cause:
 - Motion for rule to show cause, 14, 895
- Secondary evidence:
 - Failure to introduce secondary evidence, 14, 802
- Second motion, 14, 895, 947
- Second motion for new trial, 14, 947
- Second trial*, see *infra*, The new trial.
- Sentence:
 - Sentence pending motion in arrest or for new trial, 19, 444
- Separate motion, 14, 871, 873
- Service of statement of case, 14, 924
- Set-off, recoupment, and counterclaim:
 - Amendments, 19, 780
- Sickness, 14, 730
- Special interrogatories to juries*, see SPECIAL INTERROGATORIES TO JURIES.
- Specific performance, 20, 521

NEW TRIAL, *cont'd.*

- Statement of case (see *infra*, Assignment of errors), 14, 918
- Abbreviation of evidence, 14, 918
- Abbreviation of instruments and records, 14, 923
- Absence of material evidence, 14, 920
- Abstract of evidence, 14, 923
- Adoption of amendments, 14, 925
- Amendment after settlement, 14, 929
- Amendments by adverse party, 14, 925
- Assignment of errors, 14, 918
- Certificate of settlement, 14, 929
- Contents, 14, 919
- Extension of time to prepare and serve, 14, 927
- Failure to make specifications, 14, 919
- Failure to settle in time, 14, 926
- Insufficiency of evidence, 14, 919, 922
- Judgment based on findings of court, 14, 920
- Matters of record, 14, 923
- Nature of statement, 14, 918
- Notice of time of settlement, 14, 925
- Object of statement, 14, 918
- Procedure to obtain settlement, 14, 924
- Record on appeal, 14, 971
- Service on adverse party, 14, 924
- Settlement and correction by judge, 14, 928
- Settlement by judge's successor, 14, 929
- Signature insufficient, 14, 929
- Specification of errors in terms of statute insufficient, 14, 921
- Specification of errors must form a part of the statement, 14, 922
- Specification of errors of law, 14, 921
- Specification of insufficiency of evidence, 14, 919
- Stating what evidence does show, 14, 921
- Verdict contrary to law, 14, 922
- When settled without notice, 14, 924
- Statement of facts on appeal:
 - Use on appeal of statement on motion for new trial, 20, 557
 - On appeal from judgment, 20, 558
 - On appeal from order granting or refusing new trial, 20, 557
- Statutory grounds, 14, 718

NEW TRIAL, *cont'd.*

- Stipulations, 20, 644
- Subsequent new trials, 14, 992
 - Number after reversal, 14, 995
 - Number of new trials, 14, 992
 - Number restricted by statute, 14, 994
- Summons:
 - Petition for new trial after term, 14, 953
- Sundays:
 - Computation of time, 14, 966
- Supersedeas and stay of proceedings, 20, 1259
- Surprise*, see *infra*, Accident or surprise.
- Suspension of judgment, 14, 899
- Telegraphs and telephones, 21, 532
- Term*, see *infra*, Petition for new trial after term.
- The new trial, 14, 991
 - Burden of proof, 14, 991
 - Criminal cases, 14, 992
 - Effect of proceedings at former trial, 14, 992
 - Number of new trials, 14, 992
 - Parties, 14, 991
 - Pleadings, 14, 991
 - Procedure, 14, 991
 - Same judge, 14, 991
 - Same jury, 14, 991
 - Subsequent new trials, 14, 992
 - Taking part in the new trial as waiver of right of appeal, 14, 963
- Time, computation of, 14, 865
 - From or after certain day, 14, 865
 - Pendency of motion for judgment, 14, 867
 - Pendency of motion for modification of judgment, 14, 867
 - Rendition of verdict, 14, 865
 - Sundays not included, 14, 866
 - Time of making motion, 14, 865
 - When time commences to run, 14, 866
- Time of filing affidavits, 14, 911
- Time of filing notice, 14, 877
- Time of hearing motion, 14, 901
- Time of hearing on minutes, 14, 916
- Time of making motion (see *infra*, Motion for new trial; Petition for new trial after term), 14, 860
- Time of serving and filing notice, 14, 877
- Time of settlement of statement of case*, see *infra*, Statement of case.
- Title of motion, 14, 881
- Trial (see *infra*, The new trial):
 - Errors of law occurring at the trial*, see *infra*, Errors of law occurring at the trial.

NEW TRIAL, *cont'd.*

- United States courts, 14, 837; 22, 306
- Usury, 22, 461
- Variance, 22, 639
- Venire de novo*, 14, 716
- Verdict.
 - Vacation of, by order for new trial, 14, 935
- Verdict contrary to law, 14, 782
 - Assignment of errors, 14, 888
 - Compromise verdicts*, see **VERDICT**.
 - Contrary to evidence and instructions, 14, 782
 - Criminal cases, 14, 840
 - Definition of term contrary to law, 14, 782
 - Insufficiency of evidence, 14, 782
 - Motion for nonsuit as a condition precedent, 14, 785
 - Objections to form of verdict*, see **VERDICT**.
 - Verdict contrary to instructions, 14, 786
 - Verdict irregularly found*, see **VERDICT**.
 - Where nonsuit could have been granted, 14, 785
- Verdict not sustained by the evidence or contrary to the evidence, 14, 688, 768
 - Admissions, verdict contrary to, 14, 777
 - All evidence weighed though incompetent, 14, 771
 - Assignment of errors, 14, 888
 - Compromise verdicts*, 14, 774
 - Concurrent verdicts, 14, 773
 - Conflicting evidence, 14, 780
 - Construction of evidence, 14, 773
 - Contrary to the evidence, 14, 768
 - Court in doubt, 14, 781
 - Credibility of witnesses, 14, 775
 - Criminal cases, 14, 840
 - Definitions, 14, 768
 - Discretion as to sufficiency and weight of evidence, 14, 768
 - Discretion of lower court, 14, 983
 - Disregarding uncontradicted testimony, 14, 779
 - Disregard of impeached testimony, 14, 779
 - Distinction between actions *ex contractu* and *ex delicto*, 14, 774
 - Distinction between verdicts not supported by sufficient evidence and verdicts against the weight of evidence, 14, 785
 - Duties and functions of trial court as to weight of evidence, 14, 769
 - Effect of concurrent verdicts, 14, 773

NEW TRIAL, *cont'd.*

- Verdict not sustained by the evidence or contrary to the evidence, *cont'd.*
 - Excessive or inadequate damages, 14, 755
 - General principles governing review of evidence, 14, 773
 - Improper motives, 14, 777
 - Insufficiency of evidence, 17, 782
 - Mistake, 14, 777
 - Nominal damages, 14, 934
 - Not sustained by the evidence, 14, 768
 - Number of new trials discretionary, 14, 773
 - Number of witnesses, 14, 774
 - Passion or prejudice, 14, 779
 - Preponderance of evidence, 14, 781
 - Probability that new trial will change result, 14, 773
 - Province of court and jury, 14, 772
 - Review*, see *infra*, *Review of order*.
 - Torts, 14, 774
 - Trial court must weigh the evidence, 14, 769
 - Verdict clearly against the weight of evidence, 14, 776
 - Verdict contrary to admissions, 14, 777
 - Verdict manifestly against weight of conflicting evidence, 14, 780
 - Verdict resulting from mistake or improper motives, 14, 777
 - Witnesses, 14, 775
- Waiver of motion, 14, 899
 - By agreement, 14, 899
 - By moving for arrest of judgment, 14, 899
 - By neglect to file motion in time, 14, 899
 - By proceedings inconsistent with motion, 14, 900
 - Motion for judgment, 14, 900
 - Motion for *venire de novo*, 14, 900
 - Waiver of right to appeal*, see *infra*, *Review of order*.
- Weight of evidence*, see *infra*, *Verdict not sustained by the evidence or contrary to the evidence*.
- Witnesses (see *infra*, *Accident or surprise*; *Newly discovered evidence*):
 - Credibility of witnesses, 14, 775
 - Examination by witnesses, 14, 903
 - Number and credibility of witnesses, 14, 774

NEW TRIAL, *cont'd.*Witnesses, *cont'd.*

Province of court and jury, 14, 772

Verdict not sustained by the evidence or contrary to the evidence, see infra, Verdict not sustained by the evidence or contrary to the evidence.

Written motion, 14, 880

NEXT FRIEND, 14, 996

Abatement of actions, 14, 1001, 1002

Admissions, 14, 1039

Allowances, 14, 1049

Amendments, 14, 1031

Failure to appoint or irregular appointment, 14, 1021

Appeals, 2, 159; 14, 1058

By whom taken, 14, 1058

Failure to appoint or irregular appointment as raised on motion for new trial, 14, 1020

Ordinary presumptions and rules of decision, 14, 1059

Time of taking, 14, 1059

Appointment, 14, 1002

Actual appointment unnecessary, 14, 1026

Adverse interest, 14, 1034

After judgment, 14, 1031

Allegations in pleadings as to appointment, 14, 1052

Amendment, 14, 1031

Application for appointment, 14, 1026

Attorneys, 14, 1034

Bond, 14, 1035

Consent of infant, 14, 1029

Discretion of court, 14, 1033

Effect of failure to appoint or irregular appointment, 14, 1016

After verdict or judgment, 14, 1019

Amendment, 14, 1021

Answer or plea to merits, 14, 1024

Collateral attack, 14, 1018

Demurrer, 14, 1023

Demurrer *ore tenus*, 14, 1024

Illustrations of irregularities not fatal, 14, 1017

In general, 14, 1016

Irregularity cured or waived, 14, 1018

Irregularity first raised on motion for new trial or on appeal, 14, 1020

Judgment voidable, 14, 1016

Majority *pendente lite*, 14, 1020

Manner of raising objection, 14, 1021

NEXT FRIEND, *cont'd.*Appointment, *cont'd.*Effect of failure to appoint or irregular appointment, *con.*

Motion for nonsuit, 14, 1024

Motion in arrest of judgment, 14, 1025

Motion to dismiss or set aside proceedings, 14, 1022

Pleading to the merits, 14, 1019

Plea in abatement, 14, 1021

Waiver by failure to object, 14, 1018

Father, 14, 1033

Formal appointment required, 14, 1028

Improper person, 14, 1034

Necessity and propriety of suing by next friend, 14, 1002

Application and illustration of principles, 14, 1014

Attorney as representative, 14, 1010

General guardian as representative, 14, 1004

General statement of rule, 14, 1002

Guardian *ad litem* or next friend, 14, 1011

Guardian or next friend, 14, 1006

Infant co-plaintiff, 14, 1009

Infant suing by representative, 14, 1003

Insane persons, 14, 1013

Married women, 14, 1012

Next friend unnecessary or improper, 14, 1015

Proceedings that are properly brought by next friend, 14, 1014

Right of infant to sue, 14, 1002

Oath, 14, 1034

On appeal, 14, 1031

Order of appointment, 14, 1031

Power to appoint, 14, 1025

Proceedings for appointment, 14, 1026

Recital or allegation in the pleadings, 14, 1027

Relatives, 14, 1033

Responsible person, 14, 1032

Security for costs, 14, 1033

Time of appointment, 14, 1030

Who may be appointed, 14, 1032

Arbitration and award, 14, 1040

Arrest of judgment:

Failure to appoint or irregular appointment, 14, 1025

NEXT FRIEND, *cont'd.*

- Attorney, 14, 1034
 - Infants, 14, 1003, 1011
 - Representation by attorney, 14, 1010
 - Suing by infant, 14, 1003
 - Power to employ attorney, 14, 1037
- Bastardy, 3, 271; 14, 1016
- Bond, 14, 1035
- Character as a party and as an officer of court, 14, 998
- Compromise, 14, 1040
- Control and duty of court, 14, 1041
 - Discretion of court, 14, 1042
 - In general, 14, 1041
 - Inquiry whether suit is for benefit of infant, 14, 1043
 - Proceedings may be stayed until majority, 14, 1043
- Costs, 5, 155; 14, 1044
 - Fees and allowances, 14, 1049
 - Infant and not next friend liable, 14, 1046
 - Infant's arrival at majority, 14, 1047
 - Liability in general, 14, 1044
 - Next friend primarily liable, 14, 1041
 - Recourse against infant, 14, 1046
 - Remedies, 14, 1047
 - Security for costs, 14, 1047
 - Suing *in forma pauperis*, 14, 1048
 - Where infant elects to dismiss on arrival at majority, 14, 1047
 - Where infant prosecutes on arrival at majority, 14, 1047
- Court, *see infra*, Control and duty of court.
- Death of next friend, 14, 1002
- Defaults, 14, 1039
- Definition, 14, 997
- Demurrers:
 - Failure to appoint or irregular appointment, 14, 1023, 1024
- Dismissal, discontinuance, and non-suit:
 - Failure to appoint or irregular appointment, 14, 1022, 1024
 - Power to dismiss, 14, 1036
- Duties, *see infra*, Powers and duties.
- Error, writ of, 14, 1058
- Fees, 14, 1049
- Forma pauperis*, 14, 1048
- Guardian *ad litem*, 14, 997
 - Guardian *ad litem* or next friend, 14, 1011
 - Infant may sue by guardian *ad litem* although there is a general guardian, 14, 1007
- Guardians, 9, 983
 - General guardian as representative, 14, 1004

NEXT FRIEND, *cont'd.*

- Guardians, *cont'd.*
 - Guardian maintaining action in his own name, 14, 1005
 - Guardian or next friend, 14, 1006
 - Guardian substantially a next friend, 14, 1005
 - Infant may sue by guardian *ad litem* although there is a general guardian, 14, 1007
 - Infant may sue by next friend although there is a guardian, 14, 1007
 - Negating existence of general guardian, 14, 1053
- Husband and wife, *see infra*, Married women.
- Necessity of next friend obviated by statute, 10, 198
- Wife to sue in equity by next friend, 10, 197
- Infant *en ventre sa mere*, 14, 1014
- Infants:
 - Appearance by guardian or *prochein ami*, 10, 594
 - Consent of infant unnecessary, 14, 1029
 - Necessity and propriety of suing by next friend, 14, 1002
 - Attorney as representative, 14, 1010
 - Disqualifying adverse interest, 14, 1009
 - General statement of the rule, 14, 1002
 - Guardian *ad litem* or next friend, 14, 1011
 - Guardian *ad litem* though there is a general guardian, 14, 1007
 - Infant co-plaintiff, 14, 1009
 - Suing by next friend where there is a guardian, 14, 1007
 - Suing in person or by attorney, 14, 1003
 - Suing without representative, 14, 1003
- Insane persons, 10, 1193, 1224; 14, 1013
 - Substitution of guardian *ad litem* for next friend, 10, 1225
 - Suits by next friend, 10, 1224
 - Suits where committee's interests are adverse, 10, 1225
 - Where insanity not adjudicated and no committee appointed, 10, 1224
- Judgments, 14, 1054
 - Bills to impeach, 14, 1056
 - By agreement or consent, 14, 1057
 - Collateral attack, 14, 1055

NEXT FRIEND, *cont'd.*

- Judgments, *cont'd.*
 - Form of judgment, 14, 1056
 - Infant's day in court, 14, 1055
 - In general, 14, 1054
- Majority of infant *pendente lite*, 14, 1000
 - Costs, 14, 1047
 - Where infant elects to dismiss, 14, 1047
 - Where infant prosecutes, 14, 1047
 - Election by infant, 14, 1001
 - Failure to appoint or irregular appointment, 14, 1020
 - In general, 14, 1000
 - Whether action abates, 14, 1001
- Married women, 14, 1012
 - When authorized to sue by next friend, 14, 1012
- New trial:
 - Failure to appoint or irregular appointment as raised on motion for new trial, 14, 1020
- Oath, 14, 1034
- Officer of court, 14, 998, 1001
- Parties:
 - Whether next friend is a party, 14, 998
- Partition, 14, 1014
- Pendente lite*, majority of infant, 14, 1000
- Pleadings, 14, 1049
 - Allegations as to appointment or admission to sue, 14, 1052
 - Allegations as to plaintiff's disability, 14, 1051
 - In whose name, 14, 1049
 - Negating existence of general guardian, 14, 1053
 - Particular actions by infants, 14, 1054
 - Plea to the appointment, 14, 1053
 - Technical accuracy, 14, 1051
- Plea in abatement:
 - Failure to appoint or irregular appointment, 14, 1021
- Powers and duties, 14, 1035
 - Admissions, 14, 1039
 - Arbitration, 14, 1040
 - Compromise, 14, 1040
 - Control of action, 14, 1035
 - Defaults, 14, 1039
 - Dismissal of action, 14, 1036
 - Effect of defaults, admissions, etc., 14, 1039
 - Employment of attorney, 14, 1037
 - Extent of authority, 14, 1036
 - In general, 14, 1035
 - Payment of judgment, 14, 1037
 - Satisfaction of judgment, 14, 1037
 - Settlement, 14, 1040
 - Stipulations, 14, 1040

NEXT FRIEND, *cont'd.*

- Proceedings properly brought by next friend, 14, 1014
- Removal of causes:
 - Citizenship, 18, 190
- Responsible person, 14, 1032
- Security for costs, 19, 352
- Settlement, 14, 1040
- Settlement of decedents' estates.
 - Removal, 19, 853
- Stipulations, 14, 1040
- Substitution of parties, 20, 1025
- Termination of office, 14, 1044
- NIGHT SESSIONS:**
 - Terms and sessions of court, 21, 605
- NIGHT TIME** (see BURGLARY):
 - Indictments, 10, 517
- NIL DEBET** (see PLEAS AT LAW):
 - Bonds, 3, 664
- Debt:
 - Action on statutes, 5, 928
 - Book debt, 5, 929
 - Plea to action on record, 5, 925
 - Plea to action on simple contracts, 5, 922
 - Plea to action on specialties, 5, 924
- Judgments:
 - Actions on judgments*, see JUDGMENTS.
- Official bonds, 15, 150
- Pleas at law, 16, 545
- Replevin, 18, 634
- Scire facias:
 - Recognizances in criminal cases, 19, 315
- NIL DEBET AND NUNQUAM INDEBITATUS**, see DEBT.
- NIL DICIT** (see DEFAULTS; DISMISSAL, DISCONTINUANCE, AND NONSUIT):
 - Defaults, 6, 59
 - Quieting title, 17, 369
- NIL HABUIT IN TENEMENTIS**, see COVENANT.
- NISI:**
 - Decrees, 5, 950
- NOLLE PROSEQUI**, 10, 556
 - See DISMISSAL, DISCONTINUANCE, AND NONSUIT.
 - Attorney-general, 10, 556
 - By whom entered, 10, 556
 - Courts control, 10, 556, 557
 - Discretion of prosecuting officer, 10, 556
 - Effect, 10, 558
 - Acquittal, 10, 558, 559
 - After reversal, 10, 559
 - After verdict, 10, 563
 - At what time it may be entered, 10, 560
 - Compared with nonsuit or discontinuance, 10, 558, 559
 - Curative effect, 10, 563

NOLLE PROSEQUI, *cont'd.*Effect, *cont'd.*

Duplicity, 10, 563

In general, 10, 558

Misjoinder, 10, 563

Not prejudicial to case, 10, 560

Prosecution on same indictment

or information, 10, 561

Whether an acquittal, 10, 558

Without consent of defendant,
10, 559Former conviction or acquittal, 10,
561

Leave of court, 10, 557

Penalties and penal actions, 16, 247

Scope of *nol. pros.*, 10, 557

Verdict:

Nolle prosequi as to one or more
counts, 22, 845**NOLO CONTENDERE**, see ARRAIGN-
MENT AND PLEA.**NOMINAL DAMAGES** (see DAM-
AGES):

Allegation of damage, 5, 704

Appeals, 2, 535

Costs:

Amount in controversy, 5, 161

Recovery limited by demand, 5, 713

NOMINAL PARTIES, see PARTIES;
COSTS.**NON ASSUMPSIT** (see ASSUMPSIT):

Payment, 16, 170

Pleas at law, 16, 544

NON CEPIT:

Pleas at law, 16, 544

Replevin, 18, 547

NON COMPOS MENTIS, see INSANE
PERSONS.**NON DAMNIFICATUS** (see COVE-
NANT; DEPARTURE):

Bonds, 3, 663

Official bonds, 15, 149

NON DETINET:

Detinue, 6, 654

Pleas at law, 16, 544

NON EST FACTUM:

Alteration of instrument, 16, 545

Bonds, 3, 663

Covenant, 5, 378

Debt:

Plea to action on specialties, 5, 923

Debt on specialty and in covenant,
16, 545

Nature as general issue, 16, 545

Negotiable instruments, 16, 545

Notice or brief statement of defense,
14, 1085

Official bonds, 15, 150, 176

Pleas at law, 16, 545, 546

Poor debtor acts, 16, 743

Release, 18, 95

Special *non est factum*, 16, 546

Verification, 16, 546

NON EST INVENTUS, see EXECU-
TIONS AGAINST THE BODY AND ARREST
IN CIVIL CASES.**NON-IDENTITY**:

Escape, 7, 924

**NON INFREGIT CONVEN-
TIONEM**, see COVENANT.**NONJOINDER**, see PARTIES; ABATE-
MENT IN PLEADING.**NON OBSTANTE VEREDICTO** (see
JUDGMENTS; SPECIAL INTERROGA-
TORIES TO JURIES):

Sham and frivolous pleadings, 20, 109

NON PROSEQUITUR, see DISMISSAL,
DISCONTINUANCE, AND NONSUIT.**NONRESIDENTS** (see PUBLICATION;
SERVICE OF PROCESS; SUMMONS AND
PROCESS):

Appeals, see APPEALS.

Appearance of, see APPEARANCES.

Arrest of judgment, see ARREST OF
JUDGMENT.

Attachment, see ATTACHMENT.

Examination of nonresidents before
trial, see EXAMINATION OF PARTIES
BEFORE TRIAL.Exhaustion of legal remedies, see
CREDITORS' BILLS.

Judgment against, see DEFAULTS.

Jurisdiction, see JURISDICTION.

Jurisdiction over absent insane persons,
see INSANE PERSONS.Jurisdiction over foreign corporations,
see JURISDICTION.Jurisdiction over person or property, see
JURISDICTION.Nonresidence of debtor, see CREDITORS'
BILLS.

Publication, see PUBLICATION.

Service on nonresident infants, see IN-
FANTS.**NONSUIT**, see DISMISSAL, DISCONTINU-
ANCE, AND NONSUIT.**NON-TENURE**, see ABATEMENT IN
PLEADING; ENTRY, WRIT OF; REAL
ACTIONS.**NOTARY PUBLIC**:

Affidavits:

Authority to take, 1, 329

Depositions, see DEPOSITIONS.

NOTES, see NEGOTIABLE INSTRUMENTS.**NOTES OF ISSUE**, 14, 1063

Amendments, 14, 1065

Amended pleadings, 14, 1064

Amending old note, 14, 1065

In general, 14, 1065

Trial, 21, 963

When filed, 14, 1064

Amended pleadings, 14, 1064

Cause reversed on appeal, 14,
1065

In general, 14, 1064

Supplemental pleadings, 14, 1065

NOT GUILTY (see ARRAIGNMENT AND PLEA; PLEAS AT LAW; TRESPASS; VERDICT):

Official bonds, 15, 150

Ordinances, 15, 435

Pleas at law, 16, 544

NOTICE, 14, 1066

See ELECTIONS; EQUITABLE ASSIGNMENTS; SUMMONS AND PROCESS.

Adoption, 10, 848

Amendments, 1, 656, 658

Answer, see *infra*, Plea or answer denying notice.**Appeals:**

Jurisdiction, 2, 192

Statutory notice of appeal, 2, 209, 213

Acknowledgment of service, 2, 227

Affidavit of service, 2, 228

Amendment of notice, 2, 231

Amendment of return, 2, 229

By whom service may be made, 2, 220

Construction of notice, 2, 216

Description of judgment, 2, 217

Dismissal for obscurity, 2, 218

Filing, 2, 229

General requisite, 2, 213

How service may be made, 2, 221

Interlocutory judgments, 2, 220

Orders, 2, 220

Personal service, 2, 221

Proof of service, 2, 227

Publication, 2, 225

Return of officer, 2, 228

Service by publication, 2, 225

Service on adverse party, 2, 222

Service on attorney of record, 2, 222

Service on clerk, 2, 224

Service on corporations, 2, 224

Service on deputy, 2, 225

Service where more than one attorney, 2, 223

Several appellants, 2, 220

Signature, 2, 214

Signature by attorney not of record, 2, 215

Special appearance, waiver, 2, 234

Specification of error required, 2, 217

Strict compliance with statute, 2, 213

Substitution of attorneys, 2, 223

NOTICE, *cont'd.***Appeals**, *cont'd.*Statutory notice of appeal, *cont'd.*

Waiver of defects by general appearance, 2, 231

Waiver of defects by joinder in error, 2, 232

Waiver of defects in notice, 2, 231

Waiver of objection to order of publication, 2, 227

What it must specify, 2, 214

What may be embraced in notice, 2, 219

What record must show, 2, 230

Where judgments distinct, 2, 220

Where signature not required, 2, 215

Writing, 2, 213

Statutory notification of appeal to codefendants, 2, 189

Transcript on appeal, 2, 266

Appearances, see APPEARANCES.

Apprenticeship, 10, 852

Arbitration and award:

Averment of notice in action on awards, 14, 1068

Averment of excuse or waiver, 14, 1069

Proof under averment of due notice, 14, 1070

What allegations necessary, 14, 1069

Awards, 3, 135

Bail and recognizance:

Notice to plaintiff, 3, 170

Bills of exceptions, see **BILLS OF EXCEPTIONS**.*Bills of particulars*, see **BILLS OF PARTICULARS**.

Boundaries and fences, 3, 675

Certificate of doubt, 3, 916

Certificate of doubt on appeal, 3, 917

In capital cases, 3, 917

In other cases, 3, 917

Certiorari (see **CERTIORARI**):

Proceedings without proper notice, 4, 93

Chambers and vacation:

Injunctions, 4, 358

Change of venue:

Notice of application, 4, 429

Chattel mortgages:

Demand in notice to attaching creditors, 4, 528

Citations, see **CITATIONS**.

Conditions precedent, 4, 653

Demand and notice in actions on commercial paper, 4, 649

Examples, 4, 653, 654

NOTICE, *cont'd.*

- Conditions precedent, *cont'd.*
 - How pleaded, 4, 654
 - Implication of law, 4, 653
- Constructive notice, 14, 1072
- Contempt (see CONTEMPT), 4, 777, 781
- Costs, see COSTS.
- Declaration and complaint, 4, 615
- Depositions (see DEPOSITIONS):
 - Certificate:
 - United States courts, 6, 627
- Disbarment and suspension of attorneys, 6, 714
- Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
- Drainage, 7, 212
 - Defective notice, 7, 213
 - In general, 7, 212
 - Notice is jurisdictional, 7, 212
 - Nunc pro tunc* entry, 7, 213
- Eminent domain, see EMINENT DOMAIN
- Exceptions and objections, 8, 180
- Excuse, averment of, 14, 1069
- Executions, see EXECUTIONS.
- Extent, 8, 786
- Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.
- Forma pauperis*, 16, 685
- Guardians, see GUARDIANS.
- Heating, 10, 13
- Indemnity bond:
 - Averment of notice in action on indemnity bond, 14, 1068
- Infants, see INFANTS.
- Injunctions, see INJUNCTIONS.
- Inquests and inquiries, see INQUESTS AND INQUIRIES.
- Insane persons, see INSANE PERSONS.
- Insolvency, see INSOLVENCY.
- Issues to the jury, see ISSUES TO THE JURY.
- Judgments, see JUDGMENTS; OPENING, AMENDING, AND VACATING JUDGMENTS.
- Judicial notice, 12, 1
- Judicial sales, see JUDICIAL SALES.
- Jurisdiction, 12, 146
 - Necessity of personal service, 12, 144
- Justices of the peace, see JUSTICES OF THE PEACE.
- Local improvements, see LOCAL IMPROVEMENTS.
- Logs and lumber:
 - Attachment to enforce lien, 13, 342
- Lost instruments and records, see LOST INSTRUMENTS AND RECORDS.
- Mandamus (see MANDAMUS), 13, 543
- Mandate, see MANDATE.
- Manner of alleging notice, 14, 1071
 - Constructive notice, 14, 1072

NOTICE, *cont'd.*

- Manner of alleging notice, *cont'd.*
 - Examples, 14, 1071
 - In general, 14, 1071
 - Necessity of alleging facts, 14, 1071
 - Notice to proper person, 14, 1072
 - Time of notice, 14, 1071
- Marriage (*annulment*), see MARRIAGE (ANNULMENT).
- Mechanics' liens, see MECHANICS' LIENS.
- Motions, see MOTIONS.
- Necessity to aver notice, 14, 1066
 - Action on indemnity bond, 14, 1068
 - Actions on awards, 14, 1068
 - Effect of omissions or defects at common law, 14, 1068
 - Effect of omissions or defects under the code, 14, 1069
 - Matters not within peculiar knowledge of plaintiff, 14, 1067
 - Matters within peculiar knowledge of plaintiff, 14, 1066
 - Notice necessary by terms or nature of contract, 14, 1067
- Ne exeat*, see NE EXEAT.
- Negotiable instruments, see NEGOTIABLE INSTRUMENTS.
- New trial, see NEW TRIAL.
- Nuisances, see NUISANCES.
- Official bonds, see OFFICIAL BONDS.
- Omissions or defects at common law, 14, 1068
- Omissions or defects under the code, 14, 1069
- Opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.
- Patents, see PATENTS.
- Petitions, see PETITIONS.
- Plea or answer denying notice, 14, 1072
 - Bona fide purchaser, 14, 1073
 - In general, 14, 1072
 - Requisite allegations, 14, 1072
- Poor and poor laws, see POOR AND POOR LAWS.
- Poor debtor acts, see POOR DEBTOR ACTS.
- Possession, writ of, 16, 749
- Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.
- Production of documents, 6, 797
- Proper person, 14, 1072
- Publication, see PUBLICATION.
- Public officers, see PUBLIC OFFICERS.
- Receivers, see RECEIVERS.
- Recordari, 17, 902
- Records, see RECORDS.
- References (see REFERENCES):
 - Notice before ordering reference, 17, 1006

NOTICE, *cont'd.*

Rehearing, see REHEARING.

Remittitur, see REMITTITUR.

Removal of causes, see REMOVAL OF CAUSES.

Revival of judgments:

Revival on motion and notice, 18, 1089

Satisfaction and discharge of judgments, see SATISFACTION AND DISCHARGE OF JUDGMENTS.

Sequestration, see SEQUESTRATION.

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Settlement on appeal, see STATEMENT OF FACTS ON APPEAL.

Sheriffs and constables, see SHERIFFS AND CONSTABLES.

Sheriffs' sales, see SHERIFFS' SALES.

Stock and stockholders, see STOCK AND STOCKHOLDERS.

Substitution of attorneys, see SUBSTITUTION OF ATTORNEYS.

Summary proceedings, see SUMMARY PROCEEDINGS.

Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.

Suretyship, 16, 933

Action by surety against principal, 16, 953

Action for contribution, 16, 960, 962

Determination of suretyship, 16, 964

Taxation, see TAXATION.

Terms and sessions of court (see TERMS AND SESSIONS OF COURT), 21, 603

Time of notice, 14, 1071

Trial, see TRIAL.

Trial of the right of property, see RIGHT OF PROPERTY, TRIAL OF.

Variance, 22, 592

Waiver, averment of, 14, 1069

Waste, 22, 1133

Waters and watercourses, 22, 1145, 1158

Ways, 22, 1182

NOTICE OF AMENDMENT, see AMENDMENTS.

NOTICE OR BRIEF STATEMENT OF DEFENSE, 14, 1074

Admissions, 14, 1086

Amendments, 14, 1083

Character as a pleading, 14, 1081

Amendments, 14, 1083

Counter notice in reply, 14, 1081

Defendant's notice, 14, 1081

Demurrer to notice, 14, 1082

NOTICE OR BRIEF STATEMENT OF DEFENSE, *cont'd.*

Character as a pleading, *cont'd.*

Modes of attacking notice, 14, 1082

Replication of evidence, 14, 1082

Waiver of objections, 14, 1083

Counter notice in reply, 14, 1081

Defendant's notice, 14, 1081

Definition, 14, 1078

Demurrers, 14, 1082

Equitable defenses, 14, 1080

Form, 14, 1088

General issue and notice, 14, 1084

Admissions made by notice and plea, 14, 1086

Common-law pleas, 14, 1085

Generally, 14, 1084

Matter in abatement, 14, 1084

Non est factum, 14, 1085

Nul tiel record, 14, 1085

Place of each in pleading, 14, 1086

Plea *puis darrein continuance*, 14, 1084

Statutory changes, 14, 1085

With what pleas notice may be given, 14, 1085

Illustrations, 14, 1090

Modes of attacking notice, 14, 1082

Non est factum, 14, 1085

Notice and special pleas in bar, 14, 1078

Definition of notice of defense, 14, 1078

Equitable defenses, 14, 1080

Nul tiel corporation, 14, 1079

Partial defense, 14, 1079

Place of each in pleading, 14, 1080

Nul tiel corporation, 14, 1079

Nul tiel record, 14, 1085

Origin of notice of defense, 14, 1075

Place of each in pleading:

Notice and general issue, 14, 1086

Notice in special pleadings, 14, 1080

Plea in abatement, 14, 1085

Puis darrein continuance, 14, 1084

Replications and replies, 14, 1081, 1082

Rules of court, 14, 1077

Scope of article, 14, 1075

Statutory method, 14, 1077

Substance, 14, 1088

Waiver of objections, 14, 1083

NOTICE TO QUIT, see FORCIBLE ENTRY AND DETAINER.

NOVATION:

Appeal bonds and undertakings, 1, 1020

N. P.:

Abbreviations, 1, 43

NUISANCES, 14, 1091See **HEALTH REGULATIONS.**

Abatement, 14, 1093

Abatement no bar to recovery of damages, 14, 1118

Commitment to enforce abatement, 14, 1105

Complaint demanding both abatement and damages, 14, 1116

Criminal procedure, 14, 1103

Decree, 14, 1147

Judgments, 14, 1117

Actions, see *infra*, Suits in equity.

Actions at law, 14, 1094, 1105

Abatement, 14, 1117

Abatement no bar to recovery, 14, 1118

Declaration and complaint, see *infra*, Declaration and complaint.

Federal courts, 14, 1105

Joinder of parties, 14, 1108

Judgment for abatement, 14, 1117

Jurisdiction, 14, 1105

Justices of the peace, 14, 1106

Parties defendant, 14, 1108

Parties plaintiff, 14, 1107

Plea or answer, 14, 1116

Successive actions, 14, 1118

Venue, 14, 1105

Venue of action, 14, 1106

Adequacy of remedy at law, 14, 1094, 1122

Bill or complaint, 14, 1142

Irreparable injury, 14, 1125

Multiplicity of suits, 14, 1126

Necessity for establishing right at law where remedy at law is inadequate, 14, 1135

Statutes providing remedy at law, 14, 1126

Where remedy adequate, 14, 1094, 1122

Where remedy inadequate, 14, 1124

Amendments:

Declaration and complaint, 14, 1116

Answer:

Action at law, 14, 1116

Appeals:

Criminal procedure, 14, 1105

Bill or complaint, 14, 1141

Adequacy of remedy at law, 14, 1142

Allegation of title, 14, 1143

Proof, 14, 1143

Suit by private person for public nuisance, 14, 1145

Suit for injunction and damages, 14, 1146

Threatened nuisances, 14, 1144

NUISANCES, *cont'd.*Complaint, see *infra*, Bill or complaint; Declaration and complaint.

Conclusion:

Indictment, 14, 1101

Continuances, 14, 1100

Joinder of causes of action upon erection and continuance, 14, 1115

Subsequent action for continuance, 14, 1115

Control of property, 14, 1113

Criminal procedure, 14, 1093, 1096

Abatement, 14, 1103

Appeal, 14, 1105

Fine and imprisonment, 14, 1103

Indictment, see *infra*, Indictment.

Judgment, 14, 1103

Jurisdiction, 14, 1096

Damages, 5, 745

Abatement as bar to recovery of, 14, 1118

Allegations as to damages, 14, 1111

Private action for public nuisance, 14, 1112

Private nuisances, 14, 1111

Stating facts causing damage, 14, 1112

Bill or complaint in suit for injunction and damages, 14, 1146

Complaint demanding both abatement and damages, 14, 1116

Nominal damages, 14, 1128

Declaration and complaint, 14, 1109

Abatement and damages, 14, 1116

Action against municipal corporation, 14, 1115

Allegations, 14, 1110

Allegations as to damages, 14, 1111

Allegations as to negligence, 14, 1114

Allegations as to title or control of property, 14, 1113

Alleging notice to remove, 14, 1110

Damages in private action for public nuisance, 14, 1112

Damages where nuisance is private, 14, 1112

Defendant's title, 14, 1114

In general, 14, 1109

Joinder of causes of action, 14, 1115

Nuisance in highway, 14, 1115

Plaintiff's title, 14, 1113

Showing nuisance, 14, 1109

Subsequent action for continuance, 14, 1115

NUISANCES, *conf'd.*

- Decrees (see *infra*, Judgments), 14, 1146
 - Abatement, 14, 1147
 - In general, 14, 1146
 - Where nuisance can be remedied by use of proper methods, 14, 1148
- Disorderly conduct, 7, 4
- Disorderly houses, 7, 11
- Duplicity, 14, 1100
- Election of remedies, 14, 1093
- Equity, see *infra*, Suits in equity.
- Form, 14, 1093
- Highway:
 - Declaration and complaint, 14, 1115
- Inadequacy of remedy at law, see *infra*, Adequacy of remedy at law.
- Indictment, 14, 1093, 1096
 - Against officers of municipal corporations, 14, 1102
 - Conclusion, 14, 1101
 - Continuance, 14, 1100
 - Description of nuisance, 14, 1096
 - Duplicity, 14, 1100
 - Intent, 14, 1100
 - Location, 14, 1098
 - Proof must correspond with allegations, 14, 1099
 - Setting out constituent acts, 14, 1097
 - Special circumstances, 14, 1098
 - Statutory nuisance, 14, 1098
 - Time, 14, 1099
- Injunctions (see INJUNCTIONS):
 - Bill or complaint in suit for injunction and damages, 14, 1146
- Intent, 14, 1100
- Irreparable injury, 14, 1125
- Issues to the jury, 11, 643
- Joinder of counts and causes, 14, 1115
 - Abatement and damages, 14, 1116
 - Amendment, 14, 1116
 - Erection and continuance of nuisance, 14, 1115
- Joinder of parties, 14, 1107, 1108, 1138
 - In general, 14, 1138
 - Landlord and tenant, 14, 1140
- Judgments (see *infra*, Decrees):
 - Abatement, 14, 1103, 1117
 - Criminal procedure, 14, 1103
 - Fine, 14, 1103
 - Imprisonment, 14, 1103
 - Necessity for establishing right at law, 14, 1133
- Jurisdiction:
 - Actions at law, 14, 1105
 - Criminal procedure, 14, 1096
 - Federal courts, 14, 1105
 - Index Pl. & Pr. — 47

NUISANCES, *conf'd.*

- Jurisdiction, *conf'd.*
 - Justices of the peace, 14, 1106
- Suits in equity, 14, 1118
 - Adequacy of remedy at law, 14, 1122
 - Existence of nuisance manifest, 14, 1134
 - Inadequate remedy at law, 14, 1124, 1135
 - In general, 14, 1118
 - Irreparable injury, 14, 1125
 - Judgment at law, 14, 1133
 - Jurisdiction not original, 14, 1120
 - Multiplicity of suits, 14, 1126
 - Necessity of establishing right at law, 14, 1131
 - Nominal damages, 14, 1128
 - Power cautiously exercised, 14, 1121
 - Public benefit or convenience, 14, 1127
 - Remedy at law adequate, 14, 1122
 - Statutes providing remedy at law, 14, 1126
 - Threatened nuisances, 14, 1128
 - United States courts, 14, 1122
 - Verdict at law, 14, 1133
- Justices of the peace, 14, 1106
- Location, 14, 1098
- Multiplicity of suits, 14, 1126
- Municipal corporations, 14, 1137
 - Declaration and complaint, 14, 1115
 - Indictment against officers of municipal corporation, 14, 1102
- Nature, 14, 1093
- Negligence:
 - Allegations as to negligence, 14, 1114
- Nominal damages, 14, 1128
- Notice to remove:
 - Allegations of notice, 14, 1110
- Parties, 14, 1107, 1136
 - Defendant, 14, 1108, 1140
 - Joinder, 14, 1108
 - Plaintiff, 14, 1107, 1136
 - In general, 14, 1136
 - In suits to restrain public nuisances, 14, 1136
 - Joinder in general, 14, 1138
 - Joinder of landlord and tenant, 14, 1140
 - Municipal corporations, 14, 1137
 - Special injuries to private persons, 14, 1137
 - Plaintiff under statutes, 14, 1107
- Plea:
 - Action at law, 14, 1116

NUISANCES, *cont'd.*

Public officers:

Declaration and complaint, 14, 1115

Indictment against officers of municipal corporations, 14, 1102

Railroads, 17, 524

Indictments, 17, 524

Remedy:

Effect of statutes on common-law remedies, 14, 1095

Remedy at law, see *infra*, Adequacy of remedy at law.

Remedy by action at law, 14, 1094, 1122

Statutes:

Effect of statutes on common-law remedies, 14, 1095

Statutory nuisances:

Criminal procedure, 14, 1102

Statutory proceedings:

Criminal procedure, 14, 1098

Street railways, see *STREET RAILWAYS*.Suits in equity (see *infra*, Bill or complaint):

Adequacy of remedy at law, 14, 1122

Decree, see *infra*, Decrees.

Inadequacy of remedy at law, 14, 1124, 1135

Jurisdiction, see *infra*, Jurisdiction.

Necessity for establishing right at law, 14, 1131

Effect of judgment at law, 14, 1133

Existence of nuisance manifest, 14, 1134

Remedy at law inadequate, 14, 1135

What equivalent to verdict, 14, 1133

When necessary, 14, 1131

When not necessary, 14, 1134

Nominal damages, 14, 1128

Parties, see *infra*, Parties.

Public benefit or convenience, 14, 1126

Statutes providing remedy at law, 14, 1126

Threatened nuisances, 14, 1128

United States courts, 14, 1122

Survival of actions, 21, 348

Threatened nuisances, 14, 1128

Bill or complaint, 14, 1144

When equity will interfere, 14, 1130

When equity will not interfere, 14, 1128

Time:

Criminal procedure, 14, 1099

NUISANCES, *cont'd.*

Title:

Allegations as to title or control of property, 14, 1113

Allegations of title in bill or complaint, 14, 1143

Defendant's title, 14, 1114

Plaintiff's title, 14, 1113

United States courts, 14, 1105

Suits in equity, 14, 1122

Venue:

Actions at law, 14, 1105

Where abatement is sought, 14, 1106

Where damages only are sought, 14, 1106

NUL DISSEIZIN, see *ENTRY*, *WRIT OF*.**NULLA BONA**, see *EXECUTIONS*; *EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES*; *CREDITORS' BILLS*.**NULLITY**, see *MARRIAGE (ANNULMENT)*.**NUL TIEL CORPORATION:**

Notice or brief statement of defense, 14, 1079

NUL TIEL RECORD, see *ACCORD AND SATISFACTION*; *BONDS*; *DEBT*; *JUDGMENTS*; *PLEAS AT LAW*; *RECORDS*.**NUL TORT**, see *PLEAS AT LAW*; *REAL ACTIONS*.**NUL WASTE**, see *PLEAS AT LAW*; *WASTE*.**NUNC PRO TUNC:**

Appeals, 2, 246

Bills of exceptions, 3, 464

Certiorari, 4, 201

Decrees, 5, 951

Defaults, 6, 65

Dismissal, discontinuance, and nonsuit, 6, 875

Infants:

Approval of sale, 10, 815

Records, 10, 838

Lost instruments and records:

Restoration of lost records, 13, 384

Orders, 15, 344

Records, see *RECORDS*.

Removal of causes, 18, 344

Rendition and entry of judgments, see *RENDITION AND ENTRY OF JUDGMENTS*.

Sentence, 19, 489

Settlement of decedents' estates:

Appointment of administrator, 19, 835

Confirmation of sale, 19, 912

Order of sale, 19, 903

Supplemental pleadings, 21, 57

Terms and sessions of court, 21, 601

OATH (see AFFIDAVITS; AFFIRMATION; VERIFICATION):

Administration, see SETTLEMENT OF DECEDENTS' ESTATES.

Affidavits, 1, 324

Affidavit and oath compared, 1, 310

Form, 1, 324

Insufficient, 1, 324

Who may make, 1, 325

Affirmation, see AFFIRMATION.

Answers in equity pleading (see ANSWERS IN EQUITY PLEADING):

Waiver of oath, 1, 949

Awards:

Failure of arbitrators to take oath, 3, 146

Coroner's inquests:

Jury, 5, 45

Depositions, 6, 532

Certificate, 6, 554

Exhibits, 6, 605

Presumption as to administration of oath, 6, 540

United States courts, 6, 624

Elections:

Petition, complaint, or notice, 7, 386

Eminent domain:

Appraisers, 7, 568

Arbitrators, 7, 569

Commissioners, 7, 567

Necessity, 7, 567

Sufficiency, 7, 567

What the record must show, 7, 568

Jurors, 7, 566

Form, 7, 566

Necessity, 7, 566

Sufficiency, 7, 566

What the record must show, 7, 567

Right to swear witnesses and hear evidence, 7, 576

Viewers, 7, 569

Exceptions and objections, 8, 186

Executors and administrators, see SETTLEMENT OF DECEDENTS' ESTATES.

Extradition, 8, 806

Forma pauperis, see FORMA PAUPERIS.

Garnishment, 9, 831

Grand juries, 10, 379

Form of the oath, 10, 380

Necessity of oath, 10, 379

Record, 10, 380

Witnesses, 10, 394

Guardians *ad litem*, 10, 663

Indictments:

Complaint, 10, 466

Complaint before magistrate, 10, 463

Sufficiency of oath, 10, 466

OATH, *cont'd.*

Infants:

Sale of infants' real estate, 10, 800

Inquests and inquiries:

Oath of jury, 10, 1152

Judges, 11, 791

Judicial sales:

Appraisers, 12, 18

Officer conducting sale, 12, 51

Jury, see JURY.

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

Perjury, see PERJURY.

Poor debtor acts, 16, 727

Bond or recognizance, 16, 740

Departure of debtor, 16, 729

In general, 16, 727

Refusal of oath, 16, 728

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Witnesses, see WITNESSES.

OBITER DICTA:

Appeals, 2, 371

OBJECTIONS, see EXCEPTIONS AND OBJECTIONS.

OBSCENITY, 14, 1151

See BLASPHEMY.

Colloquium, 14, 1160

Common-law offense, 14, 1152

Criminal procedure, see *infra*, Indictments, informations, and complaints.

Description of the obscene matter, 14, 1157

Forfeiture, 14, 1164

Indictments, informations, and complaints, 14, 1154

Address of matter mailed, 14, 1162

Appropriateness of indictment or information, 14, 1154

Averments in language of statute, 14, 1156

Averments peculiar to indictments for mailing obscene matter, 14, 1162

Averments that matter was mailed, 14, 1162

Colloquium, 14, 1160

Description of place, 14, 1157

Description of the obscene matter, 14, 1157

Inducement, 14, 1160

Intent, 14, 1162

Joinder of offenses and offenders, 14, 1154

Knowledge that matter was obscene, 14, 1162

Laying the venue, 14, 1157

Obscene matters in the mails, 14, 1154, 1157, 1160, 1162

OBSCENITY, *cont'd.*

- Indictments, informations, and complaints, *cont'd.*
 - Oral utterances, 14, 1157
 - Payment of postage, 14, 1162
 - Publication, 14, 1161
 - Scienter, 14, 1162
 - Signs, 14, 1158
 - Time, 14, 1157
 - Uttering obscene language and writings, 14, 1156
 - Writings, 14, 1158
- Inducement, 14, 1160
- Instructions, 14, 1164
- Intent, 14, 1162
- Joinder of offenses, 14, 1154
- Joinder of parties:
 - Indictment, 14, 1155
- Jurisdiction, 14, 1153
 - In general, 14, 1153
 - Justices of the peace, 14, 1153
 - Obscene matters in the mails, 14, 1154
 - Venue, 14, 1154
- Mails, 14, 1153
 - Averment in language of statute, 14, 1157
 - Averments peculiar to indictments for mailing obscene matter, 14, 1162
 - Address of matter mailed, 14, 1162
 - Knowledge that matter was obscene, 14, 1162
 - Payment of postage, 14, 1162
 - That matter was mailed, 14, 1162
 - Jurisdiction, 14, 1154
 - Setting out obscene matter in indictment, 14, 1160
 - Variance, 14, 1164
- Oral utterances, 14, 1157
- Pictures, 14, 1159
- Place, description of, in the indictment, 14, 1157
- Pleadings, 14, 1163
- Prints, 14, 1159
- Publication, 14, 1161
 - Necessity of alleging in indictment, 14, 1161
 - Particulars as to publication in indictment, 14, 1161
- Scienter, 14, 1162
- Signs, 14, 1158
- Tenor, 14, 1160
- Time, 14, 1157
- Uttering obscene language and writings, 14, 1156, 1163
 - Proof, 14, 1163
 - Variance, 14, 1163
- Variance, 14, 1163
 - Mails, 14, 1164

OBSCENITY, *cont'd.*

- Venue, 14, 1154
 - Laying the venue in indictment, 14, 1157
- Writings, 14, 1158

OBSTRUCTING JUSTICE, 15, 1

- Affidavit, 15, 6
- Aider by verdict, 15, 12
- Authority of officer, 15, 4, 9
 - Warrant, 15, 22
- Conspiracy, 4, 727
- Conviction of lesser offense than that charged, 15, 23
- Court of limited jurisdiction, 15, 15
- Degree:
 - Conviction of lesser offense than that charged, 15, 23
- Deputy, 15, 11
- Duplicity, 15, 21
- Evidence*, see *infra*, Witnesses.
- Execution of or attempt to execute process, 15, 7
 - Aider by verdict, 15, 12
 - Authority of officer, 15, 9
 - Averments of indictment or corresponding pleading, 15, 7
 - Consummation of offense, 15, 8
 - Conviction of lesser offense than that charged, 15, 23
 - Court of limited jurisdiction, 15, 15
 - Defective averments, 15, 21
 - Deputization of officer, 15, 11
 - Description of obstruction, 15, 18
 - Description of process, 15, 15
 - Duplicity, 15, 21
 - Instructions, 15, 23
 - Issuance of process, 15, 13
 - Knowledge of official capacity, 15, 19
 - Language of statute, 15, 8
 - Officer's territorial jurisdiction, 15, 10
 - Pleading and proof, 15, 22
 - Possession of process by officer, 15, 17
 - Preliminaries to issuance of process, 15, 12
 - Province of jury, 15, 23
 - Scienter, 15, 19
 - Surplusage, 15, 21
 - Variance, 15, 22
 - Warrant, 15, 22
- Indictments (see *infra*, Execution of or attempt to execute process; Resistance to officer; Witnesses):
 - Charging offense in language of statute, 15, 28
 - Description of obstruction, 15, 30
 - Particular exercise of office obstructed, 15, 29
- Intent (see *infra*, Scienter), 15, 29

OBSTRUCTING JUSTICE, *cont'd.*

Knowledge of official capacity, 15, 5;
19, 29

Official capacity, 15, 5

Process, see *infra*, Execution of or
attempt to execute process.

Questions of law and fact, 15, 23

Resistance to officer, 15, 2

Affidavit, 15, 6

Authority of officer, 15, 4

Averments of indictment or cor-
responding pleading, 15, 2

Kind or nature of resistance,
15, 6

Knowledge of official capacity,
15, 5

Pleading and proof, 15, 7

Scienter, 15, 5

Statutory or common-law of-
fense, 15, 3

Unnecessary averments, 15, 3

Variance, 15, 7

Verdict, 15, 7

Scienter, 15, 5; 19, 29

Summons, see *infra*, Execution of or
attempt to execute process.

Surplusage, 15, 21

Variance, 15, 7, 22

Verdict, 15, 7

Verdict, aided by, 15, 12

Warrant, 15, 22

Witnesses, 15, 24

Averments of indictment, 15, 24
Averment that witness was sum-
moned, 15, 26

Conclusion, 15, 27

Contempt, 15, 24, 25

Dissuasion, 15, 24

Interference with witness, 15,
24

Knowledge of litigation and obli-
gation of witness to attend,
15, 27

Materiality of witness's testi-
mony, 15, 26

Means used to accomplish pur-
pose, 15, 25

Sufficiency of original proceed-
ings, 15, 27

OFFENSIVE, see **ABUSIVE AND OF-
FENSIVE LANGUAGE**.

OFFER OF JUDGMENT, 15, 32

Acceptance of offer, 15, 45

Amendment of judgment, 15, 47
Control of court after acceptance,
15, 47

Costs, 15, 48

Effect of acceptance, 15, 47

In general, 15, 45

Res adjudicata, 15, 48

Time of acceptance, 15, 46

Vacation of judgment for fraud,
15, 48

OFFER OF JUDGMENT, *cont'd.*

Affidavits:

Attorney's authority, 15, 45

Amendments, 15, 47

Appeal from justice's court:

Amount of offer discretionary,
15, 34

Effect of refusal of offer as to
costs, 15, 53

Reduction of judgment, 15, 39

Service of process, 15, 39

Attorney:

Affidavit as to attorney's au-
thority, 15, 45

Service of offer, 15, 38

Confession of judgment, see **JUDG-
MENTS**.

Costs, 15, 44

Acceptance of offer, 15, 48

Actions in justices' courts, 15,
53

Costs accruing prior to offer, 15,
50

Costs accruing subsequently to
offer, 15, 50

Effect of acceptance, 15, 48

Effect of refusal of offer as to
costs, 15, 49

Reduction of judgment on ap-
peal, 15, 52

What is more favorable judg-
ment, 15, 54

Where counterclaim or set-off is
pleaded, 15, 56

Where recovery more favorable
than offer, 15, 49

Whether interest included, 15,
58

Definiteness and certainty in plead-
ing, 15, 41

Definition, 15, 33

Interest, 15, 58

Justices of the peace (see *infra*, Ap-
peal from justice's court):

Effect of refusal of offer as to
costs, 15, 53

Writing, 15, 43

Partnership:

Actions against partnerships,
15, 36

Refusal of offer (see *infra*, Costs):

Effect of refused offer, 15, 59

Requirements of offer, 15, 40

Affidavit as to attorney's au-
thority, 15, 45

Certainty, 15, 41

Costs, 15, 44

Full amount of claim, 15, 42

In general, 15, 40

Insufficient, 15, 43

Interest, 15, 42

Sufficient offers, 15, 42

Writing, 15, 43

OFFER OF JUDGMENT, *cont'd.*

- Service of process, 15, 38
 - Appeal from justice's court, 15, 39
 - In general, 15, 38
 - Offer in open court, 15, 39
 - Party as attorney, 15, 38
 - Service of copy, 15, 40
- Set-off, recoupment, and counter-claim, 15, 56
- Several defendants, actions against, 15, 35
- Signature, 15, 44
- Time of making offer, 15, 37
 - Before service of complaint, 15, 37
 - In general, 15, 37
 - In various states, 15, 37
- When allowable, 15, 33
 - Actions against partnerships, 15, 36
 - Actions against several defendants, 15, 35
 - Actions not on contracts, 15, 34
 - Appeal from justice, 15, 34
 - Cases not covered by statute, 15, 35
 - Construction of statutes, 15, 33
 - In general, 15, 33
 - Severance of separate claims, 15, 34
- Writing, 15, 43
 - Justice's court, 15, 43
 - Signature, 15, 44
 - Whether offer must be in writing, 15, 43

OFFICE (see PUBLIC OFFICERS; QUO WARRANTO):

- Amount in controversy, 1, 728

OFFICE FOUND, see ESCHEAT.**OFFICERS OF MUNICIPAL CORPORATIONS, see MUNICIPAL CORPORATIONS; PUBLIC OFFICERS.****OFFICERS OF PRIVATE CORPORATIONS, 15, 60**

- Accounting, 15, 66
- Amotion, 15, 81
- Answer, 15, 78
- Bill, declaration, and complaint, 15, 72
 - Accounting, 15, 73
 - Action for deceit, 15, 75
 - Allegations appropriate to relief sought, 15, 72
 - Allegations of fraud, 15, 75
 - Charging statutory liability, 15, 76
 - Following language of statute, 15, 76
 - Hostility of majority of directors, 15, 75
 - Penal liability, 15, 77
 - Refusal or inability of corporation to sue, 15, 74

OFFICERS OF PRIVATE CORPORATIONS, *cont'd.**Bonds, see OFFICIAL BONDS.*

- Confession of judgment, 11, 976
- Corporate redress for official misconduct, 15, 61
 - At law or in equity, 15, 62
 - Nature of remedy, 15, 62
 - Stockholder's remedy, 15, 64
 - Waste or misapplication of funds, 15, 63
 - Who may sue, 15, 61
- Creditors (see *infra*, Parties to actions), 15, 64
 - Action for tort, 15, 68
 - Fraud of director, 15, 68
 - Necessity for judgment against corporation, 15, 67
 - Proceedings under statutes, 15, 64
 - Remedies at law, 15, 66
 - Remedies in equity, 15, 66
 - Statute creating original liability, 15, 66
 - Strict construction of statute giving remedies against, 15, 65
 - Time of relation of creditor, 15, 65
 - To reach common fund or for accounting, 15, 66
- Deceit, 15, 75
- Declaration and complaint*, see *infra*, Bill, declaration, and complaint.
- Embezzlement:
 - Description of money or funds, 7, 430
- Equitable jurisdiction, 22, 16
- Filing false statements, 15, 78
- Fraud*, see *infra*, Bill, declaration, and complaint; Corporate redress for official misconduct; Creditors; Parties to actions.
- Joinder of actions, 15, 79
- Joinder of parties, 15, 71, 72
- Judgments:
 - Necessity for judgment against corporation, 15, 67
- Mandamus*, see MANDAMUS.
- Names:
 - Action in name of officers, 5, 63
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- Parties to actions, 15, 69, 662
 - Corporation as defendant in suit by stockholder against officers, 15, 69
 - Creditors, 15, 71
 - Defendants, 15, 70
 - Directors and officers, 15, 70
 - Discovery, 15, 602
 - Fraud, 15, 70
 - In suit to reach common fund, 15, 71

OFFICERS OF PRIVATE CORPORATIONS, *cont'd.***Parties to actions, *cont'd.***

Joinder of corporation and agent in action for damages, 15, 72

Joinder of officers, 15, 71

Plaintiffs, 15, 69

Suit by creditor or stockholder for himself and others, 15, 69

Third participant in fraud, 15, 71

Plea, 15, 78

Quo warranto, 15, 81, 82; 17, 401

Remedies of creditors, see *infra*, Creditors.

Removal of causes, 18, 198

Removal of officers, 15, 81

Character of proceedings, 15, 82

Character of remedy, 15, 81

Power of amotion, 15, 81

Scienter:

Filing false statements 15, 78

Service of process, see SERVICE OF PROCESS.

Statutory liability, 15, 76

Stockholders, see *infra*, Parties to actions.

Stockholder's remedy for official misconduct, 15, 64

Suits in name of officers, 5, 63

Suretyship, see OFFICIAL BONDS.

Survival of actions, 15, 81

Tort, action for, 15, 68

Winding up corporations, see WINDING UP CORPORATIONS.

OFFICIAL BONDS, 15, 83

Abandonment, 15, 143

Abatement:

Notice of motion, 15, 177

Actions (see *infra*, Judgment on motion; Regular (in contradistinction to summary) proceedings):

"For the use," 15, 112

"Injured party," 15, 112

"On the relation," 15, 112

When action lies, 15, 91

Where action must be brought, 15, 92

Admissions:

Plea of conditions performed, 15, 149

Aider by exhibits, 15, 128

Amendments, 15, 130

Amount in controversy, 15, 89

Another suit pending, 15, 152

Answer, see *infra*, Plea or answer.

Appeals:

Partial official bonds, 2, 145

Appearances, 15, 176

Approval, 15, 125

Assignments of breaches, 15, 130

Abandonment, 15, 143

OFFICIAL BONDS, *cont'd.***Assignments of breaches, *cont'd.***

Averment of impossible breach, 15, 131

Character of default, 15, 131

Conclusiveness of assignment, 15, 139

Definiteness and certainty, 15, 135

Distinction between acts done *colore officii* and *virtute officii*, 15, 132

Failure to levy, 15, 140

Failure to make return, 15, 141

Failure to pay over money, 15, 137

Failure to sell property levied on, 15, 141

General judgment where one of several breaches is ill assigned, 15, 159

Impossible breach, 15, 131

In general, 15, 130

In what pleading breaches must be assigned, 15, 142

Making false return, 15, 142

Material averment, 15, 130

Misconduct in connection with process, 15, 140

Neglect or refusal to pay over proceeds, 15, 141

New assignments, 15, 143

Nonperformance of duty, 15, 136

Several assignments, 15, 131

Successive judgments and assignments of breach after judgment, 15, 160

Tax collectors, 15, 133

Time when breach occurred, 15, 135

Breaches, see *infra*, Assignments of breaches.Complaint, see *infra*, Declaration, petition, or complaint.

Conclusiveness:

Assignments of breaches, 15, 139

Conditions performed, 15, 149

Conditions precedent (see *infra*, Demand):

Averments of, in bill or complaint, 15, 119

Judgment against principal, 15, 95

Adjustment of principal's account, 15, 98

General rule, 15, 95

Statute, 15, 97

Summary remedy provided by statute, 15, 96

Leave to institute suit, 15, 93

In general, 15, 93

Objection for want of leave, 15, 95

OFFICIAL BONDS, *cont'd.*

- Constitutional law:
 - Summary proceedings, 15, 165
- Continuance, 15, 156
- Costs, 15, 163
- Court:
 - Leave to institute suit, 15, 93
- Cumulative remedies, 15, 88
- Declaration, petition, or complaint, 15, 118
 - Abandonment, 15, 143
 - Actions on defective bonds, 15, 130
 - Aider by exhibits, 15, 128
 - Amendments, 15, 130
 - Approval, 15, 125
 - Assignments of breaches, see infra*, Assignments of breaches.
 - Conditions precedent, 15, 119
 - Copying bond in full, 15, 127
 - Damages to relator or usee, 15, 121
 - Damages where two are jointly interested, 15, 123
 - Death of principal, 15, 126
 - Demand, 15, 119
 - Information and belief, 15, 124
 - In general, 15, 118
 - Injury resulting, 15, 120
 - In what pleading breaches must be assigned, 15, 142
 - Joinder of causes, 15, 119
 - Joinder of tort and contract, 15, 119
 - Legal conclusions, 15, 125
 - Necessity to set out bond, 15, 126
 - Negating exceptions, 15, 127
 - New assignments, 15, 143
 - Nominal damages, 15, 1211
 - Nonpayment of penalty, 15, 124
 - Penalty, nonpayment of, 15, 124
 - Plaintiff's right to sue, 15, 120
 - Pleading and proof, 15, 129
 - Profert and oyer, 15, 126
 - Recordation, 15, 125
 - Variance, 15, 129
 - Various averments, 15, 119
- Defaults:
 - Admissions, 6, 119
- Defective bonds, actions on, 15, 130
- Definiteness and certainty in pleading:
 - Declaration and complaint in action, 15, 135
 - Failure to pay over money, 15, 137
 - In general, 15, 135
 - Nonperformance of duty, 15, 136
- Plea or answer, 15, 147

OFFICIAL BONDS, *cont'd.*

- Definition, 15, 86
- Demand, 15, 99
 - Allegations of, 15, 119
 - Averments of, in bill or complaint, 15, 119
 - Dependent upon condition of bond and nature of duties, 15, 99
 - Doctrine that demand is necessary, 15, 102
 - Demand for statutory penalty, 15, 104
 - Demand impossible, 15, 104
 - Failure to pay over money collected on execution, 15, 102
 - In general, 15, 102
 - Institution of suit as demand, 15, 105
 - No specific direction or duty as to payment, 15, 102
 - Waiver of demand, 15, 104
 - What is sufficient demand, 15, 103
- Doctrine that demand is unnecessary, 15, 100
 - Covenant express and absolute, 15, 101
 - Failure to pay over money collected on execution, 15, 101
 - Failure to pay over or make a prescribed disposition of funds, 15, 100
 - In general, 15, 100
 - Retirement of officer from office, 15, 100
- Failure to pay over money collected on execution, 15, 101, 102
 - Demand impossible, 15, 104
 - Deputy, 15, 103
 - Statutory penalty, 15, 104
 - Sufficiency of demand, 15, 104
 - Waiver of demand, 15, 104
- Summary proceedings, 15, 173
- Departure, 15, 156
- Deputy:
 - Demand on deputy, 15, 103
- Discharge, 15, 152
- Discontinuance, 15, 156
- Dismissal, discontinuance, and non-suit, 15, 156
 - Effect of termination of the suit, 6, 981
 - Notice of motion, 15, 177
- Election of remedies, 15, 162; 17, 168
- Equity, 15, 90
- Exceptions, negating, 15, 127

OFFICIAL BONDS, *cont'd.*

Executions:

Failure to pay over money collected on execution, 15, 101
102

Exhibits:

Aider by exhibits, 15, 128

Failure to pay over money:

Declaration and complaint, 15, 137
Expiration of term of office, 15, 139
In general, 15, 137
Money collected on execution, 15, 141
Qualification of successor, 15, 139

Former adjudication, 15, 125,

Form of action, 15, 87

"For the use," 15, 112

Information and belief, 15, 124

"Injured party," 15, 112

Joinder of counts and causes 15, 119, 167

Joinder of parties:

Joinder of defendants, 15, 116
Joinder of different sets of sureties, 15, 117
Joint and several, 15, 116
Joint bonds, 15, 116
Plaintiffs 15, 107
Several bonds, 15, 117

Joint and several, 15, 116, 117

Judgment against principal, 15, 95

Adjustment of principal's accounts, 15, 98

Conditions precedent, 15, 95

General rule, 15, 95

Statute, 15, 97

Summary remedy provided by statute, 15, 96

Judgment on motion, 15, 163

Abatement, 15, 177

Appearance, 15, 176

Confer no rights, 15, 165

Constitutionality of statutes, 15, 165

Discontinuance, 15, 177

In general, 15, 163

Joinder of causes, 15, 167

Judgment, 15, 179

Notice of motion *see infra*, Notice of motion.

Parties defendant, 15, 167

Parties plaintiff, 15, 167

Pleas, 15, 176

Record, 15, 177

Statutory origin, 15, 163

Time of making motion, 15, 166

Venue, 15, 166

What record must show, 15, 177

Judgments, 15, 158

Amount of judgment, 15, 158

OFFICIAL BONDS, *cont'd.*Judgments, *cont'd.*

Damages less than penalty, 15, 159

Election between remedies, 15, 162

Examples, 15, 158, 159

First judgment as security for subsequent breaches, 15, 161

For penalty of bond, 15, 158

General judgment where one of several breaches is ill assigned, 15, 159

In general, 15, 158

Plea of irregularity of judgment, 15, 154

Separate recovery against each surety, 15, 159

Successive actions on bond, 15, 160

Successive judgments and assignments of breach after judgment, 15, 160

Successive suits not favored, 15, 161

Jurisdiction, 15, 87

Jury:

Right to jury trial, 15, 156

Leave to institute suit, 15, 93

Legal conclusions, 15, 125

Levy, 15, 140

Failure to levy, 15, 140

Failure to sell property levied on, 15, 141

Mandamus, 13, 601

Acts pertaining to bonds, 13, 601

Approval of bonds, 13, 601

Copy of bond, 13, 601

Discretion in approval of bonds, 13, 603

In general, 13, 601

To fix amount of bond, 13, 604

To substitute bond, 13, 605

Motions (*see infra*, Judgment on motion), 15, 156

Names:

Action in party's own name, 15, 115

Parties defendant, 15, 116

Variance, 15, 129

Nature of proceedings, 15, 87

Negating exceptions, 15, 127

New assignments, 15, 143

Nil debet, 15, 150

Non damificatus, 15, 149

Non est factum, 15, 150, 176

Not guilty, 15, 150

Notice of motion, 15, 168

Amount claimed, 15, 173

By whom service made, 15, 176

Caption, 15, 172

Date, 15, 172

Demand, 15, 173

OFFICIAL BONDS, *cont'd.*

- Notice of motion, *cont'd.*
 - Description of bond, 15, 171
 - Form of, 15, 172
 - How service made, 15, 176
 - In general, 15, 168
 - Judgment against principal and sureties on notice to either, 15, 175
 - Judgment against sureties on notice to principal, 15, 175
 - Length of notice, 15, 173
 - Motion in writing, 15, 172
 - Motion to quash notice, 15, 174
 - Necessity for notice, 15, 174
 - Notice in writing, 15, 172
 - On whom service made, 15, 174
 - Reference to statute, 15, 173
 - Requisites of, 15, 169
 - Subscription, 15, 173
 - Various averments, 15, 173
 - When motion will be made, 15, 174
- "On the relation," 15, 112
- Parties defendant, 15, 116
 - By what name described, 15, 116
 - General rule, 15, 116
 - Joinder of defendants, 15, 116
 - Joinder of different sets of sureties, 15, 117
 - Joint and several bonds, 15, 116
 - Joint bonds, 14, 116
 - Several bonds, 15, 117
 - Summary proceedings, 15, 167
 - Personal representatives, 15, 168
- Parties plaintiff, 15, 105
 - Action by official successor, 15, 108
 - Action for misconduct of officer on execution, 15, 109
 - Action for the use or on the relation of injured party, 15, 112
 - Action in party's own name, 15, 115
 - Assignee of bond, 15, 112
 - At common law, 15, 105
 - Bonds to official obligees, 15, 108
 - Bonds to state or county, 15, 107
 - County treasurer, 15, 111
 - "For the use," 15, 112
 - Joinder by plaintiffs, 15, 107
 - Name, 15, 115
 - Obligee, 15, 105
 - Obligee appears as relator, 15, 106
 - "On the relation," 15, 112
 - Relator, 15, 112
 - Statutes, 15, 110
 - Suit by obligee for another, 15, 106
 - Summary proceedings, 15, 167
 - Personal representatives, 15, 168

OFFICIAL BONDS, *cont'd.*

- Payment, 15, 151
- Penalty, averment of nonpayment, 15, 124
- Petition*, see *infra*, Declaration, petition, or complaint.
- Plea or answer, 15, 143
 - Allegations not denied admitted, 15, 144
 - Another suit pending, 15, 152
 - Conclusiveness, 15, 146
 - Conditions performed, 15, 149
 - Denniteness and certainty, 15, 147
 - Discharge, 15, 152
 - Election and qualification of principal, 15, 153
 - Former judgment, 15, 152
 - General requisites, 15, 145
 - Informality of bond, 15, 153
 - In general, 15, 143
 - Irregularity, 15, 153
 - Irregularity of judgment or tax assessment, 15, 154
 - Nil debet*, 15, 150
 - Non damnificatus*, 15, 149
 - Non est factum*, 15, 150
 - Not guilty, 15, 150
 - Payment, 15, 151
 - Pleas in bar and abatement, 15, 148
 - Principal and surety, 15, 145
 - Proceedings in default of plea or answer, 15, 154
 - Qualification of sureties and official obligees, 15, 153
 - Release, 15, 152
 - Responsiveness, 15, 145
 - Seal, 15, 153
 - Set-off, 15, 151
 - Several sorts of pleas, 15, 149
 - Summary proceedings, 15, 176
 - Verification, 15, 148
 - What may not be pleaded, 15, 153
 - What plea admits, 15, 149
- Pleas in abatement, 15, 148
- Principal*, see *infra*, Judgment against principal.
- Process:
 - Declaration and complaint with misconduct in connection with process, 15, 140
- Receivers*, see *RECEIVERS*.
- Recordation, 15, 125
- Records:
 - What record must show, 15, 177
 - Exception to general rule, 15, 178
 - Jurisdictional facts, 15, 177
 - Notice of motion, 15, 177
 - Notice sets out every necessary fact, 15, 179

OFFICIAL BONDS, *cont'd.*

Regular (in contradistinction to summary) proceedings, 15, 87
 At law, 15, 87
 Cumulative remedies, 15, 88
 Equity, 15, 90
 Form of action, 15, 87
 Generally, 15, 87
 Jurisdictional amount, 15, 89
 Statutes, 15, 90
Summary proceedings, see infra,
 Judgment on motion.

Rejoinder, 15, 155

Relation, on the, 15, 112

Relator:

Allegations of damages, 15, 121

Release, 15, 152

Replications and replies, 15, 155

Responsiveness of plea or answer, 15, 145

Returns:

Declaration and complaint, 15, 141, 142

Failure to make return, 15, 141

Making false return, 15, 142

Seal, lack of, 15, 153

Set-off, recoupment, and counter-claim, 15, 151

Several bonds, 15, 116, 117

Sheriffs and constables:

Action on official bond, 20, 120

Sheriff's sales:

Failure to sell property levied on, 15, 141

Summary proceedings, see infra, Judgment on motion; Notice of motion; Regular (in contradistinction to summary) proceedings.

Taxation, 21, 428, 431

Tax collectors:

Declaration and complaint in actions against, 15, 133

Taxes:

Plea of irregularity of tax assessment, 15, 154

Trial, 15, 156

Use, for the, 15, 112

Variance, 15, 129

Venue, 15, 92, 166

Verification, 15, 148

Writing:

Motion, 15, 172

Notice of motion, 15, 172

OIL:

Ejectment, 7, 273

OPEN AND CLOSE, 15, 181

See ORDER OF PROOF.

Appeals, 15, 198

Whether denial of right reversible error, 15, 200

Burden of proof, 15, 183

Chancery cases, 15, 186

OPEN AND CLOSE, *cont'd.*

Claim cases, 15, 192

Condemnation proceedings, 15, 193

Confession and avoidance, 15, 190

Consolidation of actions, 15, 199

Contest of wills, 15, 197

Criminal procedure, 15, 185

Assistant counsel, 15, 186

Rights of state, 15, 185

Damages:

Action for liquidated damages, 15, 192

Issue as to amount of damages, 15, 189

Defendant's right (see *infra*, Plaintiff's right):

Action for liquidated damages, 15, 192

Actions on money demands, 15, 195

Admission of plaintiff's case, 15, 191

Confession and avoidance, 15, 190

Contest of wills, 15, 197

Criminal cases, 15, 185

Defendant offering no evidence, 15, 192

Defendant setting up counter-claim, 15, 191

Detinue, 15, 196

General rule, 15, 183

Incapacity to be sued, 15, 191

In general, 15, 190

Libel and slander, 15, 194

Liquidated damages, 15, 192

Replevin, 15, 196

Sham plea, 15, 190

Trespass, 15, 197

Unnecessary averments or proof on the part of the plaintiff, 15, 191

Demurrers, 15, 185

Detinue, 15, 196

Divorce, 7, 114

Effect of denial of right, 15, 200

Party granting the privilege, 15, 201

Statutes disposing of the order of judgment, 15, 201

Whether reversible error, 15, 200

Eminent domain, 7, 578; 15, 193

Condemning party, 7, 579

Discretion of court, 7, 578

Landowner, 7, 578

Right to open and close in general, 7, 578

Equity, 15, 186

Exceptions and objections, 15, 185

Inquests and inquiries, 10, 1156

Introductory, 15, 182

Issues to the jury, 11, 682

OPEN AND CLOSE, *cont'd.*

- Libel and slander, 15, 194
 - Jurisdiction in which defendant opens and closes, 15, 194
 - Jurisdiction in which plaintiff opens and closes, 15, 195
 - Where words are libelous or slanderous *per se*, 15, 194

Mandamus, 13, 804

Money demands, 15, 195

Motions, 14, 167; 15, 185

Negotiable instruments, 14, 694

Orders:

Orders to show cause, 15, 370

Payment, 16, 170

Petitions, 16, 521

Plaintiff's right (see *infra*, Defendant's right), 15, 187

Actions on money demands, 15, 195

Argumentative denials, 15, 188

Because he is plaintiff, 15, 187

Burden of proof, 15, 183

Claim cases, 14, 192

Contest of wills, 15, 197

Criminal cases, 15, 185

Denial of plaintiff's capacity to sue, 15, 188

Detinue, 15, 196

General issue, 15, 187

General rule, 15, 187

Instances when plaintiff has the right, 15, 187

Issue as to amount of damages, 15, 189

Issues not tried separately, 15, 189

Libel and slander, 15, 195

Negative plea by one of several defendants, 15, 188

Replevin, 15, 196

Rule governed by one of several issues, 15, 188

Trespass, 15, 197

When defendant pleas are negative, 15, 187

When reply confesses and avoids, 15, 190

Where plaintiff must prove one of several issues, 15, 188

Pleadings:

Whether determined by state of pleadings, 15, 181

Replevin, 15, 196

Right of property, trial of, 18, 1183

Sequestration, 19, 562

Sham and frivolous pleadings, 15, 190

Special proceedings, 15, 192

Streets and highways, 20, 899

Test, 15, 184

To whom right belongs, 15, 183

Chancery cases, 15, 186

OPEN AND CLOSE, *cont'd.*

To whom right belongs, *cont'd.*

Criminal cases, 15, 185

Demurrers, 15, 185

Exceptions, 15, 185

Motions, 15, 185

Party upon whom burden of proof rests, 15, 183

Test, 15, 184

When right belongs to defendant, see infra, Defendant's right.

When right belongs to plaintiff, see infra, Plaintiff's right.

Trespass, 15, 197

Trial *de novo*, 15, 198

Usury, 22, 454

Value of right, 15, 181

Waiver of right, 15, 199

Extent of waiver, 15, 199

Permitting adversary to assume burden of proof, 15, 199

Submission of case without argument, 15, 200

Will contests, 15, 197

OPENING, AMENDING, AND VACATING JUDGMENTS, 15, 202

See AFFIDAVITS OF MERITS OR DEFENSE; SENTENCE.

Absence:

Counsel, 15, 248

Unavoidable absence, 15, 246

Accident, 15, 246

Actions:

Actions to vacate begun under former practice, 15, 262

Direct action for opening or vacating, 15, 255

Ad damnum clause, 11, 902

Additional judgment:

Entry of, as implied vacation, 15, 293

Affidavit and statement upon confession of judgment, 11, 1008

Affidavits of merits or defense, 1, 352; 15, 277

Counter affidavits, 15, 280

Equity, 1, 352

Exception, 15, 278

General rule, 15, 277

In general, 1, 352

Irregular default, 1, 355

Law, 1, 352

Necessity of affidavit, 1, 352

Requisites, 15, 279

Sufficiency, 1, 353

Verified answer as substitute, 1, 354

What facts must be stated, 1, 353, 354

When defaults opened, 1, 355

Amendments:

Amending pleadings to conform to proof, 11, 872

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.*

- Amendments, *cont'd.*
 - Amendment of pleading on motion for judgment, 11, 1047
 - Errors curable by amendment, 15, 240
- Amount, 15, 223
- Appeals, 2, 107
 - Amendment or correction on appeal, 15, 228
 - Appeal from decision on application, 15, 298
 - Cannot be used to extend time for appeal from judgment, 15, 300
 - General rule as to review, 15, 300
 - When appeal lies, 15, 298
 - New suit vacated, 2, 107
 - Not substitute for appeal, 15, 213, 217
 - Remedies, 2, 108
 - Setting aside judicial sales, 2, 110
 - When appealable, 2, 109
 - Whether order granting or refusing vacated judgments is appealable, 2, 107
- Appearance:
 - Motion to vacate upon unauthorized appearance of attorney, 15, 260
 - Unauthorized appearance by attorney, 15, 238
- Application, 15, 249
 - Action begun under former practice, 15, 262
 - Affidavit, 15, 272
 - Audita querela, 15, 254
 - Bill of review, 15, 255
 - Direct action, 15, 255
 - Effect of appearance to move, 15, 261
 - Election of remedies, 15, 262
 - Error *coram nobis*, 15, 253
 - Form requisite, 15, 272
 - Laches, 15, 268
 - Manner of application, 15, 253
 - Motion, 15, 257
 - Motion, where made, 15, 260
 - Necessity of notice of application, 15, 273
 - Notice of application, 15, 273
 - Requisites of application, 15, 271
 - Second application*, see *infra*, Second application.
 - Service of notice, 15, 276
 - Statutory limitations, 15, 264
 - Statutory proceedings by complaint and summons, 15, 257
 - Sufficiency of notice, 15, 275

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.*

- Application, *cont'd.*
 - Time of application, 15, 263
 - Waiver of notice of application, 15, 274
 - Waiver of objection to form of remedy, 15, 262
 - Who may apply, 15, 249
 - Assignee for benefit of creditors, 15, 251
 - Assignees and grantees of party cast, 15, 251
 - Attaching creditor, 15, 250
 - General rule, 15, 249
 - Joint defendants, 15, 252
 - Judgment creditors, 15, 251
 - Legal representatives, 15, 253
 - Only parties, 15, 249
 - Strangers, 15, 250
 - Strangers to record who are real parties in interest, 15, 251
 - Subsequent purchasers and mortgagees, 15, 251
 - Successful party, 15, 252
 - Unknown parties, 15, 253
 - Written, 15, 272
- Assigned judgments, 15, 234
- Assignee, 15, 251
- Assignee for benefit of creditors, 15, 251
- Attaching creditor, 15, 250
- Attorneys:
 - Counsel, 15, 248
 - Fraud or collusion of attorney, 15, 249
 - Motion to vacate upon unauthorized appearance of attorney, 15, 260
 - Negligence of counsel, 15, 247
 - Unauthorized appearance by attorney, 15, 238
- Audita querela, 15, 254
- Bills to impeach decrees and judgments (see **BILLS TO IMPEACH DECREES AND JUDGMENTS**), 3, 619
- Burden of proof, 15, 286
 - Imposition of terms, 15, 290
- Chambers and vacation, 15, 231
- Clerical errors:
 - After term time, 15, 220
- Collusion, 15, 236
- Complaint:
 - Statutory proceedings by complaint and summons, 15, 257
- Conditions, see *infra*, Imposition of terms.
- Confession of judgment, see *infra*, Judgments by confession.
- Consent judgments, 11, 1030; 15, 233

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.*

Control of court over judgments, 15, 205

After term, 15, 209

Amendments and corrections, 15, 209

Amount, 15, 223

Apparent exceptions, 15, 214

Appeal, not substitute for, 15, 213, 217

Clerical errors, 15, 220

Costs, 15, 213

Date, 15, 224

Description of land, 15, 225

Description of party, 15, 224

Effect of improper amendment after term, 15, 213

Errors correctible by record, 15, 214

Extension of time, 15, 215

Extent of power as to clerical errors, 15, 223

General rule, 15, 209

How amendment made, 15, 225

Inherent power as to clerical errors, 15, 221

Interlocutory judgment, 15, 210

In what respects amendable, 15, 223

Matters *dehors* record, 15, 227

Matters of substance, 15, 209

Mistake in calculation, 15, 224

Name, 15, 224

New trial, not substitute for, 15, 213, 217

Omission apparent on face of judgment, 15, 215

Opening, 15, 216

Proceedings to amend, 15, 228

Record as source of amendment, 15, 226

Source of amendment, 15, 226

Striking out entries, 15, 225

Substitute for appeal or new trial, 15, 213

Supplying omissions, 15, 225

Waiver of objections, 15, 219

What amendment permissible, 15, 212

Writ of error, not substitute for, 15, 213, 217

Amendment or correction on appeal, 15, 228

During term, 15, 205

Continuance of proceedings commenced during term, 15, 208

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.*Control of court over judgments, *con.*During term, *cont'd.*

Criminal cases, 15, 207

Effect of vacating judgment, 15, 208

Extent of control, 15, 207

In general, 15, 205

Motion made and granted at different terms, 15, 209

Power must be exercised in open court, 15, 205

Whether power confined to clerical errors, 15, 208

Coram nobis and *coram vobis*, 15, 253

Costs:

Imposition of terms, 15, 209

Judgment for costs, 15, 213

Counter-affidavits, 15, 280

Courts (see *infra*, Discretion of court):Imposition of terms, see *infra*,

Imposition of terms.

Court's control over judgments, see *infra*, Control of court over judgments.

Criminal cases, 15, 207

Date, 15, 224

Defaults, 15, 232

Defense:

Adjudication as to valid defense, 15, 288

Description of land, 15, 225

Determination of application, see *infra*, Hearing and determination of application.Diligence, see *infra*, Laches.

Discharge, see SATISFACTION AND DISCHARGE OF JUDGMENTS.

Discretion of court, 15, 281

Abuse of discretion, 15, 283

Abuse of discretion in imposition of terms, 15, 292

Application addressed to sound discretion of court, 15, 281

Application as matter of right under statute, 15, 284

Court's decision not disturbed on appeal, 15, 282

Evidence counterbalancing, 15, 285

In general, 15, 281

Divorce judgments, 15, 233

Doubtful cases, 15, 286

Due diligence, see *infra*, Laches.

Effect of vacating, 15, 206

As to title of stranger, 15, 298

Effect upon execution, 15, 297

General rule, 15, 296

Process becomes *functus officio*, 15, 297

Election of remedies, 15, 262

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.**Equitable relief*, see JUDGMENTS.

Error, writ of:

Error *coram nobis*, 15, 253

Issues not reopened, 15, 254

Not substitute for writ of error, 15, 213, 217

Writ superseded by other proceedings, 15, 254

Executors and administrators, 15, 253

Extension of time, 15, 215

Former adjudication, 15, 301

Fraud (see *infra*, Grounds):

Motion to vacate, 15, 259

Grantees, 15, 251

Grounds, 15, 234

Absence of counsel, 15, 248

Accident, 15, 246

Adjudication as to ground of application, 15, 287

Appearance by attorney unauthorized, 15, 238

Collusion, 15, 236

Common law, 15, 234

Entry without authority, 15, 239

Error in law insufficient ground, 15, 243

Errors curable by amendment, 15, 240

Excusable neglect, 15, 246

Fraud, 15, 234

Fraud in obtaining judgment, 15, 230, 235

Fraud not presumed, 15, 236

Fraud or collusion of attorney, 15, 249

Granting application on grounds not relied on, 15, 287

Grounds available on trial insufficient, 15, 243

Infant, 15, 238

Insane person, 15, 238

Irregularities in procuring judgment, 15, 239

Judgment based on judgment subsequently reversed, 15, 242

Judgment in violation of agreement, 15, 238

Judgments against persons under disability, 15, 238

Limitations, 15, 244

Married woman, 15, 238

Misfortune, 15, 246

Mistake, 15, 245

Mistake as to time of trial, 15, 249

Misunderstanding, 15, 248

Negligence of counsel, 15, 247

Newly discovered evidence, 15, 242

Perjury, 15, 236

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.*Grounds, *cont'd.*

Prejudicial irregularities, 15, 241

Scope of inquiry, 15, 234

Set-off, recoupment, and counterclaim, 15, 244

Sickness of party or counsel, 15, 247

Statutes, 15, 244

Surprise, 15, 245

Technical defense not ground for opening judgment, 15, 243

Usury, 15, 244

Want of jurisdiction, 15, 237

Want of notice, 15, 236

Hearing and determination of application, 15, 281

Abuse of discretion, 15, 283

Adjudication as a valid defense, 15, 288

Adjudication as to ground of application, 15, 287

Applications favored in doubtful cases, 15, 286

Burden of proof, 15, 286

Discretion of court, 15, 281

Granting application on grounds not relied on, 15, 287

In general, 15, 281

Rules of decision in general, 15, 285

Verdict for applicant must be sustainable, 15, 286

Implied vacation, 15, 293

Effect of setting aside verdict, 15, 294

Entry of additional judgment, 15, 293

In general, 15, 293

Void order granting new trial, 15, 294

Imposition of terms, 15, 288

Abuse of discretion, 15, 292

Effect of noncompliance with terms, 15, 292

Effect upon burden of proof, 15, 290

Imposition of terms as condition of refusal to open, 15, 290

Judgment to remain as security, 15, 291

Limitations upon issues, 15, 291

Miscellaneous conditions, 15, 291

Payment of amount admitted, 15, 290

Payment of costs, 15, 290

Power of court to impose, 15, 288

What terms may be imposed, 15, 286

Indirect vacation, see *infra*, Implied vacation.

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.*

Infants, 15, 238

Insane persons, 15, 238

Judgments by confession, 11, 1019;
15, 233

Affidavit, 11, 1022

As to one of two defendants, 11,
1020

Defense to the merits, 11, 1021

Discretion of court as to granting, 11, 1024

Form of application, 11, 1022

Grounds of vacation on application of creditors, 11, 1025

Laches of defendant, 11, 1022

Manner of application for vacation, 11, 1026

Power to open, 11, 1019

Power to vacate on application of creditors, 11, 1024

Proceedings upon application, 11, 1023, 1026

Time of application for vacation, 11, 1025

Vacation on application of creditors, 11, 1024

When proper, 11, 1020

Who may make application, 11, 1022

Who may move for application, 11, 1025

Judgments on appeal, 11, 1064

Power to amend, 11, 1064

Time of amendment, 11, 1065

Judgments on awards, 11, 1054

Jurisdiction:

Want of jurisdiction as a ground for opening, 15, 237

Jurisdiction to vacate, 15, 229

Courts of co-ordinate jurisdiction, 15, 230

Court which rendered judgment, 15, 229

Delegation of power to open or vacate, 15, 232

Vacation at chambers, 15, 231

Justices of the peace, 12, 738

Laches, 15, 268

Appeal to equitable powers of court, 15, 269

Due diligence required, 15, 268

Laches of both parties, 15, 271

Laches within statutory period, 15, 266

Lapse of time held to indicate laches, 15, 270

When rule inapplicable, 15, 270

Limitations, 13, 197; 15, 244, 264

Judgments against nonresidents, 15, 265

Laches within statutory period, 15, 266

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.*Limitations, *cont'd.*

Limitations inapplicable to motions not under statute, 15, 266

Statutory limitations, 15, 264

What applications limited by statutes, 15, 265

When time begins to run, 15, 265

Married women:

Judgments against persons under disability, 15, 238

Mistake, 15, 245

Motion, 14, 76, 78, 85

Motion for vacation, 15, 257

Consent of record, 15, 261

Effect of appearance to move, 15, 261

In general, 15, 257

Irregularities, 15, 258

Judgment obtained by fraud, 15, 259

Judgment upon unauthorized appearance by attorney, 15, 260

Remedy by appeal, 15, 260

Want of jurisdiction, 15, 259

Where made, 15, 260

Names:

Mistake in name, 15, 224

Negligence:

Counsel, 15, 247

Excusable, 15, 246

Newly discovered evidence, 15, 242

New trial:

Not substitute for new trial, 15, 213, 217

Void order granting new trial, 15, 294

Notice of application, 15, 273

After expiration of term, 15, 273

Before expiration of term, 15, 273

Compliance with statutory requirements, 15, 275

Necessity of, 15, 273

Reason for requiring notice, 15, 274

Service, 15, 276

Sufficiency, 15, 275

Waiver, 15, 274

Want of notice, 15, 236

Offer of judgment, 15, 47, 48

Opening distinguished from vacating, 15, 228

Orders (see ORDERS), 15, 324

Partial vacation, 15, 295

One or more defendants, 15, 295

Two or more distinct causes of action, 15, 296

When proper, 15, 295

Parties, see infra, Application.

Perjury, 15, 236

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.***Records:**

- Matters *dehors* record, 15, 227
- Source of amendment, 15, 226

Review, see REVIEW.*Satisfaction and discharge*, see SATISFACTION AND DISCHARGE OF JUDGMENTS.

Scope of article, 15, 204

Second application, 15, 300

- Compliance with terms, 15, 303
- Facts known at time of first application, 15, 302
- In general, 15, 300
- Res adjudicata*, 15, 301
- Second application for different relief, 15, 303

Security, permitting opened judgment to stand as, 15, 229

Sentence, see SENTENCE.

Service of process:

- Service of notice of application to open or vacate, 15, 276

Set-off, recoupment, and counterclaim, 15, 244

Sickness, 15, 247

Stipulations, 20, 634

Summons and process:

- Statutory proceedings by complaint and summons, 15, 257

Supersedeas and stay of proceedings, 20, 1259

Surprise, 15, 245

Terms, see *infra*, Control of court over judgments: Imposition of terms.

Time of application, 15, 263

- Appeal to equitable powers of court, 15, 269
- Due diligence required, 15, 268
- Earliest opportunity, 15, 263
- In general, 15, 263
- Judgments against nonresidents, 15, 265
- Laches, 15, 268
- Laches of both parties, 15, 271
- Laches within statutory period, 15, 266
- Limitations inapplicable to motions not under statute, 15, 266
- Statutory limitations, 15, 264
- What applications limited by statutes, 15, 265
- When time begins to run, 15, 265
- United States courts, 22, 306
- Usury (see USURY), 15, 244
- Vacating, 15, 228
- Vacating distinguished from opening, 15, 228

Verdict:

- Effect of setting aside verdict as implied vacation of judgment, 15, 204

OPENING, AMENDING, AND VACATING JUDGMENTS, *cont'd.***Verdict, *cont'd.***

- Verdict for applicant must be sustained, 15, 286

Verification:

- Verified answer, 15, 276

Void judgments, 15, 232**Waiver:**

- Notice of application to vacate, 15, 274

- Objection to form of remedy, 15, 262

What judgments may be vacated, 15, 232

- Assigned judgments, 15, 234
- Cloud on title, 15, 233
- Consent judgments, 15, 233
- Default, 15, 232
- Divorce judgments, 15, 233
- In general, 15, 232
- Judgments by confession, 15, 232

- Offer of judgment, 15, 233

- Void judgments, 15, 232

Winding up corporations, 22, 1297**Written, 15, 272****OPINIONS OF COURTS, 15, 304****See CERTIFIED CASES; DECISION; JUDGMENTS.****Appeal from opinion, 15, 311****Appeals, 15, 311**

- Examination of opinion by appellate court, 15, 311

- State courts, 15, 311

- United States courts, 15, 313

Constitutional law, 15, 306, 308**Constitutional provisions, 15, 306****Contents, 15, 305****Control of court over, 15, 310****Correction, 15, 310****Damages:**

- Relation of opinion to judgment, 15, 309

Decisions:

- Relation of opinion to decisions, 15, 309

Definition, 15, 304**Directory nature of provisions, 15, 308*****Division of opinion*, see DIVISION OF OPINION.****Findings:**

- Relation of opinion to findings, 15, 309

Instructions*, see INSTRUCTIONS.*Jurisdiction, 15, 306****Modification, 15, 310****Necessity, 15, 305****Noticing all points raised, 15, 306****Requisites, 15, 305****Statutory provisions, 15, 306**

ORDER OF PROOF, 15, 375

See OPEN AND CLOSE.

Affirmative evidence cannot be given in rebuttal, 15, 377

Agency, 15, 387

Actions by or against principals, 16, 904

Discretion of court, 15, 387

Examples, 15, 387

Proving agent's acts before showing authority, 15, 387

Anticipating defense, 15, 379

Anticipatory evidence, 15, 391

Appeals:

Discretion of court not reviewable, 15, 385

Arguments of counsel:

Reopening the case before, during, and after argument, 15, 401

Conspiracy, 15, 388

Contracts, 15, 387

Courts (see *infra*, Discretion of court):

Control of court, 15, 382

Criminal procedure, 15, 380

Cross-examination, 15, 386

Cumulative evidence, 15, 378

Defense, anticipating, 15, 379, 391

Demurrers to evidence:

Reopening the case after demurrer to the evidence, 15, 400

Departure from the regular order, 15, 380

Control of court, 15, 382

Convenience of the parties, 15, 381

In general, 15, 380

Dependent facts, 15, 379

Directing verdict:

Reopening the case after motion to direct, 15, 400

Discretion of court, 15, 383

Actions on contract, 15, 387

Agency, 15, 387

Anticipatory evidence, 15, 391

Cases of agency, 15, 387

Conspiracy, 15, 388

Contracts, 15, 387

Cumulative evidence in rebuttal, 15, 393

Depriving adverse party of opportunity to reply, 15, 396

Evidence in chief admitted in rebuttal, 15, 393

Evidence not subsequently rendered relevant, 15, 393

Making out a *prima facie* case, 15, 396

Necessity of offer to render it relevant, 15, 393

Not an arbitrary power, 15, 386

Not ordinarily reviewable, 15, 385

ORDER OF PROOF, *cont'd.*Discretion of court, *cont'd.*

Order of proof rests in, 15, 383

Rebuttal evidence, 15, 393

Reception of evidence not relevant when offered, 15, 392

Regular order may be enforced, 15, 396

Testamentary causes, 15, 406

Time and order of cross-examination, 15, 386

Trials for conspiracy, 15, 388

Various actions, 15, 389

When exercised, 15, 384

Dismissal, discontinuance, and nonsuit:

Reopening the case after motion to dismiss, 15, 400

Probate and contest of wills, 15, 406

Railroads, 17, 593

Rebuttal:

Affirmative evidence cannot be given in rebuttal, 15, 377

Evidence in chief admitted in rebuttal, 15, 393

Evidence inadvertently admitted, 15, 394

General rule, 15, 393

Making out a *prima facie* case, 15, 396

Regular order may be enforced, 15, 396

Rights of the adverse party, 15, 395

Recalling witnesses, 15, 404

In general, 15, 404

To explain testimony, 15, 405

When not permitted, 15, 405

Regular order, 15, 376

Affirmative evidence cannot be given in rebuttal, 15, 377

Anticipating the defense, 15, 379

Criminal cases, 15, 380

Departure from the regular order, see *infra*, Departure from the regular order; and see DISCRETION OF COURT.

Dependent facts, 15, 377

Discretion of court, see DISCRETION OF COURT.

In general, 15, 376

Strict rule of practice, 15, 376

Relevancy:

Reception of evidence not relevant when offered, 15, 392

Discretion of court, 15, 393

Evidence not subsequently rendered relevant, 15, 393

In general, 15, 392

Necessity of offer to render it relevant, 15, 393

ORDER OF PROOF, *cont'd.*

- Reopening the case, 15, 397
 - After both parties have rested, 15, 398
 - After demurrer to the evidence, 15, 400
 - After motion to direct judgment, 15, 400
 - After motion to dismiss, 15, 400
 - After one party has rested, 15, 398
 - After submission of the case, 15, 403
 - Before, during, and after argument, 15, 401
 - For the plaintiff and defendant, 15, 399
 - In general, 15, 397
- Rules of court, 18, 1243
- Set-off, recoupment, and counterclaim, 19, 802
- Statutory provisions, 15, 407
- Submission of the case:
 - Reopening, 15, 403
- Testamentary causes, 15, 406
 - Discretion of court, 15, 406
 - Making out *prima facie* case, 15, 407
 - Regular order, 15, 406
- Wills, 15, 406

ORDERS, 15, 315

- See DECREES; FINAL JUDGMENTS AND DECREES; INJUNCTIONS; JUDGMENTS.
- Abandonment of order, 15, 360
- Actions:

- Enforcement of orders, 14, 362
- Additional allowances of costs, 1, 214

Affidavits:

- Orders to show cause, 15, 366, 371

Allocatur, 15, 319

- Amending and vacating orders, 15, 324, 349
 - Appeal or motion to vacate, 15, 356
 - Application, 15, 357
 - Chamber order, 15, 353
 - Consent order, 15, 324, 352
 - Discretion of court, 15, 354
 - Effect of vacating, 15, 358
 - Death of party, 15, 359
 - Implied vacation, 15, 359
 - Grounds for vacating, 15, 354
 - Motion, 15, 357
 - Noncompliance with terms, 15, 355
 - Notice of application, 15, 357
 - Parties to application, 15, 357
 - Power of court before and after term, 15, 350
 - Power of court in general, 15, 349

ORDERS, *cont'd.*

- Amending and vacating orders, *con.*
 - Relief granted, 15, 358
 - Renewal, 15, 358
 - Time of application, 15, 357
 - Void orders, 15, 355
 - What court or judge, 15, 352
 - When exercised, 15, 354
 - When order will not be vacated, 15, 355

Amendments, see AMENDMENTS.**Appeal bonds and undertakings (see APPEAL BONDS AND UNDERTAKINGS), 1, 981****Amendments, 1, 995, 997****Appeals (see APPEALS; FINAL JUDGMENTS AND DECREES), 2, 16; 15, 372****Appeal from portion of decision, 2, 96****Appeal or motion to vacate orders, 15, 356****Appellate review of orders, 15, 372****Ex parte orders, 2, 96****Final orders, 2, 72; 15, 372****Orders to show cause, 15, 367****Presumption in favor of, 2, 447****Receivers, see RECEIVERS.****Transcript on appeal, 2, 269****Unappealable causes, 2, 96****Waiver of right of appeal, 2, 181****Arrest in civil cases, see EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES.****Attorneys:****Service on attorney or client, 15, 349****Substitution of attorneys, see SUBSTITUTION OF ATTORNEYS.****Bankruptcy, see BANKRUPTCY.****Bills of exceptions:****Appeals from orders, 3, 383****Caption, 15, 332****Order made out of court, 15, 332****Presumption, 15, 333****Sufficiency, 15, 332****Case made on appeal, 3, 888****Cause, see *infra*, Orders to show cause.****Certiorari (see CERTIORARI), 4, 100****Chambers and vacation, 15, 320, 321****Final orders, 4, 343****Form and requisites of order, 4, 365****Orders to show cause, 15, 367****Vacation and amendment of judgments and orders, 4, 347****Change of venue, see CHANGE OF VENUE.****Common orders, 15, 320****Conditions, see *infra*, Terms and conditions.**

ORDERS, *cont'd.*

- Consent orders, 15, 323
 - Effect of consent, 15, 323
 - Recital of consent in order, 15, 326
 - Signing in open court, 15, 326
 - Vacating or modifying order, 15, 324
 - Withdrawal of consent, 15, 324
- Contempt (see CONTEMPT):
 - Enforcement of orders, 15, 361
- Continuances*, see CONTINUANCES.
- Courts (see *infra*, Amending and vacating orders):
 - Orders of court and orders of judge, 15, 320
- Date, 15, 333
 - Dating order back, 15, 334
 - Giving effect as of prior date, 15, 334
 - In general, 15, 333
- Death of party, 15, 331, 359
- Decisions*, see DECISIONS.
- Decrees*, see DECREES.
- Defaults:
 - Orders to show cause, 15, 372
- Definitions, 15, 316
- Direction for order, 15, 319
 - Vacation or modification of order, 15, 354
- Dismissal, discontinuance, and nonsuit*, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.
- Distringas, writ of, 7, 35
- Divorce*, see DIVORCE.
- Effect*, see *infra*, Operation and effect.
- Eminent domain*, see EMINENT DOMAIN.
- Enforcement of orders, 15, 360
 - Actions, 15, 362
 - Attachment for contempt, 15, 361
 - Execution against property, 15, 361
 - In general, 15, 360
 - Orders for act other than payment of money, 15, 361
 - Orders for payment of money, 15, 361
 - Suit, 15, 362
- Entering*, see *infra*, Filing and entering.
- Entry and rendition*, see *infra*, Filing and entering.
- Erroneous orders, 15, 327
- Examination of parties before trial*, see EXAMINATION OF PARTIES BEFORE TRIAL.
- Executions against the property:
 - Enforcement of order, 15, 361
- Executors and administrators*, see SETTLEMENT OF DECEDENTS' ESTATES.

ORDERS, *cont'd.*

- Filing and entering, 15, 341
 - Filing motion papers, 15, 345
 - Necessity, 15, 341
 - Nunc pro tunc*, 15, 344
 - Place, 15, 343
 - Time, 15, 343
- Final judgments, orders, and decrees*, see FINAL JUDGMENTS AND DECREES.
- Forgery (see FORGERY), 9, 566
- Form of order, 15, 331
 - Caption, 15, 332
 - Conditions, 15, 336
 - Date, 15, 333
 - Direction to enter, 15, 340
 - In general, 15, 331
 - Recitals, 15, 334
 - Settlement, 15, 338
 - Signature, 15, 340
 - Terms, 15, 336
- Funds and deposits in court*, see FUNDS AND DEPOSITS IN COURT.
- Guardian *ad litem*:
 - Order of appointment, 10, 667
 - Directions as to service of order, 10, 668
 - Examples, 10, 667, 668
 - In general, 10, 667
 - Naming infants in order, 10, 668
- Guardians*, see GUARDIANS.
- Infants*, see INFANTS.
- Injunctions*, see INJUNCTIONS.
- Interlocutory orders, 15, 327
- Interstate commerce, 11, 489
 - Actions to enforce orders of commission, 11, 491
- Issues to the jury*, see ISSUES TO THE JURY.
- Judgments:
 - Decision on demurrer is an order, 11, 830
 - Order for judgment, 11, 822
 - Orders distinguished from judgments, 11, 828; 15, 317
 - Orders of court and orders of judge, 15, 320
 - Chambers, 15, 321
 - Test of validity, 15, 321
 - Probate orders and judgments, 11, 824
- Judicial sales*, see JUDICIAL SALES.
- Jurisdiction:
 - Errors and irregularities, 15, 328
 - Void orders, 15, 327
 - Want of jurisdiction, 15, 328
- Kinds, 15, 320
 - Common and special orders, 15, 320
 - Consent orders, 15, 323
 - Final orders, 15, 327
 - Interlocutory orders, 15, 327

ORDERS, *cont'd.*Kinds, *cont'd.*

- Orders of court and orders of judge, 15, 320
- Orders on motions, 15, 327
- Orders *sua sponte*, 15, 326

Laches:

- Service of order, 15, 360
- Time of service of order, 15, 348

Local improvements:

- Order of confirmation, 13, 313

Lost instruments and records:

- Restoration of judicial records, 13, 383
 - Amending and vacating order of restoration, 13, 384
- Frame of order, 13, 384
- Necessity for order, 13, 383
- Nunc pro tunc*, 13, 384

Mandamus:

- Entering and signing judgments and orders, 13, 562
 - Before refusal to enter judgment, 13, 563
 - In general, 13, 562
 - On verdict, 13, 564
 - Order must be authorized, 13, 563
 - Sufficiency of verdict, 13, 564
 - To enter particular judgment, 13, 563
- To enforce mandates and orders, 13, 592
 - Discretion of inferior court, 13, 593
 - To inferior court, 13, 592
 - When writ is denied, 13, 593

Vacating and altering judgments and orders, 13, 565

- Refusal to vacate proper, 13, 566
- Revision of discretion, 13, 566
- To modify judgment after entry, 13, 568
- To reverse order vacating judgment or decree, 13, 567
- To vacate and set aside judgments or decrees, 13, 565
- Where respondent has no power, 13, 567

Motion papers, filing, 15, 345

Motions (see MOTIONS):

- Application to vacate or modify order, 15, 357
- Motions vacating consent orders, 15, 324, 352

New trial, see NEW TRIAL.

Notice, 15, 346

- Application to modify or vacate, 15, 357

ORDERS, *cont'd.*Notice, *cont'd.*

- Attorney, 15, 349
- Copies, 15, 347
- Court orders, 15, 348
- Defective copy, 15, 348
- Exhibiting judge's signature, 15, 349
- Laches, 15, 348
- Mode and proof of, 15, 349
- Necessity, 15, 346
- Notice charged without actual notice, 15, 347
- Notice to limit time for appeal, 15, 347
- Order to show cause, 15, 363
- Originals, 15, 347
- Service on moving party, 15, 346
- Time of service, 15, 348
- Use of order to show cause, 15, 363

Nunc pro tunc, 15, 344

Open and close:

- Orders to show cause, 15, 370

Opening, amending, and vacating judgments, see *infra*, Amending and vacating orders.

Operation and effect, 15, 359

- Abandonment of order, 15, 360
- Expiration of order, 15, 360
- In general, 15, 359
- Time of performance, 15, 360
- Time of taking effect, 15, 359

Orders to show cause, 15, 362

- Affidavits, 15, 366, 371
- Appeals, 15, 367
- Chambers, 15, 367
- Construction in support of order, 15, 368

Defaults, 15, 372

Definition, 15, 362

Effect on final hearing, 15, 364

Enlargement of time for showing cause, 15, 372

Equivalent to notice, 15, 363

Ex parte, 15, 365

Extraordinary remedies, 15, 363

Form, 15, 369

Hearing on return day, 15, 370

Of course, 15, 365

Proceedings under order, 15, 370

Questions of fact, 15, 371

Right to open and close, 15, 370

Rule *nisi*, 15, 362

Service, 15, 370

Substitute for notice, 15, 363

Use as original process, 15, 362

Use as short notice of motion, 15, 363

When or how obtained, 15, 364

When returnable, 15, 367

Where returnable, 15, 367

ORDERS, *cont'd.*

Parties to actions:

Application to modify or vacate, 15, 357

Substitution of parties, see SUBSTITUTION OF PARTIES.*Payment out of court*, see FUNDS AND DEPOSITS IN COURT.

Performance, 15, 360

Physical examination:

In actions for personal injuries, 16, 493

By whom made, 16, 493

Compliance with statute, 16, 494

Enforcement of order, 16, 495

Matters not regulated by statute, 16, 494

Power to direct and control examination, 16, 493

Vacation of order, 16, 495

Place of filing, 15, 343

Pleas in equity:

Nature of order overruling or allowing plea, 16, 627

Order to answer where plea is overruled, 16, 623

Poor and poor laws, see POOR AND POOR LAWS.*Power of court*, see *infra*, Amending and vacating orders.

Presumption:

Caption, 15, 333

Validity of order, 15, 331

Presumption in favor of validity of order, 15, 323

Production of documents, see PRODUCTION OF DOCUMENTS.*Publication of notice*, see PUBLICATION.*Receivers*, see RECEIVERS.

Recitals, 15, 334

Conclusiveness of recitals, 15, 336

In general, 15, 334

Material recitals, 15, 336

Remedy for failure to recite, 15, 336

Recordari, 17, 903*Recording*, see *infra*, Filing and entering.*References*, see REFERENCES.*Removal of causes*, see REMOVAL OF CAUSES.*Rendition and entry of judgments*, see RENDITION AND ENTRY OF JUDGMENTS.

Returns:

Orders to show cause, 15, 367

Revivor of suits and actions, see REVIVOR OF SUITS AND ACTIONS.

Rule, 15, 317

ORDERS, *cont'd.*

Satisfaction and discharge of judgments, 19, 136

Scope of article, 15, 316

Service of order, 15, 346

Laches, 15, 360

Service of order to show cause, 15, 370

Imperfect copy of a rule, 15, 370

Mode and proof of service, 15, 370

Service of proposed order, 15, 339

Settlement, 15, 338

Entry in wrong form, 15, 340

In general, 15, 338

Motions to resettle, 15, 340

Service of proposed order, 15, 339

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.*Showing cause*, see *infra*, Orders to show cause.

Signature, 15, 340

Exhibiting the judge's signature, 15, 349

Special and struck juries, 20, 286

Special orders, 15, 320

Statutory definition, 15, 317

Stipulations:

Order granting or denying relief from stipulation, 20, 667

Stock and stockholders, see STOCK AND STOCKHOLDERS.*Sua sponte*, 15, 326*Substitution of parties*, see SUBSTITUTION OF PARTIES.*Supplementary proceedings*, see SUPPLEMENTARY PROCEEDINGS.

Terms and conditions, 15, 336

Form of provision, 15, 337

Power to impose, 15, 336

Proceedings under order, 15, 338

Time for performance, 15, 338

Time:

Application to modify or vacate, 15, 357

Time of filing, 15, 343

Time of return of order to show cause, 15, 367

Time of taking effect, 15, 359

Time to plead, see TIME TO PLEAD.*Trusts and trustees*, see TRUSTS AND TRUSTEES.*Vacation of order*, see *infra*, Amending and vacating orders.

Vendor's liens, 22, 738

Void orders, 15, 327

Death of party, 15, 331

Default orders, 15, 331

Errors and irregularities in the exercise of jurisdiction, 15, 328

In general, 15, 327

Partial invalidity, 15, 330

Presumptions, 15, 331

ORDERS, *cont'd.*

- Void orders, *cont'd.*
 - Want of jurisdiction, 15, 328
 - Wrong reason, 15, 330
- Waste, see WASTE.
- Written, 15, 331

ORDINANCES, 15, 409

See STATUTES.

Actions, see *infra*, Remedies and rules of procedure.

Amendments:

- Complaint or petition, 15, 434
- Amount in controversy, 15, 420

Appeals, 15, 442

- Docketing appeal, appeal bond, and notice of appeal, 15, 444

Error, writ of, 15, 444

Jury trial, 15, 436

Plea of guilty, 15, 444

Right of appeal, 15, 442

Statute permitting exceptions to be reserved, 15, 442

Time for taking appeal, 15, 444

Trial *de novo*, 15, 443

Who may appeal, 15, 443

Assumpsit, 15, 417

Attorney's fees, 15, 440

Certiorari, 4, 84; 15, 445

What errors reviewable, 15, 445

When writ lies, 15, 445

Civil, criminal, or quasi-criminal proceedings (see *infra*, Criminal procedure):

Character of proceedings to enforce ordinances, 15, 412

Conflict of authority, 15, 412

Offenses denounced by statute or not, 15, 416

Proceedings regarded as civil, 15, 413

Proceedings regarded as criminal, 15, 414

Proceedings regarded as quasi-criminal, 15, 414

Refinements and distinctions, 15, 415

Complaint or petition, 15, 424

Allegations as to ordinance, 15, 425

Alleging authority to enforce payment, 15, 428

Alleging enactment, 15, 428

Alleging necessity for ordinance, 15, 429

Authority to pass ordinance, 15, 427

In general, 15, 424

In what courts ordinance can be pleaded, 15, 425

Jurisdictional facts, 15, 428

Necessity to plead ordinance, 15, 425

Negating exceptions, 15, 429

ORDINANCES, *cont'd.*

Complaint or petition, *cont'd.*

Pleading ordinance on appeal

from municipal courts, 15, 425

Requisite allegations, 15, 426

Setting out ordinance, 15, 426

Venue, 15, 429

Allegation of language of ordinance, 15, 431

Alleging repetition of offense, 15, 433

Amendments, 15, 434

Conclusion, 15, 432

Description of offense, 15, 430

Duplicity, 15, 434

Infraction of ordinance, 15, 431

Intent, 15, 432

Negligence, 15, 432

Surplusage, 15, 432

Time and manner of violation, 15, 430

Unlawfully, 15, 432

Verification, 15, 433

Whether accuracy of indictment is required, 15, 431

Wilfully, 15, 432

Violation of ordinance relied on as negligence, 15, 427

Costs, 15, 439

Attorney's fees, 15, 440

Costs dependent upon statute, 15, 439

Examples, 15, 440

Whether taxed against municipality, 15, 439

Courts, see *infra*, Jurisdiction.

Criminal procedure:

Civil, criminal, or quasi-criminal proceedings, 15, 412

Necessity for indictment, 15, 412

Debt, 15, 416

Declaration and complaint, see *infra*, Complaint or petition.

Definiteness and certainty in pleadings, 6, 264

Definition, 15, 410

Duplicity, 15, 434

Equity, see *infra*, Review of proceedings.

Error, see *infra*, Appeals.

Fines (see PENALTIES AND PENAL ACTIONS), 15, 437

Fines and costs in criminal cases, see FINES AND COSTS IN CRIMINAL CASES.

Habeas corpus, 15, 446

Retrial of question of fact, 15, 446

When habeas corpus lies, 15, 446

Indictment (see *infra*, Complaint or petition):

Necessity for, 15, 412

ORDINANCES, *cont'd.*

- Injunctions, 15, 441
- Injunctions against acts forbidden by ordinance, 15, 442
- Proceedings to enforce ordinance, 15, 441
- Remedies by injunction and at law inconsistent, 15, 442
- Intent:
 - Complaint or petition, 15, 432
- Judgments, 15, 437
- Jurisdiction, 15, 418
 - Circuit and supreme courts, 15, 420
 - Competency of various tribunals, 15, 418
 - Complaint or petition, 15, 428, 429
 - Concurrent jurisdiction of mayor and justice, 15, 419
 - Jurisdictional amount, 15, 420
 - Justices of the peace, 15, 419
 - Municipal courts, 15, 418
 - Offenses committed by non-residents, 15, 420
 - Proceedings must be before a competent tribunal, 15, 418
 - Repeal of ordinance pending prosecution, 15, 420
 - Venue, 15, 420
- Jury:
 - Right to jury trial, 15, 435
 - Appeal, 15, 436
 - Criminal act, 15, 436
 - Jury not a matter of right, 15, 435
- Justices of the peace, 15, 419
- Licenses, 13, 121
- Liquidated damages, 15, 417
- Local improvements, 13, 300
- Mandamus, 15, 446
- Negating exceptions, 15, 429
- Negligence:
 - Complaint or petition, 15, 432
 - Violation of ordinance relied on as negligence, 15, 427
- Parties, 15, 421
 - In general, 15, 421
 - Prosecution in corporate name, 15, 421
 - Prosecution in name of state, 15, 422
- Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.*
- Petition, see infra, Complaint or petition.*
- Plea or answer, 15, 435
- Process, 15, 423
- Railroads, see RAILROADS.*
- Records, 15, 437
 - Defects of record, 15, 439
 - Enumeration of matters which must appear, 15, 438

ORDINANCES, *cont'd.*

- Records, *cont'd.*
 - Exceptions, 15, 438
 - General requisites, 15, 437
 - What need not appear, 15, 438
- Remedies and rules of procedure, 15, 410
 - Assumpsit, 15, 417
 - Civil, criminal, or quasi-criminal proceedings, 15, 412
 - Debt, 15, 417
 - Distinction as to whether criminal or civil, 15, 415
 - In general, 15, 410
 - Institution of summary proceedings, 15, 412
- Liquidated damages, 15, 417
 - Offenses denounced by statute, 15, 416
 - Proceedings regarded as civil, 15, 413
 - Proceedings regarded as criminal, 15, 414
 - Proceedings regarded as quasi-criminal, 15, 414
 - Rules of procedure, 15, 417
 - Statutes authorizing summary proceedings, 15, 411
 - Summary proceedings at common law, 15, 411
- Repeal of ordinance pending prosecution, 15, 420
- Review of proceedings:
 - Appeal and error, see infra, Appeals.*
 - Certiorari, see infra, Certiorari.*
 - Habeas corpus, 15, 446
 - In equity, 14, 440
 - Distinction between execution and enactment of ordinances, 15, 442
 - General rule, 15, 440
 - Injunction, 15, 441
 - Injunction against acts forbidden by ordinance, 15, 442
 - Judgment at law against validity of ordinance, 15, 441
 - Remedies by injunction and at law inconsistent, 15, 442
 - Remedy at law, 15, 441
 - Mandamus, 15, 446
- Sentences 15, 437
- Street railways:
 - Averment of violation, 20, 870
- Summary proceedings, 15, 411
 - At common law, 15, 411
 - How summary proceedings instituted, 15, 412
 - Statutes authorizing summary proceedings, 15, 411
- Summons and process, 15, 423

ORDINANCES, *cont'd.*

- Surplusage, 15, 432
- Survival of actions, 21, 360
- Trial *de novo*, 15, 443
- Variance, 15, 436
- Venue, 15, 420
 - Complaint or petition, 15, 429
- Verification:
 - Complaint or petition, 15, 433
- Warrants, 15, 423
- Wilfully and unlawfully, 15, 432

ORE TENUS:

- Demurrers, 6, 349
- Demurrers in chancery*, see DEMURRERS IN CHANCERY.

ORIGINAL BILLS, see BILLS IN EQUITY.**ORIGINAL NOTICE, see SUMMONS AND PROCESS.****ORPHANS' COURTS:**

- Costs, 5, 224

OUSTER, see EJECTMENT.**OVERT ACTS (see CONSPIRACY):**

- Conspiracy*, see CONSPIRACY.

OWELTY OF PARTITION, 15, 812**OWNERSHIP, see TITLE, OWNERSHIP, AND POSSESSION.****OYER, see PROFERT AND OYER.****PAPER BOOK:**

- Briefs, 3, 711

PAPERS, see INDORSING PAPERS; LOST INSTRUMENTS AND RECORDS.**PARAGRAPHS, see COUNTS, PARAGRAPHS, AND SEPARATE STATEMENTS.****PARAMOUR, see DIVORCE.****PARCENERS (see PARTITION):**

- Ejectment, 7, 312
 - Death of coparceners, 7, 317
 - Ejectment for ouster, 7, 318
- Ouster a question for jury, 7, 319
- Ouster by force, 7, 319
- Possession of one possession of all, 7, 317
- Proof of ouster, 7, 318

PARDON, 15, 447

- Contempt, 4, 821
- Fines and costs in criminal cases, 8, 998, 999
- Effect of pardon, 8, 999
- Effect of pardon upon costs, 8, 999
- Remission of fine by executive pardon, 8, 998
- Vested rights, 8, 999

Plea, 15, 448

- After final conviction and sentence, 15, 449
- In the criminal prosecution, 15, 448
- Private act or charter, 15, 448
- Proceedings to obtain, 15, 447
- Public law or proclamation, 15, 448

PARDON, *cont'd.*

- Sentence, 15, 449

- Pleading pardon, 19, 459

PARENT AND CHILD (see INFANTS):

- Abduction*, see ABDUCTION.

- Actions by child*, see INFANTS; NEXT FRIEND.

- Actions by parent, 15, 452

- Allegations of loss of service, 15, 453

- Allegations of negligence, 15, 454

- Damages, 15, 455

- Declaration and complaint, 15, 453

- Declaration of relationship, 15, 453

- Form of action, 15, 452

- Injuries resulting in death*, see DEATH BY WRONGFUL ACT.

- Parties, 15, 452

- Pleadings, 15, 453

- Seduction*, see SEDUCTION.

- Actions for injuries to child, 15, 450

- Former adjudication, 15, 451

- In general, 15, 450

- Loss of services, 15, 450

- When child a proper party, 15, 450

- When child may sue in his own name, 15, 451

- Adoption*, see ADOPTION.

- Apprenticeship*, see APPRENTICESHIP.

- Bastardy*, see BASTARDY.

- Civil damage acts*, see CIVIL DAMAGE ACTS.

- Commitment of infant*, see COMMITMENTS.

Damages:

- Injuries to infants, 5, 759

- Death by wrongful act:

- Joinder of parents, 5, 859

- Parents of deceased, 5, 857

- Suits by parent, 5, 850

- Declaration and complaint, 15, 453

- Disorderly conduct:

- Failure to support family, 7, 5

- Divorce*, see DIVORCE.

- Former adjudication:

- Actions by parent and actions by child, 15, 451

- Guardian ad litem*, see GUARDIAN AD LITEM.

- Habeas corpus, 9, 1017

- Kidnapping*, see KIDNAPPING.

- Malicious prosecution, 13, 427

- Marriage (annulment):

- Custody and maintenance of children, 13, 886

- Next friend*, see NEXT FRIEND.

- Parties to actions:

- Actions *ex delicto*, 15, 518

- Personal injuries*, see PERSONAL INJURIES.

- Seduction*, see SEDUCTION.

PAROL DEMURRER, 10, 581

PAROL EVIDENCE:

- Abbreviations, 1, 42
- Another suit pending:
 - Pendency, 1, 755

Appeals:

- Records, 2, 298, 299, 300

Demurrers to evidence:

- Joinder in demurrer, 6, 447
 - Effect of refusal to join, 6, 449
 - Examples, 6, 447, 448
 - In general, 6, 447
 - Necessity for, 6, 447
 - Where evidence is partly oral and partly written, 6, 449
- What should appear in demurrer, 6, 451

Exception and objections, 8, 234

Foreclosure of mortgages:

- Assumption of mortgages, 9, 472

Instructions, 11, 85

Records:

- Appeals, 2, 298, 299, 300
- Stipulations, 20, 561
- Withdrawing and striking out evidence, 22, 1315

PARTIAL ASSIGNMENT:

- Splitting causes of action, 1, 158

PARTICULARS, see **BILLS OF PARTICULARS**.

PARTIES TO ACTIONS, 15, 456

- See **FORCIBLE ENTRY AND DETAINER; TRUSTS AND TRUSTEES**.

Abatement in pleading:

- Equity, 1, 41
- Misnomer, 1, 12

Absence:

- Equity, 15, 607
- Proper but not indispensable parties, 15, 652

Accounts and accounting, 1, 104

- Assignees, 1, 105
- Bill in equity for accounting, 1, 104
- Corporations, 1, 105
- Parties to bill in equity, 1, 104
- Partners, 1, 104
- Trustees and *cestuis que trustent*, 1, 105
- Unnecessary persons, 1, 106

Actions *ex contractu*:

- Codes and practice acts, 15, 715
- Contracts for benefit of third persons, 15, 509
 - Exceptions and qualifications, 15, 514
 - General rule as to parties plaintiff, 15, 509
 - Incidental benefit to third persons, 15, 515
 - Where contract is under seal, 15, 512

PARTIES TO ACTIONS, *cont'd.*

Actions *ex contractu*, *cont'd.*

- Defendants, 15, 524
 - Breach of simple contract, 15, 525
 - Contracts under seal, 15, 525
 - Implied or quasi contracts, 15, 526
 - In general, 15, 524
- General rules as to proper plaintiff, 15, 499
 - Actions upon subscription papers, 15, 503
 - Attorneys, 15, 504
 - Contract in wrong name, 15, 504
 - Contracts under seal, 15, 507
 - Deeds, 15, 507
 - Exceptions to the rule as to simple or parol contracts, 15, 507
 - Fraudulent representations, 15, 503
 - Guaranties, 15, 503
 - Legal interest in a contract, 15, 500
 - Parties and privies, 15, 500
 - Promisee has legal interest, 15, 499
 - Promisee's right to sue, 15, 502
 - Sale of dangerous instrumentalities, 15, 504
 - Simple or parol contracts, 15, 505
 - Strangers, 15, 500
 - Tort founded on contract, 15, 504
 - Warranties, 15, 503

***Joinder of parties*, see **JOINDER OF PARTIES**.**

Actions *ex delicto*:

- Codes and practice acts, 15, 719
- Parties plaintiff, 15, 517
 - Bailors and bailees, 15, 521
 - General rule, 15, 517
 - Injuries to personal property, 15, 520
 - Injuries to person or character, 15, 518
 - Injuries to real property, 15, 519
 - Interference with possession, 15, 520
 - Per quod* actions, 15, 518

***Administration*, see **SETTLEMENT OF DECEDENTS' ESTATES**.**

Affidavits, 1, 325

Agency (see **AGENCY)**, 22, 173

Discovery, 15, 604

Equity, 15, 598

Telegraphs and telephones, 21, 510

PARTIES TO ACTIONS, *cont'd.*

- Agreed case, 1, 398
 - Infants, 1, 399
- Alimony, 1, 423
- Amendments:
 - Adding defendants, 1, 542
 - Adding parties, 1, 666
 - Adding plaintiffs, 1, 541
 - Attachments, 1, 678, 679
 - Bills in equity, 1, 466
 - Changing nominal plaintiff, 1, 537
 - Corporations, 1, 539
 - Effect of making a new defendant, 1, 543
 - Entire change of parties, 1, 545
 - Equity, 15, 700
 - Misdescription of defendant, 1, 540
 - Misdescription of plaintiff, 1, 537, 538, 539
 - Nominal change, 1, 540
 - Omission of a party, 1, 666
 - Process, 1, 665
 - Representative capacity, 1, 538
 - Striking out defendants, 1, 544
 - Striking out plaintiffs, 1, 543
 - Substituting beneficiary, 1, 538
 - Substituting holder of legal title, 1, 538
 - Trusts and trustees, 22, 190
- Animals, 21, 888
- Answers:
 - Misjoinder under codes, 15, 760, 762, 764
 - Nonjoinder in equity, 15, 685
 - Nonjoinder under codes, 15, 754
 - Objections that plaintiff has no real party in interest under codes, 15, 713
- Answers in equity pleading, 1, 865
- Appeals*, see **APPEALS**.
- Appearances:
 - Necessity of appearance to constitute one a party, 15, 466
- Arrest of judgment:
 - Defects and irregularities as to parties, 2, 797
- Assignees*, see *infra*, Parties plaintiff under codes and practice acts.
- Assignment for benefit of creditors, 2, 876
- Action to set aside assignment, 2, 903
 - Parties defendant, 2, 904
 - Parties plaintiff, 2, 903
- Assignments (see **EQUITABLE ASSIGNMENTS**), 22, 170
- Choses in action, 15, 486
 - General rule, 15, 486
 - Right to bring action not assignable at common law, 15, 486

PARTIES TO ACTIONS, *cont'd.*

- Assignments, *cont'd.*
 - Nominal and use plaintiffs*, see *infra*, Nominal and use plaintiffs.
- Assignor in equity, 15, 597
- Attachment, 3, 41
- Attorneys:
 - Action for fees, 3, 106
 - Action for negligence, 15, 504
 - Equity, 15, 599
 - Summary proceedings, 3, 112
- Auctioneers:
 - Equity, 15, 599
- Audita querela, 3, 120
- Bailment:
 - Parties plaintiff, 15, 521
- Bankruptcy*, see **BANKRUPTCY**.
- Banks and banking, 22, 174
- Bills in equity:
 - Designation of parties, 3, 361
- Bills to impeach decrees and judgments, 3, 620
 - In general, 3, 620
 - Joint judgment debtors, 3, 622
 - Parties defendant, 3, 622
 - Parties plaintiff, 3, 621
 - Receiver, 3, 622
 - Stranger, 3, 621
- Bonds, 3, 639
 - Assignment, 3, 640
 - Attachment proceedings, 3, 643
 - Defendants, 3, 642
 - Joinder of defendants, 3, 642
 - Joinder of plaintiffs, 3, 641
 - Plaintiffs, 3, 639
 - Trustees, 3, 640
- Boundaries and fences, 3, 675
- Breach of promise of marriage, 3, 684
- Bridges, 3, 701
- Bringing in new parties:
 - Codes and practice acts, 15, 765
 - In general, 15, 765
 - Manner of objection to court's order, 15, 767
 - Provision mandatory, 15, 766
- Capacity to sue and be sued*, see *infra*, Interest and capacity to sue and be sued.
- Carriers*, see **CARRIERS**.
- Certiorari*, see **CERTIORARI**.
- Chattel mortgages:
 - Actions at law, 4, 514
 - Parties defendant, 4, 514
 - Parties plaintiff, 4, 514
- Check, 22, 170
- Choses in actions, 22, 170
- Civil damage acts, 4, 543
 - Joinder of husband and wife, 4, 544
 - Joinder of seller and owner of premises, 4, 546
 - Joinder of seller and surety on his bond, 4, 545

PARTIES TO ACTIONS, *cont'd.*

- Civil damage acts, *cont'd.*
 - Joinder of sellers, 4, 544
 - Joinder of wife and children, 4, 543
 - Parties defendant, 4, 544
 - Parties plaintiff, 4, 543
 - Whether an intoxicated person a necessary party, 4, 546
- Class interest*, see *infra*, Equity.
- Clubs*, see UNINCORPORATED SOCIETIES.
- Codes and practice acts, 15, 707
 - Defendant*, see *infra*, Parties defendant under codes and practice acts.
 - Joinder of parties*, see JOINER OF PARTIES.
 - Plaintiffs*, see *infra*, Parties plaintiff under codes and practice acts.
 - Raising, waiving, and curing objections*, see *infra*, Raising, waiving, and curing objections.
- Common law (see *infra*, Defendants at common law; Plaintiffs at common law):
 - Raising, waiving, and curing objections*, see *infra*, Raising, waiving, and curing objections.
- Conflict of laws, 15, 483
- Conspiracy, 4, 709
- Constables*, see SHERIFFS AND CONSTABLES.
- Contingent interests:
 - Equity, 15, 595
- Contingent remaindermen, 15, 646
 - Doctrine of representation, 15, 647, 648
- Contractors:
 - Employer and contractor, 16, 893
- Contracts*, see *infra*, Actions *ex contractu*.
- Coram nobis* and *coram vobis*, 5, 31
 - Defendant, 5, 32
 - Plaintiff, 5, 31
- Corporations (see CORPORATIONS; OFFICERS OF CORPORATIONS; WINDING UP CORPORATIONS):
 - Persons without interest joined for discovery, 15, 602
- Costs*, see COSTS.
- Counties, 5, 295, 300
- Covenant*, see COVENANT.
- Creditors' bills (see CREDITORS' BILLS):
 - Doctrine of representation, 15, 646
- Cross-bills*, see CROSS-BILLS.
- Cross-complaints*, see CROSS-COMPLAINTS.
- Curing objections*, see *infra*, Raising, waiving, and curing objections.
- Death*, see DEATH.

PARTIES TO ACTIONS, *cont'd.*

- Death by wrongful act*, see DEATH BY WRONGFUL ACT.
- Decrees, 5, 955
 - Definiteness and certainty, 5, 1065
- Deeds, 15, 507
 - Defendants at common law, 15, 525
 - Parties plaintiff, 15, 507
 - Deed *inter partes*, 15, 508
 - Deeds poll, 15, 509
 - In general, 15, 507
- Defaults*, see DEFAULTS.
- Defendants:
 - Definition, 15, 467
 - Equity, see *infra*, Equity.
 - Interest and capacity to sue and be sued*, see *infra*, Interest and capacity to sue and be sued.
 - Same person both plaintiff and defendant, 15, 481
 - Parties on record, 15, 483
 - Party in different capacities, 15, 482
 - Statement of rule, 15, 481
- Defendants at common law:
 - Actions *ex contractu*, 15, 524
 - Actions *ex delicto*, 15, 526
- Definiteness and certainty in pleadings, 6, 257
 - Examples, 6, 257, 258
 - In general, 6, 257
 - Names, 6, 257
- Definition and use of terms, 15, 463
 - Defendants, 15, 467
 - Necessity of process or appearance, 15, 466
 - Parties of record, 15, 464
 - Parties within rule *res judicata*, 15, 465
 - Party may mean one or more persons, 15, 464
 - Plaintiffs, 15, 467
 - Stockholders and officers of a corporation, 15, 465
 - Term party, 15, 464
- Demurrers:
 - Misjoinder in equity, 15, 698
 - Misjoinder under codes, 15, 760, 762
 - Nonjoinder in equity, 15, 681
 - Nonjoinder under codes, 15, 747
 - Objections that plaintiff has no real party in interest under codes, 15, 713
 - Waiver of defects by failure to demur, 6, 374
 - Defects of parties, 6, 375
 - In general, 7, 314
 - Misjoinder of defendants, 6, 375
 - Misjoinder of plaintiffs, 6, 374
 - Waiving objections, 15, 475

PARTIES TO ACTIONS, *cont'd.*

- Departure, 6, 463
- Description of parties, see infra, Name and description of parties.*
- Descriptio personarum*, 15, 480
- Detinue, 6, 645
 - Bailees as plaintiff, 6, 647
 - Defendant generally, 6, 648
 - Executors and administrators as defendants, 6, 648
 - Executors and administrators as plaintiffs, 6, 647
 - Particular persons as plaintiffs, 6, 647
 - Plaintiff, 6, 645
 - Plaintiff generally, 6, 645
 - Revival of action, 6, 648
 - Trustees as plaintiffs, 6, 647
- Dilatory pleas, 6, 666
- Discovery, 6, 761
 - Agent or arbitrator charged with fraud, 6, 763
 - Effect of nonjoinder, 6, 764
 - Grounds for demurrer, 6, 779
 - Joinder, 6, 763
 - Matters peculiarly within knowledge of agent, 6, 763
 - Officers, agents, and members of corporations, 6, 762
 - Parties to action at law, 6, 763
 - Persons interested in action at law, 6, 761
 - Persons under disability, 6, 763
 - Persons without interest joined for discovery, 15, 602
- Dismissal, discontinuance, and nonsuit, 6, 897
 - Failure to substitute parties, 6, 907
 - Misjoinder in equity, 15, 699
 - Nominal plaintiff, 15, 492
 - Nonjoinder in equity, 15, 690
 - Want of parties, 6, 897
 - Amendment, 6, 898
 - As to portion of defendants, 6, 900
 - Code procedure, 6, 901
 - Disclaimer of interest, 6, 903
 - Dismissal inappropriate, 6, 899
 - Dismissal of improper party, 6, 902
 - Earlier chancery practice, 6, 897
 - In general, 6, 897
 - Misjoinder of parties, 6, 901
 - Modern practice, 6, 897
 - Neglect of plaintiff, 6, 900
 - Nonsuit, 6, 901
 - Nonsuit of one codefendant, 6, 903
 - Portion of codefendants, 6, 902
 - Refusal to reverse, 6, 899
 - Without prejudice, 6, 995

PARTIES TO ACTIONS, *cont'd.*

- Disorderly conduct, 7, 2
- Distributees, 15, 646
- Divorce, 7, 58
 - Ancillary relief for wife, 7, 59
 - Appearance by prosecuting attorney, 7, 66
 - Coverture, 7, 60
 - Creditor, 7, 59
 - Defendants, 7, 58
 - Guardian and ward, 7, 61, 62
 - Infancy, 7, 61
 - Insane defendants, 7, 65
 - Insanity, 7, 62
 - Intervention, 7, 59
 - Paramour, 7, 59, 60
 - Plaintiffs, 7, 58
 - State as party, 7, 66
- Dower, 7, 159
 - Assignee, 7, 160
 - Defendants, 7, 160
 - In equity, 7, 177
 - Creditors of widow, 7, 178
 - Defendants, 7, 178
 - Heir, 7, 177
 - Of adverse parties, 7, 178
 - Owner of land, 7, 177
 - Parties who have had title, 7, 180
 - Plaintiffs, 7, 177
 - Tenant under lease, 7, 179
 - Where the land has been sold in separate tracts, 7, 179
 - Widow, 7, 177
 - Land in parcels, 7, 161
 - Plaintiff, 7, 159
 - Present owner, 7, 161
 - Summary proceedings, 7, 197
 - Assignee or other persons interested, 7, 197
 - Defendants, 7, 197
 - Examples, 7, 198
 - Executors and administrators, 7, 197
 - Heirs, 7, 197
 - Plaintiffs, 7, 197
 - Tenants of freehold, 7, 160
- Easements, 7, 256
- Ejectment, see EJECTMENT.*
- Elections, 7, 379
 - Defendants, 7, 380
 - Joinder, 7, 380
 - Plaintiffs, 7, 379
- Eminent domain, see EMINENT DOMAIN.*
- Entry, writ of, 7, 725
 - Foreclosure of mortgages, 7, 720
- Equitable assignments, see EQUITABLE ASSIGNMENTS.*
- Equitable attachment, 7, 792
 - Defendants, 7, 792
 - How defendants brought in, 7, 793

PARTIES TO ACTIONS, *cont'd.*

- Equitable attachment, *cont'd.*
 - Joinder of plaintiffs, 7, 793
 - Multifariousness, 7, 793
 - Necessary and proper parties, 7, 792
- Equitable owners, 15, 593
- Equity, 15, 584
 - Absence from jurisdiction, 15, 607
 - Agents, 15, 598
 - Agents of natural persons, 15, 604
 - All persons interested, 15, 584
 - Amendment, 15, 700
 - Assignor, 15, 597
 - Attorneys, 15, 598
 - Auctioneers, 15, 599
 - Beneficial owners, 15, 593
 - Bringing in new parties, 15, 700
 - Classification of parties, 15, 610
 - Collateral liability, 15, 601
 - Complainants, 15, 663
 - Capacity to sue, 15, 663
 - Joinder of complainants, 15, 666
 - Multifariousness, 15, 667
 - Nature of common interest authorizing joinder, 15, 670
 - Necessity of common or joint interest, 15, 666
 - Persons with common interests, 15, 668
 - Persons without interest, 15, 669
 - Real party in interest, 15, 663
 - Whether party should be complainant or defendant, 15, 672
 - Who may join, 15, 666
 - Contingent interests, 15, 595
 - Defendants, 15, 674
 - General rules as to defendants, 15, 674
 - Joinder of defendants, 15, 675
 - Liability to be sued, 15, 674
 - Whether party should be complainant or defendant, 15, 672
 - Desires or wishes insufficient, 15, 594
 - Discovery, persons without interest joined for, 15, 602
 - Doctrine of representation, 15, 627
 - Equitable owners, 15, 594
 - Executors and administrators, 15, 626, 627
 - General rule one of convenience only, 15, 606
 - General rules, 15, 584

PARTIES TO ACTIONS, *cont'd.*

- Equity, *cont'd.*
 - Guarantors, 15, 601
 - Holder of legal title, 15, 593
 - Inconvenient, 15, 609
 - Incumbrancers, 15, 601
 - Interest, 15, 584, 590, 592, 594
 - Interest defeasible by act of defendant, 15, 594
 - Interest joined for discovery, 15, 602
 - Interest parted with, 15, 596
 - Joinder of complainants, 15, 666
 - Distinct demands, 15, 666
 - Fraudulent representations, 15, 671
 - Mere interest in legal question insufficient, 15, 670
 - Nature of common interest authorizing joinder, 15, 670
 - Necessity of joint or common interest, 15, 666
 - Persons representing antagonistic interests, 15, 668
 - Persons with common interests, 15, 668
 - Persons without interest, 15, 669
 - Rule against multifariousness, 15, 667
 - Whether party should be complainant or defendant, 15, 672
 - Who may join, 15, 666
 - Joinder of defendants, 15, 675
 - Legal title, 15, 593
 - Misjoinder, 15, 695
 - Amendment, 15, 700
 - Dismissal, 15, 699
 - How and when raised, 15, 695
 - Motion to strike out, 15, 697
 - Sua sponte*, 15, 697
 - Sufficiency of demurrer, 15, 698
 - Who may object, 15, 698
 - Nature of interest required, 15, 592
 - Necessary and indispensable parties, 15, 611
 - Cloud on title, 15, 623
 - Definition, 15, 611
 - Depending on relief sought, 15, 621
 - Disclaiming interest, 15, 625
 - Equity proceeding to final decree in the absence of necessary party, 15, 616
 - Exceptions to rule, 15, 624
 - Illustrations of rule, 15, 617, 624
 - Injunctions, 15, 623

PARTIES TO ACTIONS, *cont'd.*Equity, *cont'd.*Necessary and indispensable parties, *cont'd.*

Injunctions against payment of money, 15, 622

Issuance of municipal securities, 15, 622

Partition, 15, 624

Persons against whom rights are waived, 15, 626

Persons connected with the subject-matter of the controversy, 15, 614

Persons consenting to decree or disclaiming interest, 15, 625

Persons held not to be necessary or indispensable parties, 15, 619

Persons held to be necessary or indispensable parties, 15, 617

Persons legally represented, 15, 627

Persons whose interest is very small, 15, 624

Persons whose interests will necessarily be affected, 15, 612

Persons whose interests will not be affected, 15, 614

Persons with interests created to oust jurisdiction, 15, 624

Proper but not indispensable parties, 15, 651

Restraint by injunction, 15, 623

Statement of rule, 15, 611

Unknown persons, 15, 627

What class includes, 15, 611

When personal representative may be omitted, 15, 626

Where necessary party cannot be brought in, 15, 615

Numerous parties, 15, 608

Ousting jurisdiction of court, 15, 608

Persons claiming under inconsistent titles, 15, 605

Persons legally represented, 15, 627

Averments in bill as to representative character of suit, 15, 631

Conduct and control of suit, 15, 637

Death or disability of one representative party, 15, 633

PARTIES TO ACTIONS, *cont'd.*Equity, *cont'd.*Persons legally represented, *con.*

Dismissal or discontinuance of suit, 15, 637

Doctrine of representation, 15, 627

Necessity the reason and limit of exception, 15, 628

Numerous parties, 15, 642

Similarity of interests between representative and persons represented, 15, 629

Status as parties of persons represented, 15, 633

Tenants in tail, unborn, or contingent remaindermen, 15, 646

Transferring conduct of cause, 15, 639

When doctrine is applicable, 15, 639

Persons who have parted with all interest, 15, 596

Persons without interest, 15, 599

Persons without interest joined for discovery, 15, 602

Persons without legal or beneficial interest, 15, 594

Pleas in bar for defects of parties, 16, 599

Pledges, 15, 601

Prayer for process, 15, 610

Proper but not indispensable parties, 15, 651

Absence from jurisdiction, 15, 655

Active and passive parties, 15, 657

Averment of excuse for non-joinder, 15, 656

Formal parties, 15, 659

Heirs, 15, 658

Illustrations of rule as to formal and nominal parties, 15, 661

Illustrations of rule as to parties with separable interests, 15, 657

In general, 15, 651

Joint tortfeasor, 15, 658

Making out legal title, 15, 661

Nominal parties, 15, 659

Numerous parties, 15, 656

Officers and agents of corporation, 15, 662

Omitting parties with separate interests, 15, 654

Parties with separate interests, 15, 653

Partnership, 15, 659

PARTIES TO ACTIONS, *cont'd.*Equity, *cont'd.*

Proper but not indispensable parties, *cont'd.*

Prior and subsequent incumbrancers, 15, 657

Saving rights of absent parties, 15, 656

Separate interest, 15, 653

Sureties, 15, 659

Where joinder would oust jurisdiction, 15, 655

Public officers, 15, 600

Purchasers *pendente lite*, 15, 589

Raising, waiving, and curing objections, see *infra*, Raising, waiving, and curing objections.

Reason of the rule, 15, 587

Representation, 15, 627

Simple contract creditors, 15, 594

Slight and remote interests, 15, 594

Stakeholder, 15, 601

Tenants for life, 15, 601

Titles inconsistent, 15, 605

Unknown parties, 15, 609, 627

Vested remainders or reversions, 15, 594

Witnesses, 15, 601

Error, writ of, see ERROR, WRIT OF.

Escape:

After rescue, 7, 933

Defendant, 7, 932

Election to sue old or new sheriff, 7, 933

Joinder of sheriff with debtor, 7, 932

Plaintiff, 7, 932

Examination of parties before trial, see EXAMINATION OF PARTIES BEFORE TRIAL.

Examination of witnesses:

Cross-examination of adverse party, 8, 122

Exclusion from court room, 8, 93

Leading questions, 8, 87

Exceptions and objections (see *infra*, Raising, waiving, and curing objections), 8, 188

Answer, 8, 190

Defect of party, 8, 189

Demurrer, 8, 190

Incapacity to sue, 8, 191

Intervention, 8, 192

Misjoinder of parties, 8, 188

Misnomer, 8, 192

Revivor, 8, 190

Time of objecting in equity, 8, 189

Waiver, 8, 188

PARTIES TO ACTIONS, *cont'd.*Exceptions and objections, *cont'd.*

Want of jurisdiction of parties, 8, 169

Necessity for objections, 8, 169

Time and manner of making objection, 8, 171

Ex contractu, see *infra*, Actions *ex contractu*.

Executions, see EXECUTIONS.

Executors and administrators (see *infra*, Equity), 15, 480

Administration bonds, 8, 720

Defendants, 8, 722

Plaintiffs, 8, 720

Codes and practice acts, 15, 724

Doctrine of representation, 15, 627

Doctrine of representation in equity, 15, 641

Representation under codes, 15, 727

When personal representative may be omitted, 15, 626

Executory interest:

Doctrine of representation, 15, 648

Factors, 22, 174

False imprisonment, 8, 844

False representations and deceit, 8, 896

Fictitious parties, see *infra*, Real and fictitious parties.

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Formal parties:

Equity, 15, 659

Fraud:

Fraud on jurisdiction, 15, 471

Fraudulent representations, 15, 503

Garnishment, see GARNISHMENT.

Guaranty, see GUARANTY.

Guardians:

Codes and practice acts, 15, 724

Guardians *ad litem*, 10, 617

Hearing, 10, 9

Heirs and devisees:

Common-law actions against heirs and devisees, 10, 31

Equity, 15, 658

Highways, see STREETS AND HIGHWAYS.

Homesteads, see HOMESTEADS AND EXEMPTIONS.

Husband and wife, see HUSBAND AND WIFE.

Incapacity, see *infra*, Interest and capacity to sue and be sued.

Incumbrances, 15, 601

Indictments:

Joinder of parties, 10, 554

PARTIES TO ACTIONS, *cont'd.*

Indispensable parties, see *infra*,
Equity.

Infants, see INFANTS.

Injunctions, see INJUNCTIONS.

Necessary parties, 15, 622 623

Insurance, 11, 389

Agents, 11, 391

Assignees, 11, 399

Assignees of defendants, 11,
401

Bailees, 11, 391

Beneficiaries, 11, 393

Co-owners, 11, 393

Defendants, 11, 401

Executors and administrators,
11, 390

Heir, 11, 391

Insurance by agent or bailee for
whom it may concern, 11, 392

Interveners, 11, 401

Joinder of defendants, 11, 403

Joinder of plaintiffs, 11, 401

Mortgagees, 11, 394

Partners, 11, 393

Suits by the insured, 11, 389

Who may sue, 11, 389

Interest:

Equity, see *infra*, Equity.

Interest and capacity to sue and be
sued, 15, 467

Actions *ex contractu*, 15, 499

Averment of right to sue, 15,
471

Capacity, 15, 467

Defendants' interest, 15, 469

Demurrer, 15, 475

Expression of a use, 15, 490

Fraud on jurisdiction, 15, 471

Interest, 15, 468

Legal interest of plaintiff at
common law, 15, 484

General rule, 15, 484

Trustees and beneficiaries,
15, 485

Whoever has suffered wrong,
15, 485

Materiality of motive where in-
terest exists, 15, 469

Nominal plaintiff, 15, 490

Plaintiffs' interest, 15, 468

Plea or answer, 15, 475

Presumptions, 15, 471

Private wrongs, 15, 472

Public wrongs, 15, 472

Raising and waiving objections,
15, 475

Waiver of objections, 15, 476

Interpleader (see INTERPLEADER):

Bills of interpleader, 11, 463

Interstate commerce:

Actions to enforce orders of
commission, 11, 492

Index Pl. & Pr. — 49

PARTIES TO ACTIONS, *cont'd.*

Interstate commerce, *cont'd.*

Proceedings before interstate
commerce commission, 11,
484

Complaint concerning sev-
eral carriers, 11, 484

Complaint concerning single
carrier, 11, 484

Interest of complainant, 11,
485

Intervention, 11, 485

Intervention, see INTERVENTION.

Irrigation, 11, 591

Examples, 11, 591, 592

In general, 11, 591

Proper parties, 11, 591

Joinder of parties (see JOINDER OF
PARTIES):

Equity, see *infra*, Equity.

Joint and several contracts:

Defendants at common law, 15,
548, 553

Bankruptcy of one party, 15,
549

Claims barred as against
one, 15, 549

Death of joint contractor,
15, 551

Exceptions to general rule,
15, 549

Express contracts, 15, 555

Implied contracts, 15, 556

Infants and married women,
15, 550

Interpretation, 15, 555

Joint contracts, 15, 548

Nominal and dormant part-
ners, 15, 550

Several contracts, 15, 553

What contracts are joint, 15,
555

What contracts are several,
15, 555

Joint tenants and tenants in common:

Action between joint tenants and
tenants in common, 11, 768

Joint tortfeasor, 15, 658

Judgments, 11, 842

Actions on judgments, 11, 1115

Assignees, 11, 1117

Enforcement of lien, 11, 1119

Executors and administra-
tors, 11, 1116

Executors and administra-
tors as defendants, 11,
1121

Foreign executors and ad-
ministrators as defend-
ants, 11, 1122

Identity of defendant, 11,
1119

Joint defendants, 11, 1119

PARTIES TO ACTIONS, *cont'd.***Judgments, *cont'd.*****Actions on judgments, *cont'd.***

Joint obligation made joint
and several by statute, 11,
1120

Legal owner, 11, 1119

Next friend, 11, 1116

Original plaintiff a nominal
party, 11, 1117

Parties defendant, 11, 1119

Parties plaintiff, 11, 1115

Statutes as to assignees, 11,
1118

Conformity to pleadings and
proof, 11, 885

Death of party, 11, 843

Designation of parties, 11, 948

Against whom, 11, 951

Christian name or initials, 11,
953

Clerical error, 11, 951

Descendants, 11, 950

Descriptio personæ, 11, 942

Heirs, 11, 950

In general, 11, 948

In whose favor, 11, 949

Judgment against defend-
ants, 11, 952, 953

Legatees, 11, 950

Miscellaneous cases, 11, 954

Necessity of designating
party by name, 11, 950

Nominal and beneficial
plaintiffs, 11, 951

Representatives, 11, 950, 952

Transposition of the words
plaintiff and defendant, 11,
949

Variance, 11, 948

Where party is sued by
wrong name, 11, 954

Disposition of case as to all
parties, 11, 842

Entirety of judgment where
rendered for or against joint
parties, 11, 828

Equitable relief against judg-
ments, 11, 1172

Joinder of parties, 11, 1173

Judges and officers of court,
11, 1174

Judgment debtor or privies,
11, 1172

Participants in fraud, 11,
1174

Parties defendant, 11, 1173

Parties plaintiff, 11, 1172

Receiver or assignee, 11,
1173

Taxpayer, 11, 1173

Executors and administrators,
11, 885

PARTIES TO ACTIONS, *cont'd.***Judgments, *cont'd.***

In general, 11, 842

Joinder of parties, 11, 847

Judgment against a deceased
party, 11, 843

Judgment against one not a
party, 11, 842

Judgment for a deceased party,
11, 843

Judgment in favor of one not a
party, 11, 843

Necessity of parties, 11, 818

*Opening, amending, and vacating
judgments*, see *OPENING,
AMENDING, AND VACATING JUDG-
MENTS.*

Jurisdiction:

Absence from jurisdiction:

Equity, 15, 607

Justices of the peace (see *JUSTICES OF
THE PEACE*), 12, 715

Legal title, 15, 593

Making out legal title, 15, 661

Legatees and distributees, 13, 5, 13;
15, 646

Libel and slander, 13, 29

Defendants, 13, 30

Husband and wife, 13, 31

Joint defendants, 13, 30

Joint libel, 13, 29

Partners, 13, 29

Plaintiffs, 13, 29

Publication affecting a class, 13,
29

Publisher, editor, and printer,
13, 31

Survivor, 13, 31

Limited partnerships, see *LIMITED
PARTNERSHIPS.*

Lost instruments and records, see *LOST
INSTRUMENTS AND RECORDS.*

Malicious prosecution, see *MALICIOUS
PROSECUTION.*

Mandamus, see *MANDAMUS.*

Mandate:

New trial, 13, 857

Marriage (annulment), see *MARRIAGE
(ANNULMENT).*

Marshaling assets, 13, 889

Master and servant, see *MASTER AND
SERVANT.*

Mechanics' liens, see *MECHANICS'
LIENS.*

Mills and milldams, see *MILLS AND
MILLDAMS.*

Mines and mining, 14, 25

Misjoinder, see *infra*, *Equity*; and see
JOINDER OF PARTIES.

Misrepresentation, 15, 503

Mistake, 14, 45

Mode of treatment adopted, 15,
463

PARTIES TO ACTIONS, *cont'd.**Motions*, see **MOTIONS**.

Motive:

Materiality of motive where interest exists, 15, 469

Multifariousness, 14, 200

Joinder of complainants, 15, 667

Municipal corporations, 14, 230

Individual inhabitants not parties, 14, 230

Name and description of parties, 15, 478

Description in title not controlling, 15, 480

Equity, 15, 479

Individual or representative capacity, 15, 480

In general, 15, 478

Misnomer cured by amendment, 15, 478

Parties must be designated by name and not by mere description, 15, 478

Rule at common law, 15, 478

Statement of rule, 15, 478

Unknown parties, 15, 479

Naturalization, 14, 310

Necessary parties, see *infra*, **EQUITY**.*Negotiable instruments*, see **NEGOTIABLE INSTRUMENTS**.

New parties:

Bringing in new parties in equity, 15, 700

New trial (see **NEW TRIAL**), 13, 857*Next friend*, see **NEXT FRIEND**.

Nominal and use plaintiffs, 15, 487

Assignee suing in name of assignor, 15, 496

Consent of legal plaintiff unnecessary to use of name, 15, 495

Death or disability of use plaintiff, 15, 489

Designating use on record, 15, 490

Disregarding interest of usee, 15, 489

Effect of judgment, 15, 493

Expression of use may be disregarded as surplusage, 15, 490

Indemnity against costs, 15, 496

In general, 15, 487

Name of state to enforce private right, 15, 498

Negotiable instruments, 15, 494

Nominal plaintiff as party, 15, 488

Nominal plaintiff cannot dismiss, 15, 492

Nominal plaintiff cannot release action, 15, 492

Right to sue for use of third person, 15, 489

PARTIES TO ACTIONS, *cont'd.*Nominal and use plaintiffs, *cont'd.*

Right to use name of legal plaintiff, 15, 493

Right to use name put in issue, 15, 498

Use plaintiff as party, 15, 491

Want of interest in nominal party, 15, 490

Nominal parties:

Equity, 15, 659

Nonjoinder (see *infra*, **EQUITY**; **Raising**, **waiving**, and **curing objections**):*Equity*, see *infra*, **Raising**, **waiving**, and **curing objections**.

Notice of objection for nonjoinder or misjoinder of plaintiffs, 15, 764

Nuisances, see **NUISANCES**.

Numerous parties:

Doctrine of representation in equity, 15, 642

Common interest, 15, 645

Numbers held sufficient to fall within exception, 15, 644

Statement of rules, 15, 642

Voluntary and unincorporated associations, 15, 645

Whether all must be joined, 15, 642

Equity, 15, 608

Proper but not indispensable parties, 15, 656

Objections, see *infra*, **Raising**, **waiving**, and **curing objections**.Officers of private corporations (see **OFFICERS OF PRIVATE CORPORATIONS**), 15, 662

Discovery, 15, 602

Official bonds, see **OFFICIAL BONDS**.*Ordinances*, see **ORDINANCES**.

Parent and child:

Actions *ex delicto*, 15, 518

Parol contracts:

Parties plaintiff, 15, 505

Parties defendant under codes and practice acts, 15, 730

Executors and administrators, trustees of express trusts, etc., 15, 731

Generally, 15, 730

Parties by representation, 15, 731

Parties plaintiff under codes and practice acts, 15, 707

Action in grantee's name, 15, 727

Action in grantor's name, 15, 726

Actions *ex contractu*, 15, 715Actions *ex delicto*, 15, 719

Actions for death by wrongful act, 15, 725

Actions for seduction, 15, 725

PARTIES TO ACTIONS, *cont'd.*

Parties plaintiff under codes and practice acts, *cont'd.*
 Actions for waste, 15, 727
 Actions to recover land held adversely, 15, 726
 Answer, 15, 713
 Assignee, 15, 715
 Assignees in federal courts, 15, 716
 Assignees of actions *ex delicto*, 15, 721
 Averment that plaintiff sues as representative, 15, 729
 Consent of parties not joined, 15, 730
 Demurrer, 15, 713
 Description of parties not joined, 15, 730
 Effect on actions by assignees, 15, 709
 Exceptions to general rule, 15, 723
 Executors and administrators, 15, 724
 Facts not conclusions must be alleged, 15, 714
 Guardians, 15, 724
 In general, 15, 707
 Injuries to person, 15, 721
 Injuries to personality, 15, 720
 Injuries to realty, 15, 720
 Nature of interest, 15, 710
 Objection that plaintiff is not real party in interest, 15, 712
 Parties by representation generally, 15, 727
 Persons expressly authorized by statute, 15, 725
 Persons with whom or in whose name a contract is made, 15, 724
 Real party in interest, 15, 707, 710
 Rule adopted in federal court, 15, 709
 Statement of rule, 15, 707
 Third person for whose benefit contract was made, 15, 717
 Transfer of interest *pendente lite*, 15, 709
 Trustees, 15, 724
 Who are real parties in interest, 15, 710
 Partition (see PARTITION), 15, 624
 Partnership, see PARTNERSHIP.
 Patents, see PATENTS.
 Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.
 Per quod actions, 15, 518
 Personal injuries:
 Parties plaintiff for injuries to person, 15, 518

PARTIES TO ACTIONS, *cont'd.*

Petitions, see PETITIONS.
 Plaintiffs:
Complainants in equity, see *infra*, Equity.
 Definition, 15, 467
Equity, see *infra*, Equity.
Interest and capacity to sue and be sued, see *infra*, Interest and capacity to sue and be sued.
 Same person both plaintiff and defendant, 15, 481
 Parties on record, 15, 481
 Party in different capacities, 15, 482
 Statement of rule, 15, 481
 Plaintiffs at common law, 15, 484
Actions ex contractu, see *infra*, Actions *ex contractu*.
Actions ex delicto, see *infra*, Actions *ex delicto*.
 Assignee suing in name of assignor, 15, 496
 Assignment of choses in action, 15, 486
 General rule, 15, 484
 Legal interest of plaintiff, 15, 484
 Name of state, 15, 498
 Nominal and use plaintiffs, 15, 487
 Nominal plaintiff as a party, 15, 488
 Right to use name of legal plaintiff, 15, 493
 Right to use name of legal plaintiff may be put in issue by proper pleadings, 15, 498
 Use plaintiff as party, 15, 491
 Want of interest in nominal plaintiff, 15, 490
 Plea or answer:
 Nonjoinder in equity, 15, 685
 Waiving objections, 15, 475
 Pleas in equity:
 Defects in parties, 16, 599
 Pledges:
 Action on pledged note, 16, 640
 Actions at law by pledgor, 16, 650
 Suits in equity, 16, 644
 Poor and poor laws:
 Action by one poor district against another, 16, 658
 Presumptions:
 Plaintiff's right and capacity to sue, 14, 471
 Private wrongs, 15, 474
Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.
Prohibition, see PROHIBITION.
Proper parties, see *infra*, Equity.

PARTIES TO ACTIONS, *cont'd.*

- Public officers, 17, 176
- Actions by private persons, 17, 176
 - Effect of change of incumbency, 17, 177
 - In general, 17, 176
 - Joinder of public body, 17, 177
- Equity, 15, 600
- Public wrongs, 15, 472
- Quieting title*, see **QUIETING TITLE**.
- Quo warranto*, see **QUO WARRANTO**.
- Railroads*, see **RAILROADS**.
- Raising, waiving, and curing objections:
 - Amendments, 15, 584
 - Common law, 15, 564
 - Equity, 15, 681
 - Misjoinder, 15, 695
 - Amendment, 15, 700
 - Dismissal, 15, 699
 - How and when raised, 15, 695
 - Motion to strike out, 15, 697
 - Sua sponte*, 15, 697
 - Sufficiency of demurrer, 15, 698
 - Who may object, 15, 698
- Nonjoinder, 15, 681
 - Costs of unnecessary plea, 15, 687
 - Defect not jurisdictional, 15, 695
 - Demurrer, 15, 681
 - Demurrer *ore tenus*, 15, 683
 - Designating omitted parties, 15, 684, 686
 - Dismissal, reversal, and amendment to remedy defect, 15, 690
 - Dismissal without prejudice, 15, 694
 - General or special demurrer, 15, 683
 - Motion, 15, 687
 - Nonjoinder of proper but not indispensable parties, 15, 689
 - Objection by court *sua sponte*, 15, 687
 - Plea in bar or in abatement, 15, 686
 - Plea or answer, 15, 685
 - Remedy of omitted party, 15, 695
 - Removal of defect pending objection, 15, 694
 - Reversal and remand, 15, 692

PARTIES TO ACTIONS, *cont'd.*

- Raising, waiving, and curing objections, *cont'd.*
- Equity, *cont'd.*
- Nonjoinder, *cont'd.*
 - Sufficiency of demurrer, 15, 683
 - Sufficiency of plea or answer, 15, 686
 - Time of objecting and waiver by failure to object, 15, 688
 - When demurrer lies, 15, 681
 - Want of interest or capacity to sue, 15, 681
- Misjoinder*, see **JOINDER OF PARTIES**.
- Misnomer*, see **NAMES**.
- Nonjoinder*, see **JOINDER OF PARTIES**.
- Under codes and practice acts, 15, 747
 - Amendment, 15, 765
 - Bringing in new parties, 15, 765
 - Interpleader, 15, 768
 - Intervention, 15, 768
 - Misjoinder, 15, 757
 - Nonjoinder, 15, 747
 - Notice of objection for nonjoinder or misjoinder of plaintiffs, 15, 764
 - Substitution, 15, 768
 - Want of interest or capacity to sue*, see *infra*, Interest and capacity to sue and be sued.
- Real and fictitious parties, 15, 476
 - Action in name used in instrument sued on, 15, 477
 - Parties must be real, 15, 476
 - Party ceasing to exist, 15, 488
- Real property:
 - Parties plaintiff for injuries to real property, 15, 519
- Receivers*, see **RECEIVERS**.
- Redemption*, see **REDEMPTION**.
- Release:
 - Nominal plaintiff, 15, 492
- Religious societies, 18, 104, 106
- Remainders:
 - Contingent remainders:
 - Equity, 15, 595
 - Doctrine of representation, 15, 646
 - Vested remainders, 15, 594
- Removal of cloud*, see **QUIETING TITLE**.
- Replevin*, see **REPLEVIN**.
- Representation, 15, 627
 - Codes and practice acts, 15, 727
 - Averment that plaintiff sues as representative, 15, 729
 - Consent of parties not joined, 15, 730

PARTIES TO ACTIONS, *cont'd.*Representation, *cont'd.*Codes and practice acts, *cont'd.*

Description of parties not joined, 15, 730

Generally, 15, 727

Parties defendant under codes, 15, 731

Representatives in equity, 15, 627

Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.

Reversions:

Vested reversions, 15, 594

Review, see REVIEW.*Revival of judgments*, see REVIVAL OF JUDGMENTS.*Revivor of suits and actions*, see REVIVOR OF SUITS AND ACTIONS.

Reward, 18, 1151

Rules of general application, 15, 467

Interest and capacity to sue and be sued, see *infra*, Interest and capacity to sue and be sued.

Name and description of parties, 15, 478

Real and fictitious parties, 15, 476

Same person both plaintiff and defendant, 15, 481

What law governs, 15, 481, 484

Sales, see SALES.

Same person both plaintiff and defendant, 15, 481

Satisfaction and discharge of judgments, see SATISFACTION AND DISCHARGE OF JUDGMENTS.*Schools*, see SCHOOLS.

Scope, 15, 463

Seal (see *infra*, Deeds):

Defendants at common law on contracts under seal, 15, 525

Parties plaintiff where contract is for benefit of third persons, 15, 526

Seduction, 15, 725; 19, 401

Sequestration, see SEQUESTRATION.*Settlement of decedents' estates*, see SETTLEMENT OF DECEDENTS' ESTATES.*Sheriffs*, see SHERIFFS AND CONSTABLES.*Societies*, see UNINCORPORATED SOCIETIES.*Specific performance*, see SPECIFIC PERFORMANCE.*States*, see STATES.*Stock and stockholders*, see STOCK AND STOCKHOLDERS.*Street railways*, see STREET RAILWAYS.*Streets and highways*, see STREETS AND HIGHWAYS.**PARTIES TO ACTIONS, *cont'd.****Subscription*, see SUBSCRIPTION.*Substitution of parties*, see SUBSTITUTION OF PARTIES.*Sui juris*, see *infra*, Interest and capacity to sue and be sued.*Summary proceedings*, see SUMMARY PROCEEDINGS.

Summons and process (see SUMMONS AND PROCESS):

Necessity of appearance to constitute one a party, 15, 466

Supplemental pleadings, 21, 68

New parties, 21, 36

Suretyship:

Action to enforce contract of suretyship, see SURETYSHIP.

Equity, 15, 659

Surplusage:

Expression of the use, 15, 490

Telegraphs and telephones, see TELEGRAPHS AND TELEPHONES.

Third person:

Persons with whom or in whose name contract is made, 15, 724

Third person for whose benefit contract was made (see *infra*, Actions *ex contractu*):

Codes and practice acts, 15, 717

Title:

Holder of legal title in equity, 15, 593

Issue as to title, 15, 809

Persons claiming under inconsistent titles in equity, 15, 605

Tolls, 21, 746, 747

Torts, see *infra*, Actions *ex delicto*.*Trade-marks and trade names*, see TRADE-MARKS AND TRADE NAMES.*Trespass*, see TRESPASS.

Trespassing, vicious, and diseased animals, 21, 888

Trespass on the case, 21, 905

Trespass to try title, see TRESPASS TO TRY TITLE.*Trover and conversion*, see TROVER AND CONVERSION.Trusts and trustees (see *infra*, Representation), 15, 480, 724

Doctrine of representation, 15, 627

Doctrine of representation in equity, 15, 639

Equity, 15, 662

Legal interest of plaintiff at common law, 15, 485

Unincorporated societies, see UNINCORPORATED SOCIETIES.*United States courts*, see UNITED STATES COURTS.

Unknown parties, 15, 479, 627

Equity, 15, 609

PARTIES TO ACTIONS, *cont'd.*

Use plaintiffs, see infra, Nominal and use plaintiffs.

Usury, see USURY.

Vendor and purchaser, see VENDOR AND PURCHASER.

Vendor's liens, see VENDOR'S LIENS.

Waiving objections, 15, 475

Warranties, 15, 503

Waste, 15, 727

Trespass on the case in nature of waste, 22, 1104

Writ of waste, 22, 1095

Waters and watercourses:

Actions and suits for flowage, 22, 1146

Obstruction of navigation, 22, 1175

Suits in equity, 22, 1156

Suits in equity for diversion or detention, 22, 1166

Ways, 22, 1181

What law governs, 15, 483

Wills:

Bills in equity and statutory actions to set aside wills, 22, 1220

Bills in equity to establish wills, 22, 1217

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.

Suits in equity for construction of wills, 22, 1199, 1201

Making new parties, 22, 1202

Necessity to present parties in proper capacity, 22, 1202

Winding up corporations, see WINDING UP CORPORATIONS.

Witnesses:

Equity, 15, 601

Work and labor, 22, 1362

PARTITION, 15, 769

Abatement, 15, 792

Common-law partition, 15, 772

Accounting, 15, 802

Amendments:

Bill or complaint, 15, 806

Report of commissioners, 15, 818

Answers, 15, 808

In general, 15, 808

Issue as to title, 15, 809

Probate courts, 15, 827

Statutory provisions, 15, 809

Appeals, 2, 45, 144

Assignments:

Assignees as parties plaintiff, 15, 786

Assignments for benefit of creditors, 2, 875

Bid, see infra, Sale.

Bill or complaint, 15, 799

Accounting, 15, 802

Amendments, 15, 806

PARTITION, *cont'd.*

Bill or complaint, *cont'd.*

Appointment of receiver, 15, 804

Cancellation and reformation, 15, 804

Contest of will, 15, 804

Contribution for repairs, 15, 803

Cross-bill, 15, 807

Demurrer, 15, 807

Designation of parties, 15, 801

Foreclosure, 15, 803

In general, 15, 799

Injunction against waste, 15, 804

Interest of defendants, 15, 801

Interest of plaintiff, 15, 800

Irrelevant matters, 15, 803

Joinder, 15, 802

Joinder of parties, 15, 804

Multifariousness, 15, 802

Prayer, 15, 805

Quieting title, 15, 803

Signature, 15, 800

Specific performance, 15, 803

Statutory requirements, 15, 805

Verification, 15, 800

Cancellation of instruments, 15, 804

Classified as to source, 15, 772

Commissioners (*see infra*, References):

Probate courts, 15, 827

Common-law partition, 15, 772

Abatement, 15, 772

In general, 15, 772

Judgment, 15, 773

Original writ, 15, 772

Parties, 15, 772

Pleadings, 15, 773

Process, 15, 773

Complaint, see infra, Bill or complaint.

Confirmation:

Sale, 15, 823

Confirmation of report of commissioners, 15, 817

Contribution for repairs, 15, 803

Creditors:

Parties defendant, 15, 796

Cross-bills, 5, 636; 15, 807

Curtesy:

Tenants by curtesy as parties plaintiff, 15, 790

Death, see infra, Abatement.

Decree, see infra, Judgments.

Deeds, 15, 823

Default:

Effect of default, 6, 113

Definition, 15, 771

Demurrers, 15, 807

Devisees, 15, 793

Defendants, 15, 793

Dower:

Dowress as party defendant, 15, 797

PARTITION, *cont'd.***Dower, *cont'd.***

Tenants by dower as parties plaintiff, 15, 790

Equitable and statutory partition, 15, 774

Answer, 15, 808

Bill or complaint, see *infra*, Bill or complaint.

Commissioners of referees, see *infra*, References.

Conveyances to perfect title, 15, 819

Cross-bill, 15, 807

Decree or judgment, see *infra*, Judgments.

Demurrer, 15, 807

Jurisdiction, see *infra*, Jurisdiction.

Parties, see *infra*, Parties to actions.

Process, see *infra*, Process.

Report of commissioners, 15, 817

Sale, see *infra*, Sale.

Executors and administrators:

Legal representatives as parties plaintiff, 15, 788

Parties defendant, 15, 794

Final judgments and decrees, 15, 811

Foreclosure of mortgages, 15, 803

Grantors, 15, 796

Guardian *ad litem*, 15, 783

Heirs:

Defendants, 15, 793

Heirs as parties plaintiff, 15, 788

Homesteads and exemptions:

Partition of homestead property, 10, 90

Husband and wife:

Parties defendant, 15, 794

Infants, 10, 775; 15, 783

Parties defendant, 15, 795

Sale of real estate, 10, 769

Service of process, 15, 798

Injunctions, 15, 810

Insane persons:

Parties defendant, 15, 795

Interest, see *infra*, Bill or complaint.

Issues to the jury, 11, 635

Joinder of actions, 15, 802

Joinder of counts and causes, 15, 802

Code pleading, 1, 202

Joinder of parties, 15, 804

Parties plaintiff, 15, 791

Joint tenants and tenants in common, 15, 789

Parties plaintiff in equitable and statutory partition, 15, 783

Judgments:

Common-law partition, 15, 773

PARTITION, *cont'd.***Judgments, *cont'd.***

Judgment or decree in equitable and statutory partition, 15, 809

Control of court over interlocutory order, 15, 810

Decree of sale, 15, 813

Discretion of court as to decree of sale, 15, 814

Final judgment, 15, 811

Injunction, 15, 810

Interlocutory, 15, 809

Owely of partition, 15, 812

Partition of part and sale of part, 15, 814

Receivers, 15, 811

Jurisdiction, 15, 774

Concurrent jurisdiction, 15, 774

Discretion, 15, 776

Equitable titles, 15, 778

General statutory provisions, 15, 776

Infants, 15, 783

Law and equity contrasted, 15, 774

Nature, 15, 774

Origin, 15, 774

Person, 15, 781

Retention of action where title is disputed, 15, 779

Statutory provisions, 15, 775, 776

Statutory provisions as to trial of title, 15, 780

Subject-matter, 15, 781

Surrogates, 15, 824

In general, 15, 824

Jurisdiction over infant, 15, 825

Questions of title, 15, 825

Territorial jurisdiction, 15, 825

Trial of title in general, 15, 777

United States courts, 15, 776

Landlord and tenant (see *infra*, Leases):

Tenants for life and years as parties plaintiff, 15, 789

Leases:

Pending lease no objection to partition of fee, 15, 785

Tenants for life and for years as parties plaintiff, 15, 789

Life tenants:

Defendants, 15, 793

Is pendens, 15, 797

Mortgages:

Mortgagees as parties defendant, 15, 795

Mortgagees as parties plaintiff, 15, 787

Multifariousness, 15, 802

Owely of partition, 15, 812

PARTITION, *cont'd.*

- Parties to actions, 15, 624
- Common-law partition, 15, 772
- Defendants in equitable and statutory partition, 15, 792
 - Adverse claimants, 15, 796
 - Cestui que trust*, 15, 793
 - Creditors, 15, 796
 - Death, 15, 792
 - Devisees, 15, 793
 - Dowress, 15, 797
 - Executors and administrators, 15, 794
 - Grantors, 15, 796
 - Heirs, 15, 793
 - Husband and wife, 15, 794
 - Improper defendants, 15, 796
 - Infants, 15, 795
 - Lienors, 15, 795
 - Life tenants, 15, 793
 - Lunatics, 15, 795
 - Mortgagees, 15, 795
 - Necessary defendants, 15, 792
 - Proper defendants, 15, 796
 - Purchasers *pendente lite*, 15, 796
 - Remaindermen, 15, 793
 - Right to intervene, 15, 792
 - Strangers, 15, 797
 - Unknown persons, 15, 795
- Plaintiff in equitable and statutory partition, 15, 783
 - Assignees, 15, 786
 - Cestui que trust*, 15, 787
 - Equitable owners, 15, 787
 - Heirs, 15, 788
 - In general, 15, 783
 - Joinder, 15, 791
 - Joint tenants and tenants in common, 15, 783
 - Lease for years, 15, 785
 - Legal representatives, 15, 788
 - Mortgagees, 15, 787
 - Partners, 15, 790
 - Pending lease for years, 15, 785
 - Possession, 15, 784
 - Remaindermen, 15, 791
 - Reversioners, 15, 791
 - Right of possession, 15, 784
 - Rule as to present possession, 15, 784
 - Statutory provisions, 15, 786
 - Tenants by curtesy and dower, 15, 790
 - Tenants for life and for years, 15, 789
 - Trustees, 15, 787

Partnership:

- Partners as parties plaintiff, 15, 790

PARTITION, *cont'd.*

- Petition (see *infra*, Bill or complaint), 15, 826
- Possession:
 - Parties plaintiff in equitable and statutory partition, 15, 784
- Prayer for relief, 15, 805
- Probate courts*, see *infra*, Surrogate.
- Process, 15, 773
 - Common law, 15, 797
 - Equitable and statutory partition, 15, 797
 - Contents, 15, 799
 - Infants, 15, 798
 - In general, 15, 797
 - Lis pendens*, 15, 797
 - Nonresidents, 15, 798
 - Unknown owners, 15, 798
- Publication, 17, 43
- Purchasers *pendente lite*, 15, 796
- Quieting title, 15, 803
- Receivers, 15, 811
- References, 15, 815
 - Appointment of commissioners or referees, 15, 815
 - Confirmation, correction, or rejection of report, 15, 817
 - Notice of meetings, 15, 816
 - Oath, 15, 816
 - Probate courts, 15, 827
 - Proceedings, 15, 816
 - Report of commissioners, 15, 817
 - Whether all commissioners must participate in proceedings, 15, 817
- Reformation, 15, 804
- Remaindermen, 15, 791, 793
- Removal of causes, 18, 222, 224
- Report of commissioners, 15, 817
 - Amendments, 15, 818
 - Confirmation, 15, 817
 - Contents, 15, 817
 - Effect of confirmation, 15, 819
 - Grounds for rejecting report, 15, 818
 - Signature, 15, 817
- Resale, 15, 824
- Reversioners, 15, 791
- Review, 18, 994, 1002
- Sale, 15, 819
 - Bidding, 15, 821
 - Compelling purchaser to complete bid, 15, 822
 - Conditions, 15, 820
 - Conveyances to perfect title, 15, 819
- Decree of sale, 15, 813
 - Authority of courts of equity, 15, 813
 - Discretion of court, 15, 814
 - Partition of part and sale of part, 15, 814
 - Statutory provisions, 15, 813

PARTITION, *cont'd.*

Sale, *cont'd.*

- Deed, 15, 823
- Effect of confirmation, 15, 823
- Inadequacy of price, 15, 822
- Nature, 15, 819
- Notice of sale, 15, 820
- Objections, 15, 821
- Order of sale, 15, 820
- Payment for land sold, 15, 823
- Resale, 15, 824
- Setting aside, 15, 821
- Terms, 15, 820
- Whether title must be marketable to compel purchaser to complete bid, 15, 822
- Who may conduct, 15, 821
- Who may purchase, 15, 821
- Service of process, 15, 798
- Signature:
 - Bill, 15, 800
 - Report of commissioners, 15, 817
- Specific performance, 15, 803
- Statutory partition*, see *infra*, Equitable and statutory partition.
- Summons and process, 15, 773
- Surrogate:
 - Answer, 15, 827
 - Commissioners, 15, 827
 - Decree, 15, 827
 - Jurisdiction, 15, 824
 - Notice, 15, 826
 - Parties, 15, 826
 - Petition, 15, 826
 - Pleadings, 15, 826
- Survival of actions, 21, 337
- Title, 15, 777
 - Conveyances to perfect title, 15, 819
 - Equitable title, 15, 778
 - Jurisdiction of surrogates, 15, 825
 - Jurisdiction when title is in dispute, 15, 777
 - Limitations of the general rule, 15, 778
 - Retention of action, 15, 779
 - Statutory provisions, 15, 780
 - Whether title must be marketable, 15, 822
- Trusts and trustees:
 - Cestui que trust* as party defendant, 15, 793
 - Trustees and equitable owners as parties plaintiff, 15, 787
- United States courts, 15, 776
- Unknown owners, 15, 795, 798
- Unknown persons, 15, 795
- Verification*, see *VERIFICATION*.

PARTNERSHIP, 15, 820

See LIMITED PARTNERSHIP; SOCIETIES AND CLUBS; UNINCORPORATED ASSOCIATIONS.

PARTNERSHIP, *cont'd.*

Abatement in pleading:

- Nonjoinder, 1, 16
- Accounting (see *infra*, Accounting, dissolution, and settlement), 1, 85
- Accounting, dissolution, and settlement in equity*, see *infra*, Equity.
- Actions between partners or their representatives, 15, 1012
- Account at common law, 15, 1028
- Account at common law concurrent remedy by bill in equity, 15, 1029
- Assumpsit concurrent remedy, 15, 1033
- Final balance after termination of partnership, 15, 1032
- Firms with a common member, 15, 1025
- Single unadjusted item of accounts, 15, 1031
- Sole remedy, 15, 1009
- Statutory rule, 15, 1033
- Action under code equivalent to bill for accounting, 15, 1014
- Common-law action of account, 1, 85
- Final settlement*, see *infra*, Final settlement.
- Firms with a common member, 15, 1025
- Generally impracticable at law, 15, 1016
- Necessity in equity under the code, 15, 1012
- Parties to bill in equity, 1, 104
- Accounting, dissolution, and settlement (see *infra*, Accounting; Process and appearance; Service of process), 15, 1054
- Accounting useless, difficult, or impossible, 15, 1059
- Actions at law between partners and third persons, 15, 878
- Actions between partners or their representatives, 15, 1008
- Actions between partners or their representatives for breach of contract after dissolution, 15, 1049
- Actions between partners or their representatives for wrongful dissolution, 15, 1045
- Allowances, 15, 1110
- Another suit pending, 15, 1059
- Appellate review, 15, 1112
- Attorneys fees, 15, 1112

PARTNERSHIP, *cont'd.*Accounting, dissolution, and settlement, *cont'd.*

Averment of fraud or mistake, 15, 1065

Bill or complaint, 15, 1082

Amendments, 15, 1092

Averments as to partnership, 15, 1083

Averments as to state of account, 15, 1083

Averments excusing laches, 15, 1085

Certainty, 15, 1085

Consistency of prayer for relief, 15, 1089

Essential averments, 15, 1082

Indebtedness of plaintiff, 15, 1084

In general, 15, 1082

Miscellaneous averments, 15, 1086

Misjoinder, 15, 1087

Multifariousness, 15, 1087

Names of partners, 15, 1083

Necessity of praying dissolution, 15, 1090

Offer to do equity, 15, 1085

Prayer for relief in general, 15, 1088

Rights and interests of partners, 15, 1083

Specific allegations, 15, 1084

Summary statement of essential averments, 15, 1082

Supplemental bill, 15, 1093

Burden of furnishing sufficient evidence, 15, 1061

Conformity to agreement between partners, 15, 1061

Converting action at law into suit for accounting, 15, 1059

Costs, 15, 1110

Counsel fees, 15, 1112

Decree, 15, 1104

Completeness, 15, 1105

Decree against administrator, 15, 1110

Definiteness, 15, 1105

Division in kind, 15, 1107

General requisites, 15, 1104

Joint and several decrees against partners, 15, 1108

Money judgment in favor of one partner against another, 15, 1109

Necessity of converting assets into cash, 15, 1109

Payment of firm debts, 15, 1105

PARTNERSHIP, *cont'd.*Accounting, dissolution, and settlement, *cont'd.*Decree, *cont'd.*

Personal judgments for balance, 15, 1108

Retention of property by one partner at valuation, 15, 1107

Sale of assets, 15, 1106

Demand, 15, 1058

Directing and taking the account, 15, 1099

In general, 15, 1099

References, 15, 1100

Dismissal where balance cannot be stated, 15, 1060

Equity (see *infra*, Equity), 15, 1054

Extra allowances, 15, 1111

Interference in matters of internal regulation, 15, 1066

Jurisdiction, 15, 1054

Adequate remedy at law, 15, 1055

Admiralty courts, 15, 1057

Doctrine that accounting must be in equity, 15, 1056

Executory agreement for partnership, 15, 1055

In general, 15, 1054

Jurisdictional amount, 15, 1057

Limited partnerships in Pennsylvania, 15, 1057

Principles governing exercise of jurisdiction, 15, 1059

Accounting useless, difficult or impossible, 15, 1059

Averment of fraud or mistake, 15, 1065

Burden of furnishing sufficient evidence, 15, 1061

Conformity to agreements between partners, 15, 1061

Dismissal where balance cannot be stated, 15, 1060

Interference in matters of internal regulation, 15, 1066

Limitation of account to partnership transactions, 15, 1062

Mere difficulty in accounting, 15, 1060

Necessity of supporting answer, 15, 1065

PARTNERSHIP, *cont'd.*Accounting, dissolution, and settlement, *cont'd.*Jurisdiction, *cont'd.*Principles governing exercise of jurisdiction, *cont'd.*

Partial settlements, 15, 1066

Plea of account stated, 15, 1064

Previous account stated, 15, 1063

Resolving doubts against partner in default, 15, 1061

Set-off of individual indebtedness, 15, 1063

Probate courts, 15, 1056

Raising and waiving objections, 15, 1058

Limitation of account to partnership transactions, 15, 1062

Mere difficulty in accounting, 15, 1060

Necessity of supporting answer, 15, 1065

Notice, 15, 1058

Partial settlements, 15, 1066

Parties, 15, 878, 1067

Any partner, 15, 1067

Assignee, 15, 1069

Creditors, 15, 1073

Creditors' bill, 15, 1074

Distributees, 15, 1071

Dormant partner, 15, 1069

Employee sharing profits, 15, 1074

Generally, 15, 1067

Heirs, 15, 1071

Legatees, 15, 1071

Mortgagee, 15, 1069

Necessary and proper parties, 15, 1074

All partners, 15, 1074

Application of ordinary rules, 15, 1077

Assignee, 15, 1078

Creditors, 15, 1078

Devisees, 15, 1077

Heirs, 15, 1077

Interest fraudulently procured, 15, 1079

Miscellaneous cases, 15, 1079

Misjoinder, 15, 1081

Nonjoinder, 15, 1081

Partners very numerous, 15, 1076

Partner who has sold or assigned his interest, 15, 1075

PARTNERSHIP, *cont'd.*Accounting, dissolution, and settlement, *cont'd.*Parties, *cont'd.*Necessary and proper parties, *cont'd.*

Personal representatives, 15, 1077

Purchaser, 15, 1078

Retiring partner, 15, 1075

Subpartnerships, 15, 1079

Nominal partner, 15, 1069

Partner who has transferred interest in partnership, 15, 1068

Personal representatives of deceased partner, 15, 1070

Purchaser, 15, 1069

Raising, waiving, and curing objections, 15, 1080

Bringing in new parties, 15, 1081

In general, 15, 1080

Nonjoinder and misjoinder, 15, 1081

Remedy at law, 15, 1070

Suit for accounting and dissolution, 15, 1067

Surviving partner, 15, 1069

Who may maintain, 15, 1067

Widow, 15, 1071

Plea, answer, or demurrer, 15, 1093

Cross-bill or counterclaim for affirmative relief, 15, 1095

Examples, 15, 1094

In general, 15, 1093

Requisites, 15, 1094

Plea of account stated, 15, 1064

Plea of dissolution, see *infra*, Plea or answer.

Previous account stated, 15, 1063

Principles governing exercise of jurisdiction, 15, 1059

References, 15, 1100

Exceptions to report, 15, 1103

Failure to make report, 15, 1101

In general, 15, 1100

Instructions to referee, 15, 1101

Notice of hearings, 15, 1101

Principal matters to be shown in report, 15, 1103

Proceedings before master, 15, 1101

Report, 15, 1102

Sufficiency of master's report, 15, 1102

Taking testimony, 15, 1102

PARTNERSHIP, *cont'd.*

Accounting, dissolution, and settlement, *cont'd.*

Resolving doubts against partner in default, 15, 1061

Rights and liabilities of partners as to third persons, 15, 878

Right to dismiss bill, 15, 1096

Set-off of individual indebtedness, 15, 1063

Time of bringing suit, 15, 1058

Trial of issues, 15, 1097

Directing issue to jury, 15, 1097

Dissolution before accounting, 15, 1099

Preliminary determination of matters in bar, 15, 1098

Production and inspection of books and papers, 15, 1098

Right to jury trial, 15, 1097

Venue, 15, 1058

Actions, see infra, Attachment; Garnishment.

Actions at law between partners and third persons:

Appellate review, see infra, Appeals.

Attachment, see infra, Attachment.

Costs, 15, 971

Declaration, petition, or complaint, see infra, Declaration, petition, or complaint.

Dismissal, discontinuance, and nonsuit, 15, 949

Execution and enforcement of judgments, see infra, Judgments.

Findings, 15, 951

Garnishment, see infra, Garnishment.

Instructions, 15, 944

Judgment, see infra, Judgments.

Parties, see infra, Parties to actions.

Plea or answer, see infra, Plea or answer.

Process and appearance, see infra, Process and appearance.

Province of court and jury, see infra, Questions of law and fact.

Reply, see infra, Reply.

Set-off and counterclaim, 15, 943

Verdict, 15, 951

Actions between partners or their representatives, 15, 1005

Accounting, see infra, Accounting, dissolution, and settlement.

Actions at law, 15, 1005

PARTNERSHIP, *cont'd.*

Actions between partners or their representatives, cont'd.

Actions on individual transactions, 15, 1034

After final settlement, 15, 1037

Bill in equity to correct settlement, 15, 1042

Demand before suit, 15, 1043

Equity jurisdiction, 15, 1038

Errors in settlement, 15, 1041

Finality of settlement, 15, 1041

Fraud, 15, 1041

In general, 15, 1037

Mistake, 15, 1041

Necessity of express promise to pay balance, 15, 1039

Parties, 15, 1042

Pleadings, 15, 1043

Requisites of settlement, 15, 1039

Sufficiency of settlement to support action at law, 15, 1039

Articles of association, 15, 1046

Breach of contract of dissolution, 15, 1049

Compensation for services, 15, 1048

Contract, 15, 1043

Contract entered into before partnership or after dissolution, 15, 1036

Contract for launching partnership, 15, 1045

Express contracts, 15, 1044

Implied contracts, 15, 1044

Independent transactions, 15, 1036

Individual contracts, 15, 1043

Money advanced for launching partnership, 15, 1046

Negotiable instruments, 15, 1047

Partial settlement, 15, 1049

Partnership accounts not involved, 15, 1034

Partnership for a single completed transaction, 15, 1030

Promise to account, 15, 1049

Remedy at law exclusive, 15, 1045

Separate and distinct obligation, 15, 1035

PARTNERSHIP, *cont'd.*

Actions between partners or their representatives, *cont'd.*

Actions on individual transactions, *cont'd.*

Separation of particular transactions, 15, 1048

Torts of copartner, 15, 1050

Wrongful dissolution, 15, 1045

Dissolution, see *infra*, Accounting, dissolution, and settlement.

Equity, see *infra*, Equity.

Provisional remedies between partners, 15, 1113

Rule that no action lies on firm transaction, 15, 1005

Account at common law concurrent remedy by bill in equity, 15, 1029

Accounting, 15, 1009, 1012

Accounting, action under code equivalent to, 15, 1014

Accounting impracticable at law, 15, 1016

Action by indorsee, 15, 1019

Action not maintainable against partner, 15, 1018

Action under code equivalent to bill for accounting, 15, 1014

Advances to firm, 15, 1017

Applications of the rule, 15, 1017

Assignments, 15, 1020

Bill for accounting, 15, 1009

California, 15, 1033

Code procedure, 15, 1012, 1014

Connecticut, 15, 1033

Contribution, 15, 1020

Death of partner, 15, 1009

Dissolution, 15, 1008

Equity, 15, 1009, 1012

Equity, whether partner cannot directly enforce firm claim, 15, 1013

Final balance after termination of partnership, 15, 1032

Firms with a common member, 15, 1023

Accounting unnecessary, 15, 1025

Actions by assignee, 15, 1028

Contrary view, 15, 1026

Garnishment, 15, 1024

Individual contract, 15, 1028

Qualifications of the rule, 15, 1028

PARTNERSHIP, *cont'd.*

Actions between partners or their representatives, *cont'd.*

Rule that no action lies on firm transaction, *cont'd.*

Firms with a common member, *cont'd.*

Reason for rule, 15, 1024

Remedy in equity under the codes, 15, 1024

Rule at common law, 15, 1023

Rule in Pennsylvania, 15, 1027

Florida, 15, 1033

Georgia, 15, 1033

Goods sold to firm, 15, 1017

Indiana, 15, 1033

Kansas, 15, 1033

Loan to firm, 15, 1017

Louisiana, 15, 1033

Maine, 15, 1033

Massachusetts, 15, 1033

Money had and received to use of firm, 15, 1018

Nature of action, 15, 1030

Negotiable instruments, 15, 1019

New Hampshire, 15, 1033

New York, 15, 1033

Partners must be joined as parties, 15, 1011

Raising and waiving objections, 15, 1010

Reason for rule, 15, 1011, 1015

Relationship of debtor and creditor, 15, 1016

Rent, 15, 1018

Replevin, 15, 1020

Rhode Island, 15, 1033

Set-off, recoupment, and counterclaim, 15, 1021

Demand arising out of partnership transaction, 15, 1021

Demands enforceable in direct action, 15, 1022

Equitable defenses, 15, 1022

Share of profits or proceeds, 15, 1018

Single unadjusted item of account, 15, 1031

Sole remedy, 15, 1009

Statutes making obligations joint and several or authorizing suits in firm name, 15, 1011

Statutory exceptions, 15, 1033

Technical reason usually assigned, 15, 1011

Settlement, see *infra*, Accounting, dissolution, and settlement.

PARTNERSHIP, *cont'd.*

Actions by and against limited partnerships, see LIMITED PARTNERSHIPS.

Actions in firm name, 15, 839

In absence of statute, 15, 839

In general rule, 15, 839

Judgment, 15, 841

Mode of raising objection, 15, 840

Waiver of objection, 15, 841

Where firm name contains individual names, 15, 841

Under statutory authority, 15, 842

Amendment changing form of action, 15, 850

Amendment of judgment by confession, 15, 851

Attachment, 15, 845

Averments to bring cause within statute, 15, 848

Effect of statutes, 15, 842

Execution, 15, 852

Foreign or nonresident partnerships, 15, 844

Garnishment, 15, 845

General operation and effect of statutes, 15, 842

Illegal partnerships, 15, 844

Individual trading in firm name, 15, 844

Judgment, 15, 851

Judgment not subject to collateral attack, 15, 851

Jurisdiction, 15, 846

Names of partners need not be pleaded, 15, 849

Name used in executing instrument sued on, 15, 846

Pleadings, 15, 848

Proceeding one *in rem*, 15, 845

Proceedings to subject individual property, 15, 852

Process, 15, 847

Residence of partnership, 15, 846

Scire facias, 15, 852

Security for costs as condition precedent, 15, 845

Service of process, 15, 847

Statement of rule, 15, 842

Statute permissive merely, 15, 844

Strict or liberal construction, 15, 843

Venue, 15, 846

Waiver of objections, 15, 849

Whether action is against firm or against partners, 15, 850

PARTNERSHIP, *cont'd.*

Actions to charge estate of deceased partner, 15, 1000

Affidavit of insolvency, 15, 1004

Allegations bringing case within exceptions of statute, 15, 1004

Averment of exhaustion of firm assets, 15, 1003

Averment of exhaustion of legal remedy, 15, 1002

Bill, 15, 1002

Complaint, 15, 1002

Decree, 15, 1004

In general, 15, 1000

Insolvency of surviving partners, 15, 1002

Insolvency of survivor, 15, 1003

Insufficiency of legal remedy, 15, 1002

Joinder of assignee for benefit of creditors, 15, 1002

Joinder of surviving partners, 15, 1001

Jurisdiction, 15, 1000

Parties, 15, 1000

Additional allowances of costs, 1, 221

Admiralty:

Accounting, dissolution, and settlement, 15, 1057

Admissions:

Admission of one partner proceeded against alone in garnishment proceedings, 15, 986

Execution of instruments, 15, 938

Affidavits (*see infra*, Verification):

Affidavit of insolvency in actions to charge estate of deceased partner, 15, 1004

Agent's signature, 1, 316

Attachment, see infra, Attachment.

Amendments, 15, 929

Affidavit in attachment, 15, 976

Amendment changing form of action, 15, 850

Bill in equity, 15, 997

Bill or complaint for accounting, dissolution, and settlement, 15, 1093

Bond in attachment, 15, 980

Judgments, 15, 971

Parties, 15, 898

Amount in controversy:

Accounting, dissolution, and settlement, 15, 1057

Answers (*see infra*, Plea or answer):

Garnishment of partnerships, see GARNISHMENT OF PARTNERSHIPS.

Judgment on admissions in answer, 15, 968

Misjoinder, 15, 897

Nonjoinder, 15, 896

PARTNERSHIP, *cont'd.*

- Answers in code pleading:
 - Existence of a partnership, 1, 829
- Answers in equity pleadings, 15, 997
- Appeals, 15, 973
 - Description of partnership on appeal 15, 974
 - In general, 15, 973
 - Notice of appeal, 15, 973
 - Prosecution of appeal by surviving partner, 15, 974
 - Reversal as to part, 15, 974
- Appearances (see *infra*, Process and appearance), 2, 667
 - Acknowledging service, 2, 668
 - After dissolution, 2, 667
 - Before dissolution, 2, 667
 - By whom appearance can be made, 2, 667
 - Employing counsel, 2, 668
 - Partnership treated as entity, 2, 668
- Assignments:
 - Assignment to one partner of partnership claim, 15, 858
 - Rule that no action lies between partners for firm transaction, 15, 1020
- Assumpsit (see *infra*, Actions between partners or their representatives):
 - Account stated, 2, 1025
 - Actions between partners or their representatives, 15, 1033
- Attachment, 3, 42; 15, 974
- Atsconding partner, 15, 977
- Affidavit, 15, 974
 - Against partners, 15, 976
 - Amendment, 15, 976
 - Averment of absconding by one partner, 15, 977
 - Averment of concealing, 15, 977
 - Averment of fraudulent intent, 15, 978
 - Averment of residence of plaintiffs, 15, 976
 - By whom made, 15, 978
 - Clerical errors, 15, 978
 - Requisites generally, 15, 974
 - Setting out individual names of partners, 15, 975, 976
 - Variance between affidavit and petition as to names of partners, 15, 978
- Affidavit in firm name, 3, 12
- Averment of names of partners, 15, 980
- Bond, 3, 34; 15, 978
 - Action on bond, 15, 980
 - Amendment by insertion of individual names, 15, 980

PARTNERSHIP, *cont'd.*

- Attachment, *cont'd.*
- Bond, *cont'd.*
 - Bond made payable in partnership name, 15, 980
 - Execution by one partner in name of firm, 15, 978
 - Joint action on bond, 15, 980
 - Recital that obligees compose firm, 15, 980
 - Signature by one partner for himself and as agent of firm, 15, 979
 - Signature in firm name, 15, 979
 - To whom payable, 15, 980
 - Where partnership is obligee, 15, 980
 - Where partnership is obligor, 15, 978
 - Who may maintain action on bond, 15, 980
- Dissolution, 3, 66
 - In general, 15, 974
- Requisites of writ in suits against partners, 15, 981
- Requisites of writ in suits by partners, 15, 980
- Suits in firm name, 15, 845
- Writ, 15, 980
- Bankruptcy, 15, 898
 - Application in partnership cases, 22, 341
 - Parties, 15, 889
 - Petition for adjudication of partnership or its members, 22, 346
- Bill in equity (see *infra*, Accounting; Actions to charge estate of deceased partner; Suits in equity between partners and third persons):
 - Accounting, see *infra*, Accounting, dissolution, and settlement.
 - Dissolution, see *infra*, Accounting, dissolution, and settlement.
 - Settlement, see *infra*, Accounting, dissolution, and settlement.
- Bill in equity to correct settlement, 15, 1042
- Bonds, see *infra*, Attachment.
- Burglary:
 - Averment of ownership, 3, 761
- Caption, see *infra*, Declaration, petition, or complaint.
- Changes in firm before action brought, see *infra*, Parties to actions.
- Changes in firm *pendente lite*, 15, 891
- Co., 15, 930
- Cognovit, 4, 565
- Common member, see *infra*, Firms with common member.

PARTNERSHIP, *cont'd.*

Complaint, see infra, Declaration, petition, or complaint.

Confession of judgment, 11, 976; 15, 963

Amendment of judgment on suggestion, 15, 963

Confession of judgment by one partner, 15, 964

Confession of judgment by one partner after dissolution of partnership, 15, 967

Confession of judgment by one partner before action brought, 15, 964

Confession of judgment by one partner pending action, 15, 966

Confession of judgment by one partner upon partnership property, 15, 965

Form of judgment against partners, 15, 963

Merger, 15, 967

Setting out names of partners, 15, 963

Construction:

Statute authorizing suits against partnership in firm name, 15, 843

Contracts, see infra, Execution of instruments.

Contracts in name of one partner, 15, 860

Defendants in actions *ex contractu*, 15, 875

Firm in position of undisclosed principal, 15, 863

Negotiable instruments, 15, 862

Personal contracts, 15, 862

Reason for and qualifications of rule, 15, 864

Recovery of money paid, 15, 864

Sealed instruments, 15, 861

When all may but need not sue, 15, 863

When all partners must join, 15, 860

When partners named must sue alone, 15, 861

Where action is upon implied contract, 15, 860

Costs, 15, 971

Accounting, dissolution, and settlement, 15, 1110

Division of costs, 15, 1111

Creditors:

Who may maintain action for accounting, dissolution, and settlement, 15, 1074, 1078

Creditors' bills:

Necessity of judgment at law, 5, 482

Index Pl. & Pr. — 50

PARTNERSHIP, *cont'd.*

Creditors' bills, *cont'd.*

Who may maintain action for accounting, dissolution, and settlement, 15, 1074

Death:

Actions between partners or their representatives, 15, 1009

Death of one of several plaintiffs, 5, 818

Parties, 15, 883

Action by or against personal representative, 15, 884

Dormant partner, 15, 886

In absence of statute, 15, 883

Statutory changes, 15, 887

Survivorship, 15, 853

Deceased partner, see infra, Actions to charge estate of deceased partner.

Decedents' estates, see infra, Actions to charge estate of deceased partner.

Declaration, petition, or complaint (*see infra*, Actions to charge estate of deceased partner), 15, 908

Accounting, see infra, Accounting, dissolution, and settlement.

Actions against partners, 15, 920

Alleging partnership where statute makes partnership contracts joint and several, 15, 922

Amendments, 15, 929

Averment of defendants' partnership, 15, 920

Averment showing partnership liability, 15, 924

Averments in action against survivors, 15, 925

Averments in body and caption, 15, 923

Caption, 15, 923

Existence of firm, 15, 920, 926

Firm name, 15, 927

Form of averment of partnership, 15, 923

Joinder of demands, 15, 926

Necessity of averring partnership, 15, 920

Negotiable instruments, 15, 924

Partnership immaterial issue, 15, 921

Pleading and proof, 15, 926

Prayer for judgment, 15, 926

Presumption as to due execution of contract, 15, 925

Stating names of partners, 15, 924

PARTNERSHIP, *cont'd.*Declaration, petition, or complaint, *cont'd.*Actions against partners, *cont'a.*

Sufficiency of averment of partnership, 15, 923

Variance, 15, 926

Variance in description of cause of action, 15, 928

Variance in firm name, 15, 927

Variance where partnership is alleged, 15, 926

Want of authority to execute contract a matter of defense, 15, 925

When firm of partnership necessary, 15, 922

Actions by partners, 15, 908

Action for goods sold, 15, 911

Assignee, 15, 919

Assignee of firm, 15, 916

Averment of filing of statutory certificate, 15, 917

Averment of partnership in caption or body of complaint, 15, 912

Averment of partnership in death of partner, 15, 914

Averment of plaintiff's partnership, 15, 908

Averments in action by assignee of firm, 15, 916

Averments in action by surviving partners, 15, 914

Averring names of partners, 15, 918

Capacity of surviving partners to sue, 15, 914

Caption, 15, 912

Certificate, 15, 917

Existence of partnership admitted, 15, 910

Fictitious names, 15, 917

Form of averment of partnership, 15, 912

Joinder of demands, 15, 919

Joint ownership or joint contract, 15, 911

Names of partners, 15, 914, 918

Necessity of averment of partnership, 15, 908

Partnerships doing business under fictitious names, 15, 917

Pleading, 15, 919

Proof, 15, 919

Proof of partnership, when alleged, 15, 910

Raising, waiving, and curing objections, 15, 914

PARTNERSHIP, *cont'd.*Declaration, petition, or complaint, *cont'd.*Actions by partners, *cont'd.*

Repetition of names in body, 15, 913

Stating names of partners, 15, 914

Statutory certificate, 15, 917

Sufficiency of averment, 15, 912

Surviving partner, 15, 919

Surviving partners, actions by, 15, 914

When allegation as to partnership not necessary, 15, 910

Co., 15, 930

Dissolution, see *infra*, Accounting, dissolution, and settlement.

Individual trading as firm, 15, 929

Limited partnerships, see LIMITED PARTNERSHIPS.*Settlement*, see *infra*, Accounting, dissolution, and settlement.

Variance between affidavit in attachment and petition as to names of partners, 15, 978

Decrees, 15, 998

Accounting, dissolution, and settlement, see *infra*, Accounting, dissolution, and settlement.

Actions to charge estate of deceased partner, 15, 1004

Dissolution, see *infra*, Accounting, dissolution, and settlement.*Defense*, see *infra*, Plea or answer.

Definiteness and certainty in pleading:

Bill or complaint for accounting, dissolution, and settlement, 15, 1085

Definition:

Instructions as to what constitutes a partnership, 15, 945

Demurrers:

Accounting, dissolution, and settlement, 15, 1093

Cross-bill or counterclaim for affirmative relief, 15, 1095

Examples, 15, 1094

In general, 15, 1093

Requisites, 15, 1094

In equity:

Objection to nonjoinder of partners, 15, 994

Misjoinder, 15, 897

Nonjoinder, 15, 896

PARTNERSHIP, *cont'd.*

Discontinuance, see *infra*, Dismissal, discontinuance, and nonsuit.

Dismissal, discontinuance, and nonsuit, 15, 949

Discontinuance as to one partner, 15, 950

Effect of dismissal as to partners not served, 15, 949

Examples, 15, 949, 950

In actions against partners, 15, 949

In actions by partners, 15, 950

Partners not served, 15, 949

Right of member to dismiss suit of firm, 15, 950

Dissolution, see *infra*, Accounting, dissolution, and settlement.

Distributees:

Actions for accounting, dissolution, and settlement, 15, 1071

Dormant partners:

Actions for accounting, dissolution, and settlement, 15, 1069

Joinder, 15, 856

Dormant partner may join, 15, 857

Necessity that dormant partner join, 15, 856

Joinder in suits in equity, 15, 993

Parties defendant, 15, 869

Ejectment, 7, 279

Action by single partner, 7, 279

In general, 7, 279

Surviving partner, 7, 279

Embezzlement:

Partnership as owner, 7, 437

Eminent domain:

Joinder of parties, 7, 501

Equity (see *infra*, Actions to charge estate of deceased partner; Suits in equity between partners and third persons):

Accounting, dissolution, and settlement, see *infra*, Accounting, dissolution, and settlement.

Actions between partners or their representatives, 15, 1012, 1051

Accounting, dissolution, and settlement, 15, 1054

Concurrent jurisdiction of law and equity, 15, 1052

Jurisdiction, 15, 1051

Partner's right to enforce a firm claim against his copartner, 15, 1013

Provisional remedies between partners, 15, 1113

Retaining jurisdiction to do complete equity, 15, 1053

Sole remedy, 15, 1009

Where action at law will not lie, 15, 1053

PARTNERSHIP, *cont'd.*

Equity, *cont'd.*

Dissolution, see *infra*, Accounting, dissolution, and settlement.

Firms with a common member, 15, 1024

Jurisdiction:

Actions between partners or their representatives, 15, 1051

Partner's right to directly enforce a firm claim against his copartner, 15, 1013

Rule that no action lies on firm transaction:

Firms with a common member, 15, 1024

Estate of deceased partner, see *infra*, Actions to charge estate of deceased partner.

Exceptions and objections:

Accounting, dissolution, and settlement, 15, 1058, 1080

In general 15, 1080

Nonjoinder and misjoinder, 15, 1081

Actions arising out of partnership transaction, 15, 1010

Execution of instruments:

Admission of execution, 15, 938

Averment of ratification of execution of instrument, 15, 943

Defenses consistent with execution of instrument, 15, 938

Denial of execution of instrument as putting in issue existence of partnership, 15, 935

Denial of signature, 15, 938

Effect of denial of execution by one authorized, 15, 938

Putting liability in issue, 15, 936

Verified denial of execution of instrument, 15, 936

Executions, 8, 537

Accommodation to the debtor and his copartners, 8, 538

Chattels belonging to partnership, 8, 537

Dissolution of partnership, 8, 542

Execution on judgment against partnership, 8, 423

Nature of the interest seized, 8, 544

Right of officer to take possession, 8, 537

Seizure of specific articles, 8, 543

Executions against the body and arrest in civil cases:

Fraud of copartner, 8, 592

PARTNERSHIP, *cont'd.*

Executors and administrators:

Actions between partners or their representatives, see infra, Actions between partners or their representatives.

Actions for accounting, dissolution, and settlement, 15, 1070, 1071

Death of last survivor, 15, 884

Joinder of representatives of deceased partners in suits in equity, 15, 991

Parties, 15, 884

Existence of partnership:

Bill in equity, 15, 996

Bill or complaint for accounting, dissolution, and settlement, 15, 1083

Declaration, petition, or complaint, 15, 908

Actions against partners, 15, 920

Actions by partners, 15, 908

Instructions, 15, 945

Issues to the jury to try fact of partnership in equity, 15, 998

Putting partnership in issue (see *infra*, Plea or answer), 15, 930

Questions of law and fact, 15, 947, 948

Variance, 15, 926

Extra allowances:

Accounting, dissolution, and settlement, 15, 1111

Fictitious firm name:

Fictitious names, see infra, Names.

Setting up defense of fictitious firm name, 15, 943

Final settlement:

Actions between partners or their representatives after final settlement, 15, 1037

Bill in equity to correct settlement, 15, 1042

Demand before suit, 15, 1043

Equity jurisdiction, 15, 1038

Errors in settlement, 15, 1041

Finality of settlement, 15, 1041

Fraud, 15, 1041

In general, 15, 1037

Mistake, 15, 1041

Necessity of express promise to pay balance, 15, 1039

Parties, 15, 1042

Pleadings, 15, 1043

Requisites of settlement, 15, 1039

Sufficiency of settlement to support action at law, 15, 1039

PARTNERSHIP, *cont'd.*

Findings, 15, 951

Conformity to judgment, 15, 954

Examples, 15, 951, 952

Responsiveness, 15, 951

Supported by evidence, 15, 951

Firm name (see *infra*, Actions in firm name):

Actions between partners or their representatives, 15, 1011

Actions by and against limited partnerships, 15, 1114

Contracts in name of one partner, see infra, Contracts in name of one partner.

Garnishment of partnership, 15, 982

Judgments:

Irregular entry of judgment in firm name, 15, 956

Action by surviving partner, 15, 957

Failure to set out firm name in actions against partners, 15, 955

Judgment by default, 15, 957

Judgments against partners, 15, 957

Judgments in favor of partners, 15, 956

Variance, 15, 927

Firms with common member:

Rule that no action lies on firm transaction, 15, 1023

Accounting unnecessary, 15, 1025

Action by assignee, 15, 1028

Contrary view, 15, 1026

Garnishment, 15, 1024

Individual contract, 15, 1028

Qualifications of rules, 15, 1028

Reasons for rule, 15, 1024

Remedy in equity and under the codes, 15, 1024

Rule at common law, 15, 1023

Rule in Pennsylvania, 15, 1027

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Forgery, 9, 586

Forma pauperis, 16, 686

Fraud:

Accounting, dissolution, and settlement, 15, 1065

Averment of, in action for account, 15, 1065

Final settlement between partners, 15, 1041

PARTNERSHIP, *conf'd.*

Garnishment:

Actions between partners or their representatives:

Firms with a common member, 15, 1024

Service of process, 9, 824

Suits in firm name, 15, 845

Garnishment of partnerships, 15, 981

Answer, 15, 985

Admission of one partner proceeded against alone, 15, 986

By one in behalf of firm, 15, 985

Denial of separate liability by individual garnishee, 15, 986

Denial that partner answering is indebted, 15, 986

Judgments, 15, 986

Parties, 15, 981

Process, 15, 982

Averment of names of partners, 15, 982

Duty to object to defects in return, 15, 985

Form, 15, 982

Place of service, 15, 984

Requisites of return, 15, 985

Return, 15, 985

Service, 15, 983

Service on one notice to all, 15, 983

Service upon whom, 15, 983

Use of firm name, 15, 982

General issue:

Putting partnership in issue, 15, 930

Heirs:

Actions for accounting, dissolution, and settlement, 15, 1071, 1077

Joinder in suits in equity, 15, 993

Illegal partnerships:

Suits in firm name, 15, 844

Individual trading in firm name:

Suits in firm name, 15, 844

Individual transactions, see *infra*, Actions between partners or their representatives.

Infants:

Parties defendant, 15, 873

Plea of infancy, 10, 693

Injunctions:

Injunctions by partnership creditors, 15, 998

Insolvency (see *infra*, Actions to charge estate of deceased partner), 15, 898

Notice to debtor, 11, 26

Parties, 15, 889

Petition for discharge, 11, 14

PARTNERSHIP, *conf'd.*Insolvency, *conf'd.*

Who may apply for discharge, 11, 8

Instructions, 15, 944

As to liability of firm for contract of one member, 15, 947

Effect of representation of partnership, 15, 946

Existence of partnership, 15, 945

In general, 15, 944

Nature of partnership property, 15, 947

Ratification, 15, 947

What constitutes a partnership, 15, 945

Insurance:

Who may sue upon policy, 11, 393

Issue, see *infra*, Accounting, dissolution, and settlement; Plea or answer.

Issues to the jury, 11, 648

Accounting, dissolution, and settlement, 15, 1007

Direction of issue to try fact of partnership, 15, 998

Joinder of actions:

Actions against partners, 15, 926

Actions to charge estate of deceased partner:

Joinder of assignee for benefit of creditors, 14, 1002

Assignees, 15, 919

Surviving partner, 15, 919

Joinder of counts and causes, 15, 919

Actions against partners, 15, 926

Assignees, 15, 919

Surviving partner, 15, 919

Joinder of parties (see *infra*, Parties to actions):

Actions to charge estate of deceased partner, 15, 1001

Joinder of surviving partners, 15, 1001

Bill or complaint for accounting, dissolution, and settlement, 15, 1087

Defendants, 15, 550

Suits in equity between partners and third persons, 15, 988

Actions to foreclose mortgages, 15, 989

Actions to set aside fraudulent conveyance, 15, 989

Application of rule, 15, 988

General rule, 15, 988

Inability to render decree, 15, 990

Joinder of all surviving partners, 15, 993

Joinder of dormant partners, 15, 993

PARTNERSHIP, *cont'd.*

- Joinder of parties, *cont'd.*
 - Suits in equity between partners and third persons, *cont'd.*
 - Joinder of heirs, 15, 993
 - Joinder of representatives of deceased partners, 15, 991
 - Objection to nonjoinder of parties, 15, 994
 - Demurrer, 15, 994
 - Manner of raising, 15, 994
 - Plea, 15, 994
 - Time of raising, 15, 994
- Parties by representation, 15, 991
- Suits by or against less than all the partners, 15, 990
- Suit to recover demand due partnership, 15, 988
- Unwilling plaintiff made defendant, 15, 989
- Where all partners are not joined, 15, 990
- Where joinder of some partners will oust jurisdiction, 15, 990
- Judgments (see *infra*, Appeals), 15, 952
 - Actions on judgments, 15, 971
 - Against partners, 15, 971
 - By partners, 15, 972
 - Description of defendant partners, 15, 972
 - Necessary parties, 15, 972
 - Parties, 15, 971
 - Revivor of judgment, 15, 972
- Admissions in answer, 15, 968
- Against whom rendered, 15, 957
 - Effect of including partners not served, 15, 959
- Partners for personal defense, 15, 959
- Partners liable at common law in actions *ex contractu*, 15, 959
- Partners liable at common law in actions *ex delicto*, 15, 960
- Partners liable under statute, 15, 960
- Partners served, 15, 957
- Separate judgments, 15, 962
- When discontinuance improper, 15, 959
- When judgment against part improper, 15, 961
- Where one partner suffers default, 15, 962
- Amendments, 15, 971
- Confession of judgment*, see *infra*, Confession of judgment.
- Decree in equity, 15, 998

PARTNERSHIP, *cont'd.*

- Judgments, *cont'd.*
 - Enforcement of judgments:
 - Actions on judgments, 15, 971
 - Description of defendant partners in suit on judgment, 15, 972
 - Enforcement as to partner not served, 15, 972
 - Parties to actions on judgments, 15, 971
 - Revivor of judgment against executor or partner served, 15, 972
 - Execution and enforcement of judgments, 15, 971
 - Enforcement of judgments, 15, 971
 - Execution, 15, 971
 - Form of judgment, 15, 955
 - Irregular entry of judgment in firm name, 15, 956
 - Names of parties, 15, 955
 - Garnishment of partnerships, 15, 986
 - Judgment on pleadings, 15, 968
 - Merger*, see *infra*, Merger.
 - Names of parties, 15, 955
 - Error in name of one partner sued, 15, 955
 - Failure to set out firm name, 15, 955
 - Irregular entry of judgment in firm name, 15, 956
 - Setting out Christian names of partners, 15, 955
 - Prayer for judgment, 15, 926
 - Requisites of valid judgment, 15, 952
 - As to parties, 15, 952
 - Conformity to pleadings and proof, 15, 953
 - Conformity to verdict and findings, 15, 954
 - Grounds of liability alleged, 15, 954
 - Measure of relief, 15, 954
 - Must dispose of case as to all parties, 15, 952
- Suits in firm name, 15, 851
 - Action by partnership on judgment, 15, 853
 - Action on judgment, 15, 853
 - Amendment of judgment by confession, 15, 851
 - Bringing parties on record by rule, 15, 853
 - Collateral attack, 15, 851
 - Execution, 15, 852
 - Exhaustion of partnership assets, 15, 853
 - In general, 15, 851

PARTNERSHIP, *cont'd.*Judgments, *cont'd.*Suits in firm name, *cont'd.*

Proceedings to subject individual property, 15, 852

Scire facias, 15, 852

Jurisdiction (see *infra*, Suits in equity between partners and third persons):*Accounting, dissolution, and settlement*, see *infra*, Accounting, dissolution, and settlement; Equity.*Equity*, see *infra*, Suits in equity between partners and third persons.

Residence of partnership, 15, 846

Jury trial:

Accounting, dissolution, and settlement, 15, 1097

Larceny:

Allegation of ownership, 12, 967

Legatees:

Actions for accounting, dissolution, and settlement, 15, 1071, 1077

Libel and slander, 13, 29, 32

Limited partnerships, see LIMITED PARTNERSHIPS.

Merger, 15, 968

Confession of judgment by one partner, 15, 967

Contract and judgment, 15, 968

Effect of judgment as fixing liability of partner not served, 15, 971

General rule, 15, 968

Return of *non est inventus*, 15, 970

Statutes, 15, 969

Where by statute joint obligations are made joint and several, 15, 971

Misjoinder, 15, 896

Demurrer or answer, 15, 897

Discontinuance, 15, 898

Misjoinder of defendants, 15, 897

Misjoinder of plaintiffs, 15, 896

Mistake:

Accounting, dissolution, and settlement, 15, 1065

Averment of, in action for account, 15, 1065

Final settlement between partners, 15, 1041

Multifariousness, 15, 997

Bill or complaint for accounting, dissolution, and settlement, 15, 1087

Names (see *infra*, Actions in firm name; Contracts in name of one partner; Fictitious firm name):**PARTNERSHIP, *cont'd.***Names, *cont'd.*

Affidavit in attachment, 15, 975

Amendment by addition of names, 15, 976

Setting out individual names of partners, 15, 975

Variance, 15, 978

Averment of filing statutory certificate where partnership is doing business under fictitious name, 15, 917

Effect of averring names of partners, 15, 918

Effect of failure to file certificate, 15, 919

When compliance with statute need not be alleged, 15, 918

When necessary, 15, 917

Bill or complaint for accounting, dissolution, and settlement, 15, 1083

Bond in attachment, 15, 978, 979, 980

Declaration and complaint:

Actions against partners, 15, 924

Averment of filing statutory certificate, 15, 917

Caption, 15, 912, 913

Failure to set out names waived, 15, 914

Fictitious names, 15, 917

Repetition of names in body, 15, 913

Stating names of partners, 15, 914

Garnishment of partnerships, 15, 982

Individual trading as firm, 15, 929

Judgments, 15, 955

Error in name of one partner sued, 15, 955

Failure to set out firm name, 15, 955

Setting out Christian names of partners, 15, 955

Process in partnership name, 15, 899

Negotiable instruments (see NEGOTIABLE INSTRUMENTS):

Actions against partners or their representatives, 15, 1019

Actions between partners or their representatives, 15, 1047

Averment showing partnership liability in actions against partners, 15, 924

Contracts in name of one partner, 15, 862

Joinder of parties, 15, 858

PARTNERSHIP, *cont'd.*Negotiable instruments, *cont'd.*

Nominal partners, 15, 858

Parties defendant, 15, 876

Rule that no action lies against partner for firm transaction, 15, 1019

New member:

Admission and retirement of member, 15, 880

Effect of admission of new member, 15, 880

Parties, 15, 880

Nominal partner:

Actions for accounting, dissolution, and settlement, 15, 1069

Nonjoinder, 15, 893

Answer, 15, 896

Demurrer, 15, 896

Of defendants, 15, 894

Of plaintiffs at common law, 15, 893

Of plaintiffs in actions for tort, 15, 894

Plea in abatement, 15, 895

Nonsuit, see *infra*, Dismissal, discontinuance, and nonsuit.

Numerous parties, 15, 860

Oath:

Denial of existence of partnership under oath, 15, 932

Offer of judgment:

Actions against partnerships, 15, 36

Partial settlements:

Bill in equity for complete settlement, 15, 1066

Parties to actions (see *infra*, Accounting, dissolution, and settlement; and see PARTIES TO ACTIONS), 15, 854

Actions between partners on individual transactions, 15, 1042

Actions to charge estate of deceased partner, 15, 1000

Amendments, 15, 898

Bankruptcy, 15, 898

Changes in firm before action brought, 15, 878

Action by personal representative upon death of member, 15, 884

Admission of new member, 15, 880

Bankruptcy, 15, 889

Changes in firm *pendente lite*, 15, 891

Death of member, 15, 883

Dissolution in general, 15, 878

Dormant partner suing upon death of member, 15, 886

PARTNERSHIP, *cont'd.*Parties to actions, *cont'd.*Changes in firm before action brought, *cont'd.*

Incoming partner joined as defendant, 15, 881

Insolvency, 15, 889

Joint and several obligations, 15, 887

Remedy in equity against decedent's estate, 15, 886

Retirement of member, 15, 882

Statutory changes, 15, 887

Substitution of new firm as creditor, 15, 881

Suit against survivors and representatives jointly, 15, 888

Changes in firm *pendente lite*, 15, 981

Contracts in name of partner, 15, 860, 875

Defendants in actions *ex contractu*, 15, 868

Absence of partner from state, 15, 875

Agreement changing firm to individual liabilities, 15, 874

All parties must be joined, 15, 868

Contracts in name of partner, 15, 875

Dormant partners, 15, 869

Exceptions to rule, 15, 869

General rule, 15, 868

Infant partner, 15, 873

Joinder of stranger, 15, 869

Nominal partners, 15, 872

Statutes making contracts joint and several, 15, 873

Statutes requiring registry of members, 15, 875

Defendants in actions *ex delicto*, 15, 877

Disqualification of one partner to sue, 15, 867

Ejectment, 15, 878

Equity (see *infra*, Suits in equity between partners and third persons), 15, 659

Judgments, 15, 952

Actions on judgments, 15, 971

Names of parties, 15, 955

Limited partnerships, see LIMITED PARTNERSHIPS.

Misjoinder, 15, 896

Nonjoinder, 15, 893

Parties defendant in actions *ex delicto*, 15, 877

PARTNERSHIP, *cont'd.*Parties to actions, *cont'd.*Plaintiffs in actions *ex contractu*,

15, 854, 858

All partners must join, 15, 854

Assignment to one partner, 15, 858

Contracts in name of one partner, 15, 860

Firm in position of undisclosed principal, 15, 863

Negotiable instruments, 15, 862

Personal contracts, 15, 862

Reason for and qualifications of rule, 15, 864

Recovery of money paid, 15, 864

Sealed instruments, 15, 861

When all may but need not sue, 15, 863

When all partners must join, 15, 860

When partners named must sue alone, 15, 861

Where action is upon an implied contract, 15, 860

Dormant partners, 15, 856

Dormant partners may join, 15, 857

Exceptions to rule, 15, 856

General rule, 15, 854

Infant partner, 15, 859

Joinder of stranger, 15, 856

Joinder of unwilling partner as defendant, 15, 856

Negotiable instruments, 15, 858

Nominal partners, 15, 858

Numerous parties, 15, 860

Prejudice to defendant's right of set-off, 15, 857

Severance of demand, 15, 859

Whether one partner may maintain action, 15, 854

Plaintiffs in actions *ex delicto*, 15, 864

Plaintiffs in ejectment, 15, 867

Plaintiffs in replevin, 15, 867

Raising, waiving, and curing objections, 15, 893

Replevin, 15, 878

Suits in equity between partners and third persons, *see infra*,

Suits in equity between partners and third persons.

PARTNERSHIP, *cont'd.*

Partition:

Partners as parties plaintiff, 15, 790

Petition (*see infra*, Declaration, petition, or complaint):

Verification, 22, 347

Plea in abatement:

Existence of partnership, 15, 934

Nonjoinder, 15, 894, 895

Objection to nonjoinder of partners, 15, 994

Plea or answer, 15, 930

Accounting, dissolution, and settlement, 15, 1093

Cross-bill or counterclaim for affirmative relief, 15, 195

Examples, 15, 1094

In general, 15, 1093

Requisites, 15, 1094

Denying knowledge or information, 15, 942

Garnishment, *see infra*, Garnishment of partnerships.

Joint plea where part not served, 15, 942

Judgment on admissions in answer, 15, 968

Plea of dissolution, 15, 939

Assumption of debts by one partner, 15, 939

Before execution of instrument, 15, 939

Before suit, 15, 939

Putting liability in issue, 15, 936

Admission of execution, 15, 938

Affidavit denying joint liability, 15, 936

Defenses consistent with execution of instrument, 15, 938

Denial of signature, 15, 938

Effect of denial of execution by one authorized, 15, 938

In general, 15, 936

Verified denial of execution of instrument, 15, 936

Putting partnership in issue, 15, 930

Actions not on written contracts, 15, 930

Actions on written contracts, 15, 930

Denial of execution of instrument, 15, 935

Denial under oath, 15, 932

Effect of failure to make proper denial, 15, 935

General denial, 15, 930

General issue, 15, 930

PARTNERSHIP, cont'd.Plea or answer, *cont'd.*Putting partnership in issue, *con.*

Plea bad as amounting to general issue, 15, 931

Plea in abatement, 15, 934

Who may make denial under oath, 15, 934

Separate plea by one or more partners, 15, 939

Defense of one partner inuring to benefit of all, 15, 941

Demurrer by one and answer by another, 15, 940

In general, 15, 939

Separate trial, 15, 940

Verification of plea by one of several partners, 15, 941

Set-off and counterclaim, 15, 943

Setting up defense of fictitious firm name, 15, 943

Prayer for relief:

Bill or complaint for accounting, dissolution, and settlement, 15, 1088

Accounting without a dissolution, 15, 1091

Consistency of prayer, 15, 1089

Examples, 15, 1089, 1090

In general, 15, 1088

Necessity of praying dissolution, 15, 1090

Relief under general prayer, 15, 1089

Process and appearance, 15, 898

Acknowledgment or waiver of service by one partner after dissolution, 15, 907

Acknowledgment or waiver of service by one partner before dissolution, 15, 907

Actions against partners, 15, 898

Actions by partners, 15, 898

Appearance by one partner, 15, 906

Appearance by one partner after dissolution, 15, 907

Appearance by one partner before dissolution, 15, 906

Appearance by one partner binds only partnership property, 15, 906

Form of writ, 15, 898

Garnishment, see *infra*, Garnishment of partnerships.

Return of writ, 15, 908

Service, see *infra*, Service of process.

Writ in partnership name, 15, 899

Production of documents:

Accounting, dissolution, and settlement, 15, 1097

PARTNERSHIP, cont'd.*Putting partnership in issue*, see *infra*, Plea or answer.

Questions of law and fact, 15, 947

Existence of partnership, 15, 948

Firm or individual credit, 15, 948

Questions of fact, 15, 948

Questions of law, 15, 947

Ratification:

Instructions, 15, 947

Ratification of instrument, 15, 943

Receivers:

Appointment in suits between partners, 17, 691

Suits for accounting after dissolution, 17, 692

Suits for dissolution, 17, 691

Averment in application for receiver, 17, 730

Property, 17, 746

References:

Accounting, dissolution, and settlement, 15, 1100

Exceptions to report, 15, 1103

Failure to make report, 15, 1101

In general, 15, 1100

Instructions to referee, 15, 1101

Notice of hearing, 15, 1101

Principal matters to be shown in report, 15, 1103

Proceedings before master, 15, 1101

Report, 15, 1102

Sufficiency of master's report, 15, 1102

Taking testimony, 15, 1102

Remedy at law:

Accounting, dissolution, and settlement, 15, 1055

Actions for accounting, dissolution, and settlement, 15, 1070

Replevin:

In favor of one partner against another, 15, 1020

Rule that no action lies on firm transaction, 15, 1020

Reply, 15, 943

Averment of assumption of individual debt by firm, 15, 944

Averment of ratification of execution of instrument, 15, 943

Averment that one sued individually is a partner, 15, 944

Representation:

Joinder in suits in equity, 15, 991

Res adjudicata:

Judgment against one upon a joint contract, 15, 968

Residence of partnership, 15, 846

PARTNERSHIP, *cont'd.*

- Retirement of member, 15, 882
- Parties, 15, 882
- Returns:
 - Garnishment against partners, 15, 985
- Review, see *infra*, Appeals.
- Security for costs:
 - Suits in firm name, 15, 845
- Service of process, 15, 899
 - Effect of service on one not named, 15, 900
- Garnishment of partnerships, 15, 983
- General rule as upon whom served, 15, 899
- Infant partner, 15, 902
- Liability of person not served, 15, 904
- Service upon one partner, 15, 900
- Service upon one partner after dissolution of firm, 15, 903
- Service upon one partner in absence of statute, 15, 900
- Suits against partnership in firm name, 15, 847
- Suits in equity between partners and third persons, 15, 995
- Under statute, 15, 901
- Upon whom made, 15, 899
- Set-off, recoupment, and counter-claim:
 - Accounting, 15, 1063
 - Individual indebtedness, 15, 1063
 - Joinder of dormant partner, 15, 857
 - Rule that no action lies on firm transaction against copartner, 15, 1021
 - Demand arising out of a partnership transaction, 15, 1021
 - Demands enforceable in direct action, 15, 1022
 - Equitable defenses, 15, 1022
 - Rule as to set-offs is limited, 15, 1022
- Settlement (see *infra*, Accounting, dissolution, and settlement; Final settlement):
 - Accounting, dissolution, and settlement, see *infra*, Equity.
- Actions between partners or their representatives:
 - Partial settlement, 15, 1049
- As to accounting, dissolution, and settlement in equity, see *infra*, Equity.
- Partial settlement, 15, 1049
- Severance of demand, 15, 859
- Signature:
 - Bond in attachment, 15, 979
 - Denial of signature, 15, 938

PARTNERSHIP, *cont'd.*

- Single transaction:
 - Actions between partners or their representatives, 15, 1030, 1031
- Special partners*, see LIMITED PARTNERSHIPS.
- Statutes*, see *infra*, Actions in firm name.
- Suits in equity between partners and third persons, 15, 986
- Answer, 15, 997
- Bill, 15, 995
 - Allegation of firm ownership, 15, 996
 - Allegation of partnership, 15, 996
 - Amendment, 15, 997
 - Bill by partnership in firm name demurrable, 15, 995
 - Multifariousness, 15, 997
 - Names of defendant partners, 15, 996
 - Names of partners, 15, 995
 - Requisites, 15, 995
- Decree in general, 15, 998
- Decree, revival and enforcement, 15, 998
- Direction of issue to try fact of partnership, 15, 998
- Injunction by partnership creditors, 15, 998
- Jurisdiction, 15, 986
 - Bill in equity for account, 15, 987
 - General rule, 15, 986
 - Nonresidence of one or more partners, 15, 988
- Objection to nonjoinder of partners, 15, 994
- Demurrer, 15, 994
- Manner of raising, 15, 994
- Plea, 15, 994
- Time of raising, 15, 994
- Parties:
 - Joinder of all partners, 15, 988
 - Actions to foreclose mortgages, 15, 989
 - Action to set aside fraudulent conveyance, 15, 989
 - Application of rule, 15, 988
 - General rule, 15, 988
 - Inability to render decree, 15, 990
 - Joinder of all surviving partners, 15, 993
 - Joinder of dormant partners, 15, 993
 - Joinder of heirs, 15, 993
 - Joinder of representatives of deceased partners, 15, 991

PARTNERSHIP, *cont'd.*

Suits in equity between partners and third persons, *cont'd.*

Parties, *cont'd.*

Joinder of all partners, *cont'd.*

Parties by representation, 15, 991

Suits by or against less than all the partners, 15, 990

Suit to recover demand due partnership, 15, 988

Unwilling plaintiff made defendant, 15, 989

Where all partners were not joined, 15, 990

Where joinder of others will oust jurisdiction of court, 15, 990

Service of process, 15, 995

Summons and process:

Suits against partnership in firm name, 15, 847

Supplemental bill:

Bill or complaint for accounting, dissolution, and settlement, 15, 1093

Surrogate:

Accounting, dissolution, and settlement, 15, 1056

Survival of actions, 21, 323

Surviving partners (see *infra*, Actions to charge estate of deceased partner; Declaration, petition, or complaint):

Actions between partners or their representatives, 15, 1069

Torts:

Actions between partners or their representatives, 15, 1050

Parties defendant in actions *ex delicto*, 15, 878

Trade-marks and trade names, 21, 756

Variance:

Actions against partners, 15, 926

Description of cause of action, 15, 928

Existence of firm, 15, 926

Firm name, 15, 927

Nonjoinder pleaded, 15, 928

Where one partner is declared against, 15, 928

Affidavit in attachment and petition as to names of partners, 15, 978

Venue:

Residence of partnership, 15, 846

Verdict, 15, 951

Conformity to judgment, 15, 954

Examples, 15, 951, 952

Responsiveness, 15, 951

Supported by evidence, 15, 951

PARTNERSHIP, *cont'd.***Verification:**

Denial by partners of existence of partnership, 15, 932

Denial of execution of instrument, 15, 936

Verification of plea by one of several partners, 15, 941

Waiver, see *infra*, Actions in firm name.

PART PAYMENT, see PAYMENT.**PARTY AGGRIEVED, see AGGRIEVED PARTY.****PARTY WALLS:**

Ejectment, 7, 277

PASSENGERS, 15, 1120**Actions:**

Form of action against carrier, 15, 1121

Importance of distinctions as to form or nature of action, 15, 1123

Allegation of contract, 15, 1124

Effect of allegations usual in tort actions, 15, 1126

Express contract, 15, 1126

In actions *ex contractu*, 15, 1125

In actions *ex delicto*, 15, 1124

Amendments, 15, 1143

Baggage, 15, 1139

Carrying beyond station, 15, 1137

Destination regular stopping place, 15, 1137

In general, 15, 1137

Contracts, see *infra*, Allegation of contract.

Contributory negligence, 15, 1131

Duplicity, 15, 1143

Excessive fare, 15, 1130

Expulsion, 15, 1138

Compliance with rules, 15, 1139

Discrimination, 15, 1138

Form of action, 15, 1122

Necessity of averment, 15, 1138

Plaintiff's destination regular stopping place, 15, 1139

Relation of passenger, 15, 1129

Fare:

Refusal to pay excessive fare, 15, 1130

Tender of fare, 15, 1130

Instructions, 15, 1147

Duty to instruct, 15, 1147

Negligence, 15, 1149

Scope of instruction, 15, 1148

Joinder of counts and causes, 15, 1143

Joinder of parties, 15, 1144

Master and servant:

Acts and authority of servants, 15, 1132

Charging torts of agents, 15, 1132

PASSENGERS, *cont'd.*

- Master and servant, *cont'd.*
 - Acts and authority of servants, *cont'd.*
 - In general, 15, 1132
 - Negligence of servants in charge of train, 15, 1133
 - Negligence, 15, 1132
- Negligence, 15, 1130
 - Allegation in general terms, 15, 1131
 - Instructions, 15, 1149
 - Master and servant, 15, 1132
 - Necessity of allegation, 15, 1130
 - Theory of case, 15, 1141
- Penalties, 15, 1147
- Personal injuries, 15, 1134
 - Allegation of details without conclusion, 15, 1135
 - Allegations of place, 15, 1134
 - Allegations of time, 15, 1134
 - Boarding or alighting from cars, 15, 1134
 - Carrying beyond station, 15, 1137
 - Injury by sudden starting, 15, 1136
 - Place, 15, 1134
 - Relation of passenger, 15, 1127
 - Time, 15, 1134
 - Train at proper place, 15, 1134
 - Train stopping at dangerous place, 15, 1135
- Pleading, 15, 1134
- Plea or answer, 15, 1145
- Refusal to carry:
 - Relation of passenger, 15, 1129
- Refusal to receive and carry, 15, 1122
- Refusal to receive passenger, 15, 1138
- Regular stopping-place, 15, 1137, 1139
- Relation of passenger, 15, 1126
 - Action for personal injuries, 15, 1127
 - Expulsion, 15, 1129
 - Necessity of allegation, 15, 1126
 - Presence upon cars with permission, 15, 1128
 - Refusal to carry, 15, 1129
 - Refusal to pay excessive fare, 15, 1130
 - Sufficiency of allegation, 15, 1129
 - Tender of fare, 15, 1130
- Remedy against carrier, 15, 1121
 - Expulsion, 15, 1122
 - Form of action in general, 15, 1121
 - Importance of distinctions as to form or nature of action, 15, 1123
 - Refusal to receive and carry, 15, 1122
 - Tort and contract concurrent remedies, 15, 1121

PASSENGERS, *cont'd.*

- Tender of fare, 15, 1130
- Theory of case, 15, 1140
- Torts (see *infra*, Allegation of contract):
 - Tort and contract concurrent remedies, 15, 1121
- Variance, 15, 1140
- PATENTS, 16, 1**
- See **LAND PATENTS.**
- Accident:
 - Repeal or cancellation of letters patent, 16, 30
- Accounting:
 - Bill for naked account of profits and damages, 16, 39
 - Decree for accounting, 16, 141
 - In general, 16, 141
 - Profits and damages, 16, 142
 - Retention of case for accounting only, 16, 142
- Action against commissioner for refusing copies of patent, 16, 24
- Action at law for infringement, 16, 79
 - Damages, 16, 94
 - Declaration, see *infra*, Declaration and complaint.
 - Defenses under general issue, see *infra*, General issue.
 - Demurrer, 16, 91
 - Form of action, 16, 79
 - Joinder of causes of action, 16, 80
 - Judgment, 16, 94
 - Pleading want of patentability and prior state of art, 16, 90
 - Replication, 16, 92
 - Special plea or answer, see *infra*, Special plea or answer.
 - Splitting causes of action, 16, 80
 - Trespass on the case, 16, 79
 - Trial, 16, 93
 - Verdict, 16, 93
- Actions or suits growing out of patent contracts, 16, 155
 - Breach of contract, 16, 156
 - Fraud, 16, 156
 - In general, 16, 155
 - Money due under contract, 16, 155
 - Suit in equity for cancellation, 16, 157
- Action to recover penalty, 16, 33
 - Allegata et probata*, 16, 33
 - Allegations not necessary or pertinent, 16, 34
 - Averment of act *contra formam statuti*, 16, 33
 - Averment of patentability, 16, 35
 - Averment of requisites and essential facts, 16, 34
 - Declaration and complaint, 16, 34
 - Jurisdiction, 16, 33

PATENTS, *cont'd.*

- Action to recover penalty, *cont'd.*
 - Parties, 16, 33
 - When lies, 16, 33
- Admission:
 - Allegations insufficiently answered taken as admitted, 16, 109
- Affidavits:
 - Injunctions, 16, 122
- Agency:
 - Joinder of agent in actions for infringement, 16, 75
- Aider by verdict, 16, 93
- Amendments:
 - Amendment of claim before appeal, 16, 12
 - Answer, 16, 117
 - Bill in equity for infringement, 16, 103
- Amount in controversy, 16, 44
- Answer, *see infra*, Special plea or answer; Suit in equity for infringement.
- Anticipation, *see infra*, Suit in equity for infringement.
- Appeal and error in suits on or concerning patents, 16, 158
 - Appeal from costs only, 16, 163
 - Character of decree authorizing, 16, 160
 - Errors, 16, 161
 - Evidence, 16, 161
 - Expiration or surrender of patent pending appeal, 16, 163
 - Judgment, 16, 163
 - Jurisdiction of courts, 16, 158
 - Objections, 16, 161
 - Prior adjudications, 16, 162
 - Proceedings, 16, 161
 - United States courts, 16, 159
 - When lies, 16, 158
 - Writ of error to state court, 16, 159
- Appeal from decision of commissioner of patents, 16, 9
 - Amendment to claim before appeal, 16, 12
 - Bill in equity, 16, 20
 - Commissioner filing grounds of decision and reply, 16, 16
 - Decisions appealable, 16, 10
 - Discretionary matters, 16, 12
 - Grounds for reversal, 16, 10
 - Grounds of commissioner, 16, 12
 - Hearing and determination, 16, 17
 - Decision or judgment, 16, 18
 - Duty of court on petition, 16, 17
 - General rules regulating, 16, 17
 - Hearing and revision on reasons of appeal, 16, 18

PATENTS, *cont'd.*

- Appeal from decision of commissioner of patents, *cont'd.*
 - Hearing and determination, *con.*
 - Place, 16, 17
 - Summary hearing on evidence before commissioner, 16, 18
 - Time, 16, 17
 - Interference cases, 16, 13
 - Appeal by patentee from adverse decision, 16, 15
 - Decisions appealable, 16, 14
 - Patentability, 16, 15
 - Questions for consideration, 16, 15
 - When appeal lies, 16, 13
 - Whether appeal allowed, 16, 13
 - Necessity to first exhaust remedy by appeal before bill in equity, 16, 20
 - Notifying commissioner, 16, 15
 - Opinions of commissioner, 16, 12
 - Patentability, 16, 15
 - Preliminary matters, 16, 12
 - Preliminary rulings, 16, 12
 - Proceedings requisite to appeal, 16, 15
 - Reasons of commissioner, 16, 12
 - Refusal of patents, 16, 11
 - Requisite, 16, 15
 - Return of proceedings and action of commissioner thereon, 16, 18
 - Sufficiency of reasons, 16, 15
 - Time for appeal, 16, 16
 - Time for filing reasons for appeal, 16, 16
 - When appeal lies, 16, 10
- Assignments (*see infra*, Parties to actions or suits for infringement):
 - Bill in equity for infringement:
 - Suits by assignees, 16, 98
- Bill in equity (*see infra*, Injunctions):
 - Naked account of profits and damages, 16, 39
 - Repeal or cancellation of letters patent, 16, 32
- Bill in equity for infringement, 16, 94
 - Allegations of bill, 16, 97
 - Allegations of infringement, 16, 101
 - Amendment of bill, 16, 103
 - Assignees, 16, 98
 - Claims for prior infringement, 16, 99
 - Damages, 16, 102
 - Description, 16, 100
 - Description of invention, 16, 99
 - Infringement in general, 16, 101

PATENTS, *cont'd.*

- Bill in equity for infringement, *cont'd.*
 - Joinder of causes of action or defendants, 16, 94
 - Infringement of one or more claims, 16, 94
 - Uniting different grounds of relief, 16, 95
 - Uniting several defendants, 16, 97
 - Uniting several patents, 16, 95
- Jurisdiction in equity, 16, 97
- Laches, 16, 102
- Notice of patent, 16, 102
- Originality of invention, 16, 100
- Prayer for process, 16, 102
- Prior adjudications, 16, 98
- Proof of patent, 16, 99
- Profits, 16, 102
- Public use, 16, 100
- Relative to prior patents, 16, 100
- Sale, 16, 100
- Showing equitable jurisdiction, 16, 97
- Suits by assignees, 16, 98
- Supplemental bill, 16, 104
- Title or ownership, 16, 98
- Verification of bill, 16, 103
- Bill in equity when patent refused, 16, 19
 - Commissioner accepting service outside of district, 16, 21
 - Decree, 16, 23
 - Effect and weight of commissioner's decision, 15, 23
 - Exclusive jurisdiction in courts of District of Columbia, 16, 20
 - Jurisdiction, 16, 20
 - Nature and rules governing proceeding, 16, 22
 - Necessity to first exhaust remedy by appeal, 16, 20
 - Necessity to serve commissioner with process, 16, 21
 - Parties, 16, 21
 - Patentability, 16, 23
 - Priority of invention, 16, 23
 - Questions for consideration and decision, 16, 23
 - When proceedings applicable, 16, 19
- Bill in equity when patents interfere, 16, 25
 - Affirmative relief under answer or cross-bill, 16, 28
 - Decree, 16, 28
 - Dismissal of bill, 16, 28
 - Interference and priority of invention, 16, 26
 - Joinder of causes of action, 16, 27
 - Nature of and rules governing proceeding, 16, 27

PATENTS, *cont'd.*

- Bill in equity when patents interfere, *cont'd.*
 - Necessary and proper allegations, 16, 27
 - Provisions concerning, 16, 25
 - Supplemental bill, 16, 27
 - The bill, 16, 27
 - When lies, 16, 25
- Bill of discovery, 16, 37
- Cancellation, see *infra*, Repeal or cancellation of letters patent.
- Citizenship, 16, 44
- Commissioner (see *infra*, Appeal from decision of commissioner of patents; Bill in equity when patent refused):
 - Mandamus, 16, 24
- Contract or license (see *infra*, Actions or suits growing out of patent contracts; Parties to actions or suits for infringement), 16, 42
- Adequacy of remedy at law, 16, 43
- Assignment as distinguished from license, 16, 66
- By licensee, 16, 43
- Court of claims, 16, 55
- Enforcing or setting aside contract, 16, 43
- Licensees as parties, 16, 70
- State courts, 16, 51, 53
- Suit by licensor, 16, 42
- Suit on contract or license, 16, 42
- United States courts, 16, 45, 49, 50
- Where licensee has repudiated or forfeited his rights, 15, 42
- Corporations:
 - Joinder of corporations and their officers and agents, 16, 75
- Costs:
 - Appeal from costs only, 16, 163
 - Disclaimer entered after suit, 16, 63
 - Suit in equity for infringement, 16, 153
 - Apportionment of costs, 16, 153
 - At what stage of cause given, 16, 153
 - Costs of reference to master, 16, 154
 - When and to whom given, 16, 153
 - Where plaintiff succeeds in part and fails in part, 16, 154
- Courts (see *infra*, Discretion of court; State courts; United States courts):
 - Appeal from decision of commissioner of patents, 16, 9
- Creditors' bills, 5, 443

PATENTS, *cont'd.*

- Cross-bills, 5, 644: 16, 28, 104
- Bills for infringement of patents, 5, 644
- Interfering patents, 5, 636

Damages:

- Accounting, 16, 143
- Action at law for infringement, 16, 94
- Allegations in bill of equity for infringement, 16, 102
- Bill for naked account of profits and damages, 16, 39
- Decree for profits and damages, 16, 40

Declaration and complaint:

- Actions at law for infringement, 16, 80
- Annexation of copy, 16, 83
- Averments of infringement, 16, 84
- Averments of novelty, utility, public use, 16, 83
- Averments of title, 16, 81
- Describing or designating patent, 16, 83
- Founded on assignments, 16, 82
- Founded on grant of patent, 16, 81
- In general, 16, 80
- Negating prior public use, 16, 84
- Profert, 16, 83

Actions to recover penalty, 16, 34

- Allegata et probata*, 16, 35
- Allegations not necessary or pertinent, 16, 34
- Averment of act *contra formam statuti*, 16, 35
- Averment of patentability, 16, 35
- Averment of requisites and essential facts, 16, 34
- Rules of civil pleading, 16, 34

Decrees (see *infra*, Interlocutory decree), 16, 23

- Bill in equity when patents interfere, 16, 28
- Opening or vacating decree, 16, 151

In general, 16, 151

- Profits and damages, 16, 40
- Repeal or cancellation of letters patent, 16, 32

Suit in equity for Infringement, 16, 147

- After master's report, 16, 148
- Dismissal of bill, 16, 147
- Final decree, 16, 147

Defenses (see *infra*, General issue):

- Special defenses*, see *infra*, Suit in equity for infringement.

PATENTS, *cont'd.*

Demurrers, 16, 91

Action at law for Infringement, 16, 91

Suit in equity for Infringement, 16, 117

Allegations descriptive of invention, 16, 118

Allegations relative to previous patents, 16, 118

Bill not containing requisite allegations, 16, 118

Description, 16, 118

Doubts resolved against demurrer, 16, 121

Infringement, 16, 118

In general, 16, 117

Invalidity of patent, 16, 118

Invalidity of reissued patent, 16, 121

Judicial notice on demurrer, 16, 119

Multifariousness, 16, 118

Prior use, 16, 118

Sustaining or overruling demurrer, 16, 120

Uncertainty as to validity, 16, 121

When applicable, 16, 118

Determination, see *infra*, Appeal from decision of commissioner of patents.

Disclaimers (see *infra*, Infringement):

Rehearing, 16, 151

Discretion of commissioner, 16, 12

Discretion of court:

Dissolution, modification, and reinstatement, 16, 120

Granting or denying Injunction, 16, 124

Dissolution, modification, and reinstatement of injunction, see *infra*, Injunctions.

Equitable assignments, 7, 744

Equity (see *infra*, Bill in equity; Infringement; Injunctions):

***Infringement*, see *infra*, Infringement; Suit in equity for infringement.**

***Jurisdiction*, see *infra*, Jurisdiction.**

Jurisdiction at law or in equity, 16, 35

Suit in equity after expiration of patent, 16, 40

***Suit on contract or license*, see *infra*, Contract or license**

Errors, see *infra*, Appeal and error in suits on or concerning patents.

Evidence:

Injunctions, 16, 122

PATENTS, *cont'd.*

- Executors and administrators:
 - Joinder of next of kin or heir, 16, 72
 - When proper parties, 16, 72
- Expiration of patent:
 - Injunctions, 16, 131
 - Pending appeal, 16, 163
 - Suit for infringement, 16, 60
 - Suit in equity after expiration of patent, 16, 40
 - In general, 16, 40
 - Patent expiring during suit, 16, 41
 - Patent near expiration when suit brought, 16, 42
- Former adjudication:
 - Appeal, 16, 162
 - Suit in equity for infringement, 16, 133
 - Infringement, 16, 134
 - In general, 16, 133
 - Validity of patent, 16, 133
 - When prior adjudication not followed, 16, 135
- Fraud:
 - Action for damages, 16, 156
 - Repeal or cancellation of letters patent, 16, 30
- General issue:
 - Action at law for infringement, 16, 84
 - Defenses not included in statute, 16, 84
 - General rules of pleading, 16, 85
 - In general, 16, 84
 - Manner and time of giving notice, 16, 86
 - Necessity of notice, 16, 86
 - Particularity in stating places of use, 16, 88
 - Requisites of notice, 16, 87
 - Requisites of notice not prescribed in statute, 16, 87
 - Requisites of notice prescribed by statute, 16, 87
 - Special statutory defenses, 16, 85
 - Special plea or answer, 16, 89
 - Special plea together with general issue, 16, 89
 - Statutory defenses admissible under general issue, 16, 89
- Hearing, see *infra*, Appeal from decision of commissioner of patents; Suit in equity for infringement.
- Infringement (see *infra*, Special plea or answer), 16, 35
 - Action at law for infringement, see *infra*, Action at law for infringement.
 - Action for damages, 16, 35
- Index Pl. & Pr. — 51

PATENTS, *cont'd.*

- Infringement, *cont'd.*
 - Before patent obtained, 16, 59
 - Bill for naked account of profits and damages, 16, 39
 - Bill of discovery, 16, 37
 - Court of claims, 16, 54
 - Decree for complete relief, 16, 40
 - Decree for profits and damages, 16, 40
 - Disclaimers, 16, 61
 - Costs where disclaimer entered after suit, 16, 63
 - Disclaimer before or after suit, 16, 62
 - Disclaimer unreasonably neglected or delayed, 16, 62
 - Maintenance of suit and recovery where disclaimer not delayed, 16, 61
 - Statutes authorizing disclaimers, 16, 61
 - Establishment of right at law, 16, 37
 - Expiration of patent, 16, 60
 - Expired patent, 16, 60
 - General principles relative to actions and suits for infringement, 16, 59
 - Injunction, 16, 36
 - Issues to the jury, 16, 38
 - Joinder of interference with infringement, 16, 27
 - Parties to actions, see *infra*, Parties to actions or suits for infringement.
 - Patent expiring during suit, 16, 41
 - Patent near expiration when suit brought, 16, 42
 - Prior adjudication, 16, 134
 - Reissued patent, 16, 59
 - Remedy at law, 16, 36
 - State courts, 16, 48, 52
 - Suit in equity after expiration of patent, 16, 40
 - Suit in equity for infringement, see *infra*, Suit in equity for infringement.
 - Suits for, in general, 16, 35
 - Surrendered patent, 16, 59
 - United States courts, 16, 45
 - Void patent, 16, 59
 - Whether judgment at law always required, 16, 37
- Injunctions, 16, 36
 - Adequacy of remedy at law, 16, 36
 - Discretion of court, 16, 124, 128
 - Dissolution, modification, and reinstatement, 16, 128
 - Discretion of court, 16, 129

PATENTS, *cont'd.*

Injunctions, *cont'd.*

Dissolution, modification, and reinstatement, *cont'd.*

Evidence, 16, 129

Expiration of patent, 16, 131

In general, 16, 128

Interlocutory decree, 16, 140

Right to, originality, or validity of patent questioned, 16, 130

Subsequent answer, 16, 129

Trial and judgment at law, 16, 130

Equitable jurisdiction dependent on injunction, 16, 36

Equitable relief by bill of discovery, 16, 37

Establishment of right at law, 16, 37

Evidence, 16, 129

Infringement, 16, 122

Interlocutory decree, 16, 140

Issues to the jury, 16, 38

Judgments at law not always required, 16, 37

Parties to actions, 16, 64

Preliminary injunctions, 16, 122

Affidavits, 16, 122

Bill, 16, 122

Defendant's reply to rebutting evidence, 16, 124

Difficult questions, 16, 127

Doubt as to validity of patent and infringement, 16, 125

Doubtful questions, 16, 127

Granting or denying, 16, 124

Imposing terms, 16, 128

In general, 16, 122

Merits of case, 16, 127

New questions, 16, 127

Patent near expiration, 16, 125

Plaintiff's supplementary or rebutting evidence, 16, 123

Proceedings and evidence to obtain, 16, 122

Questions for consideration and determination, 16, 127

Right to injunction satisfactorily shown, 16, 124

Security instead of injunction, 16, 126

Validity of infringement, 16, 127

Security instead of injunction, 16, 126

Suit in equity for infringement, 16, 122

Violation of, 16, 131

Attachment for contempt, 16, 131

PATENTS, *cont'd.*

Injunctions, *cont'd.*

Violation of, *cont'd.*

Attachment only against party having notice of injunction, 16, 131

Determining violation or infringement, 16, 132

In general, 16, 131

Trial of validity, usefulness, or originality, 16, 133

Violation must be clear, 16, 132

Where the alleged infringing article is in different or modified form, 16, 132

Whether the question of violation or infringement is doubtful, 16, 132

Where there has been an adjudication at law, 16, 39

Inspection, 16, 137

Interference, see *infra*, Appeal from decision of commissioner of patents; Bill in equity when patents interfere.

Interlocutory decree, 16, 139

Decree for account, 16, 141

Granting, withholding, or suspending injunction, 16, 140

On one or more claims or patents, 16, 139

Profits and damages, 16, 142

Suit in equity for injunction, 16, 139

Validity and infringement proved or admitted, 16, 139

Intervention, 16, 75

Invention, priority of, 16, 23, 26

Issues to the jury, 11, 638; 16, 38

Suit in equity for infringement, 16, 137

Joinder of causes of action:

Bill in equity for infringement, 16, 94

Infringement of one or more claims, 16, 94

Uniting different grounds of relief, 16, 95

Uniting several defendants, 16, 97

Uniting several patents, 16, 95

Interference and infringement, 16, 27

Joinder of parties:

Bill in equity for infringement, 16, 94

Infringement of one or more claims, 16, 94

Uniting different grounds of relief, 16, 95

PATENTS, *cont'd.*

- Joinder of parties, *cont'd.*
 - Bill in equity for infringement, *cont'd.*
 - Uniting several defendants, 16, 97
 - Uniting several patents, 16, 95
 - Corporations and their officers and agents, 16, 75
 - Defendant in action for infringement, 16, 74
 - Executors and administrators, 16, 72
 - How objection made for misjoinder, 16, 78
 - Joinder of assignee and assignor, 16, 67
 - Nonjoinder or misjoinder of plaintiffs, 16, 78
 - Owner and licensees, 16, 70, 71
- Judgments (see *infra*, Appeal from decision of commissioner of patents), 16, 18
- Judicial notice, 16, 138
- Jurisdiction (see *infra*, State courts), 16, 35
 - Action to recover penalty, 16, 33
 - Appeal from decision of commissioner of patents, 16, 9
 - At law or in equity, 16, 35
 - Bill in equity, 16, 20
 - Commissioner accepting service outside of district, 16, 21
 - Necessity to serve commissioner with process, 16, 21
 - Whether exclusive in courts of District of Columbia, 16, 20
 - Bill in equity for infringement, 16, 97
 - General jurisdiction of suits on or concerning patents, 16, 35
 - Suit on contract or license*, see *infra*, Contract or license.
 - Suits for infringement*, see *infra*, Infringement.
 - United States courts*, see *infra*, United States courts.
- Laches, 16, 102
- License*, see *infra*, Contract or license.
- Mandamus:
 - Commissioner, 16, 24
- Mistake:
 - Repeal or cancellation of letters patent, 16, 30
- Multifariousness:
 - Demurrer, 16, 118
- New evidence:
 - Opening or vacating decree, 16, 152
 - Rehearing, 16, 149

PATENTS, *cont'd.*

- Notice:
 - Bill in equity for infringement, 16, 102
 - Necessity of notice in answer in order to take advantage of statute, 16, 107
 - Notice of each separate defense in suit in equity for infringement, 16, 107
 - Special defenses under notice in answer, 16, 106
 - Special statutory defenses, 16, 85
 - Allowances of, with notice, 16, 85
 - Manner and time of giving notice, 16, 86
 - Necessity of notice, 16, 86
 - Particularity in stating places of use, 16, 88
 - Requisites of notice, 16, 87
 - Statement of names of witnesses, 16, 88
 - Town or city, 16, 88
 - Suits in equity for infringement, 16, 106, 107
 - Want of notice or knowledge of plaintiff's patent, 16, 110
 - Duty to allege in bill, not in answer, 16, 111
 - Legislation and course of decisions, 16, 110
 - Suit in equity for infringement, 16, 110
- Opening or vacating decree:
 - New evidence, 16, 152
- Parties to actions or suits for infringement, 16, 64
 - Action to recover penalty, 16, 33
- Assignees, 16, 65
 - Action or suit for infringement prior to assignment, 16, 68
 - Action or suit in name of assignee, 16, 65
 - Assignment as distinguished from license, 16, 66
 - Assignment of undivided interest, 16, 68
 - Assignment or grant of entire right, 16, 66
 - Assignment or grant of exclusive right, 16, 66
 - Claims to past damages expressly assigned, 16, 68
 - Claims to past damages not expressly assigned, 16, 69
 - Joinder of assignee and assignor, 16, 67
 - Nature of assignment entitling assignee to sue, 16, 66

PATENTS, *cont'd.*

Parties to actions or suits for infringement, *cont'd.*

Assignees, *cont'd.*

Necessity of suit in assignee's name, 16, 67

Bill in equity when parties refuse, 16, 21

Defect of parties, 16, 78

Amendment, 16, 79

Dismissal, 16, 79

How objection made, 16, 78

Nonjoinder or misjoinder of plaintiffs, 16, 78

Objections waived, 16, 78

Plaintiff's want of title or authority, 16, 78

Defendant, 16, 73

Agents, 16, 75

Corporations, 16, 75

In general, 16, 73

Intervention, 16, 75

Joinder of joint infringers, 16, 74

Joinder of officers and agents of corporation, 16, 76

Officers of corporations, 16, 75

Personal responsibility the test of necessity to join officers of corporations, 16, 77

Proper parties, 16, 73

Right to sue one and omit other infringers, 16, 74

Executors and administrators, 16, 72

Joinder of parties, see *infra*, Joinder of parties.

Licenses, 16, 70

Exclusive licensees, 16, 72

Joinder of owner against consent, 16, 71

Necessary parties, 16, 71

Proper parties, 16, 71

Simple licensees, 16, 71

Suit against patentee in licensee's name, 16, 71

Suits by or on behalf of, 16, 70

Plaintiff, 16, 64

Assignees, 16, 65

At law and in equity, 16, 64

Equity, 16, 64

Executors and administrators, 16, 72

In general, 16, 64

Injunction, 16, 64

Licenses, 16, 70

Ownership at time of action or suit, 16, 64

Parties in interest, 16, 64

Trustees, 16, 73

Trustees, 16, 73

PATENTS, *cont'd.*

Patentability, 16, 15, 23, 35

Pleading want of patentability

and prior state of art, 16, 90

Suit in equity for infringement, 16, 110

Penalties, see *infra*, Action to recover penalty.

Place of hearing:

Appeal, 16, 17

Plea, see *infra*, Special plea or answer; Suit in equity for infringement.

Prayer for process:

Bill in equity, 16, 102

Preliminary injunctions, see *infra*, Injunctions.

Prior adjudications:

Appeal, 16, 162

Priority of invention, 16, 23, 26

Prior state of art:

Suit in equity for infringement, 16, 110

Profer and oyer, 16, 142

Action at law for infringement, 16, 83

Bill in equity for infringement, 16, 99

Quieting title, 16, 157

References, 16, 144

Accepting or rejecting master's report, 16, 146

Allowance of nominal profits and damages, 16, 145

Costs, 16, 154

Decree after master's report, 16, 148

Exceptions to master's report, 16, 145

Finding extent of monopoly and infringement, 16, 144

Period for which account taken, 16, 145

Questions foreclosed by interlocutory decree, 16, 145

Recommitment to master, 16, 146

Review of evidence, 16, 147

Suit in equity for infringement, 16, 144

Refusal, see *infra*, Appeal from decision of commissioner of patents;

Bill in equity when patent refused.

Rehearing, 16, 149

Character of evidence required, 16, 150

Disclaimers, 16, 151

Failure to present evidence on former hearing, 16, 149

In general, 16, 149

New evidence, 16, 149

Subsequent decisions of supreme court, 16, 150

PATENTS, *cont'd.*

- Rehearing, *cont'd.*
 - When rehearing may be granted, 16, 149
- Remedy at law, 16, 36
- Repeal or cancellation of letters patent, 16, 29
 - Accident, 16, 30
 - By process in nature of scire facias, 16, 29
 - By suit in equity by United States, 16, 29
 - By whom and in what name brought, 16, 32
 - Decree, 16, 32
 - Error of judgment of patent office, 16, 31
 - Fraud, 16, 30
 - Mistake, 16, 30
 - Requisites of bill, 16, 32
- Replications and replies, 16, 92
 - Suit in equity for infringement, 16, 121
- Res adjudicata*, 16, 133
- Rescission, cancellation, and reformation of contracts, 16, 53, 157
- Returns:
 - Return of proceedings and action of commissioner thereon, 16, 18
- Scope of article, 16, 9
- Service of process:
 - Commissioner, 16, 21
- Special defenses*, see *infra*, Suit in equity for infringement.
- Special plea or answer:
 - In action at law for infringement, 16, 89
 - In general, 16, 89
 - Requisites of plea or answer, 16, 90
 - Right to plead specially, 16, 89
 - Special plea together with general issue, 16, 89
 - Statutory defenses admissible under general issue, 16, 89
- Splitting causes of action:
 - Infringement, 16, 80
- State courts (see *infra*, United States courts):
 - Appeal and error in suits on or concerning patents, 16, 158, 159
 - Suits under general laws, 16, 51
 - Action for damages of royalties, 16, 51
 - Cancellation or rescission of a contract, 16, 53
 - Direct adjudication on validity of patent, 16, 52
 - Infringement, 16, 52

PATENTS, *cont'd.*

- State courts, *cont'd.*
 - Suits under general laws, *cont'd.*
 - Jurisdiction in general, 16, 51
 - Suits on contracts, 16, 51
 - Suits under patent laws, 16, 47
 - Determining and restraining infringement, 16, 48
 - Jurisdiction in general, 16, 47
 - When the validity of a patent or its originality is directly involved, 16, 48
- Suit in equity for infringement:
 - Abandonment, 16, 116
 - Allegations insufficiently answered taken as admitted, 16, 109
 - Amendment of answer, 16, 117
 - Answer or plea, 16, 105
 - Abandonment, 16, 116
 - Anticipation, 16, 114
 - Denial of infringement, 16, 108
 - Description in printed publication, 16, 116
 - Fraudulently obtaining patent, 16, 116
 - Manner of raising issues, 16, 111
 - Necessity of setting up defenses, 16, 105
 - Prior state of art, 16, 110
 - Requisites of answer or plea, 16, 112
 - Special defenses allowed by statute, 16, 106
 - Specification containing more or less than necessary, 16, 116
 - Want of notice or knowledge of plaintiff's patent, 16, 110
 - Want of patentability or invention, 16, 109
 - Anticipation, 16, 114
 - Description of printed publication, 16, 116
 - Facts showing prior patent, 16, 114
 - Statement of names, dates, residences, and places, 16, 114
 - Time of public use or sale, 16, 114
- Costs*, see *infra*, Costs.
- Decrees*, see *infra*, Decrees.
- Defenses necessary to be raised in answer, 16, 106
- Defenses, necessity of setting up, 16, 105
- Demurrers*, see *infra*, Demurrers.

PATENTS, *cont'd.*

Suit in equity for infringement, *con.*
 Denial of infringement, 16, 108
 Description of printed publication, 16, 116
 Fraudulently obtaining patent, 16, 116
 Hearing and determination, 16, 136
 Determining infringement, 16, 137
 Determining validity of patent, 16, 136
 In general, 16, 136
 Issues to the jury, 16, 137
 Judicial notice, 16, 138
 Proceedings and evidence, 16, 136
Injunctions, see infra, Injunctions.
Interlocutory decree, see infra, Interlocutory decree.
 Manner of raising issues, 16, 111
 Noninfringement, 16, 112
 Objections to answer, 16, 116
 Opening or vacating decree, 16, 151
 In general, 16, 151
 New evidence, 16, 152
 Patentability or invention, 16, 109
 Patent void on its face, 16, 109
 Prior adjudication, 16, 133
 Infringement, 16, 134
 In general, 16, 133
 Validity of patent, 16, 133
 When prior adjudication not followed, 16, 135
 Prior state of art, 16, 110
Reference to master, see infra, References.
Rehearing, see infra, Rehearing.
 Replication, 16, 121
 Requisites of answer or plea, 16, 112
 Special defenses allowed by statute, 16, 106
 Defenses to each patent or invention, 16, 108
 Necessity of notice in answer, 16, 107
 Notice to each separate defense, 16, 107
 Under notice in answer, 16, 106
 Specification containing more or less than necessary, 16, 116
The bill, see infra, Bill in equity for infringement.
 Validity of patent, 16, 112
 Want of notice or knowledge of plaintiff's patent, 16, 110
 Want of patentability or invention, 16, 109

PATENTS, *cont'd.*

Supplemental bill, 16, 104
 Survival of actions, 21, 359
 Time of hearing:
 Appeal, 16, 17
 Trespass on the case, 15, 79
 Infringement, 16, 79
 Trial:
 Action at law for infringement, 16, 93
 United States courts (*see infra, State courts*), 16, 44
 Act of 1807, 16, 58
 Acts of Congress prior to 1887, 16, 55
 Acts of 1887 and 1888, 16, 56
 Appeal and error in suits on or concerning patents, 16, 159
 Circuit courts, 16, 53
 Court of claims, 16, 54
 Jurisdiction on contracts, 16, 54
 Jurisdiction on suits for infringement, 16, 54
 District courts, 16, 54
 General judiciary acts, 16, 55
 Infringement, 16, 54
 Jurisdiction by consent or waiver, 16, 58
 Jurisdiction of federal courts in particular districts, 16, 55
 Jurisdiction of particular federal courts, 16, 53
 Suits under general laws, 16, 48
 Citizenship, 16, 48
 Defendant admitting validity and use of patent under subsisting contract, 16, 49
 Federal courts have jurisdiction, 16, 50
 Jurisdiction not defeated by plea setting up license, 16, 50
 Suits on contracts, 16, 49
 Suits under patent laws, 16, 44
 Amount in controversy, 16, 44
 Citizenship, 16, 44
 Exclusive jurisdiction, 16, 44
 In general, 16, 44
 Jurisdiction not defeated by plea of contract, 16, 45
 State courts, 16, 47
 Suits involving contracts, 16, 45
 Use beyond or contrary to grant, 16, 46
 Where suit is primarily for infringement, 16, 45
 Supreme court of District of Columbia, 16, 54
 Territorial supreme courts, 16, 54

PATENTS, *cont'd.*

Verdict, 16, 93

Verification:

Bill in equity for infringement,
16, 103

**PAUPERS, see FORMA PAUPERIS;
POOR AND POOR LAWS.**

PAYMENT, 16, 164

See FUNDS AND DEPOSITS IN COURT;
LIMITATIONS.

Accord and satisfaction:

Evidence under plea of payment,
16, 211

Affirmative defense, 16, 167

Agency:

Evidence of payment to agent,
16, 210

Payment to agent, 16, 196

Amendments:

Plea of payment, 16, 189

Amount in controversy:

Reduction of debt by payment
below jurisdictional limit:
Costs, 16, 222

Discretionary costs, 16,
224

In general, 16, 222

Limited costs, 16, 225

Reduction by set-off, 16,
223

Where plaintiff recovers
on costs, 16, 222

Answers in code pleading, 1, 833, 842

Joinder of payment and general
denial, 1, 857

Proved under general denial, 1,
817

Assignments.

Evidence of payment to assignor,
16, 210

Payment to assignor, 16, 197

Assumpsit, 2, 1018, 1028

Bonds, 3, 665

Action on bonds, 16, 201

Breach, payment after, 16, 197

Certainty and particularity:

Amendments, 16, 189

How objection taken, 16, 188

In general, 16, 186

Objection for want of certainty,
16, 188

Objection to evidence, 16, 189

Requiring defendant to furnish
particulars, 16, 186

Statutes, 16, 187

When objection for want of cer-
tainty arises, 16, 188

When objection taken, 16, 189

Check, 16, 194, 209

Collaterals:

Evidence that plaintiff has re-
ceived the proceeds of collat-
erals, 16, 214

PAYMENT, *cont'd.*

Collection:

Evidence admissible under plea
of payment, 16, 214

Conclusion of plea, 16, 198

Conclusion mere matter of form,
16, 199

Conclusion to country, 16, 199

In general, 16, 198

Conditions precedent, 4, 646

Consideration, failure of, 16, 212

Construction of plea of payment, 16,
169

Costs (see Costs), 16, 221

Costs accruing before payment
into court, 16, 226

Costs accruing subsequent to
payment into court, 16, 228

In general, 16, 221

Payment into court, 16, 226

Payment *puis darrein continu-*
ance, 16, 221

Reduction of debt by payment
below jurisdictional limit, 16,
222

Courts:

As to payment into court, see
FUNDS AND DEPOSITS IN COURT.

Damages, see infra, Mitigation of
damages.

Debt:

Plea to action on simple con-
tracts, 5, 923

Definiteness and certainty in pleading,
see infra, Certainty and particu-
larity.

Denial of original liability, 16, 185

Dismissal, discontinuance, and non-
suit, 16, 213

Evidence of former discontinu-
ance under plea of payment,
16, 213

Draft, 16, 194

Election to plead, 16, 183

Equitable defenses:

Evidence admissible under plea
of payment, 16, 215, 216, 217

Necessity for notice, 16, 217

Evidence:

Matters of evidence, 16, 191

Evidence admissible under plea of
payment, 16, 205

Accord and satisfaction, 16, 211

Check, 16, 209

Collection and loss of collaterals,
16, 214

Counterclaim, 16, 212

Discharge of sealed instrument,
16, 211

Discontinuance of the action, 16,
213

Disproving cause of action, 16,
215

PAYMENT, *cont'd.*

- Evidence admissible under plea of payment, *cont'd.*
 - Early doctrine, 16, 205
 - Equitable defenses, 16, 215
 - Evidence to disprove cause of action, 16, 215
 - Excusing nonpayment, 16, 215
 - Failure of consideration, 16, 212
 - Garnishment, 16, 213
 - Judgment in garnishment, 16, 213
 - Leave to give matter in evidence, 16, 216
 - Manner of payment expressly stated, 16, 215
 - Medium of payment, 16, 206, 207, 208
 - Mistake, 16, 212
 - Modern rule, 16, 207
 - Money payments, 16, 206, 207
 - Notice of particular equitable defenses, 16, 217
 - Of lumber, 16, 209
 - Of wheat, 16, 209
 - Partial payments, 16, 213
 - Particulars of payment constituting mere matter of evidence, 16, 208
 - "Payment," 16, 205
 - Payment in property, 16, 208
 - Payment to agent, 16, 210
 - Payment to assignor, 16, 210
 - Payment to third parties, 16, 210
 - Payment with leave, 16, 216
 - Pennsylvania, 16, 216
 - Promissory note, 16, 209
 - Property, 16, 206, 207, 208, 216
 - Rule in chancery pleadings, 16, 216
 - Set-off, 16, 212
 - Statute of limitations, 16, 213
 - Strict compliance with contract, 16, 205
 - Tender of payment in something else than money, 16, 206, 207
 - Testamentary provision, 16, 210
 - Voluntary payment to creditor under code, 16, 211
- Executions*, see EXECUTIONS.
- Extortion*, see EXTORTION.
- Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.
- Garnishment:
 - Evidence of garnishment under plea of payment, 16, 213
 - Payment as garnishee, 16, 196
- General issue (see *infra*, Necessity for plea of payment), 16, 168
- Evidence of payment, 16, 172
- Evidence of payment under general issue, 16, 171
- Information and belief, 16, 192

PAYMENT, *cont'd.*

- Joinder of counts and causes, 16, 200
- Joinder with other pleas, 16, 200
 - Improper matter, 16, 201
 - In general, 16, 200
- Joint plaintiffs, 16, 198
- Judgments, 26, 221
 - Specifying medium of payment.
 - 11, 940
 - Absence of contract, 11, 941
 - Coin, 11, 941
 - Conformity to pleadings and verdict, 11, 946
 - Contracts for coin or equivalent currency, 11, 946
 - Contracts to pay in coin, 11, 943
 - Costs, 11, 947
 - Currency, 11, 941
 - Domestic money, 11, 940
 - Effect of unauthorized judgment for coin, 11, 947
 - Foreign money, 11, 940
 - Judgments for duties and taxes, 11, 943
 - Loss or conversion of coin, 11, 942
 - Specific contract acts, 11, 945
- Legal conclusions, 16, 190
- Limitation of actions, 16, 213
 - Plea of payment, 16, 213
- Manner of payment*, see *infra*, Evidence admissible under plea of payment.
- Mechanics' liens*, see MECHANICS' LIENS.
- Medium of payment (see *infra*, Evidence admissible under plea of payment), 16, 209
- Mistake:
 - Evidence under plea of payment, 16, 212
- Mitigation of damages:
 - Necessity for plea of payment, 16, 182
 - In general, 16, 182
 - Payment in bar of the action, 16, 182
- Nature, operation, and effect of plea of payment, 16, 167
- Necessity for plea of payment, 16, 176
 - Common law, 16, 170
 - Common-law rule in United States, 16, 172
 - Common-law rule where plaintiff alleges indebtedness generally, 16, 173
 - Early distinction, 16, 170
 - Evidence of payment under general issue, 16, 171
 - In general, 16, 170
 - Nul tiel record*, 16, 172
 - Showing payment under nonassumpsit, 16, 170

PAYMENT, *cont'd.*Necessity for plea of payment, *cont'd.*Defendant's election to plead,
16, 183

Mitigation of damages, 16, 182

In general, 16, 182

Payment in bar of the ac-
tion, 16, 182

Statutes, 16, 174

Action for existing balance,
16, 181

Code rule, 16, 174

Conflict of cases considered,
16, 177

In general, 16, 174

Materiality of averment of
nonpayment in complaint,
16, 176Matter in discharge of con-
tract, 16, 180

New matter, 16, 174

Negative pregnant, 16, 191

Negotiable instruments, 16, 194, 209

New assignment:

Replication by way of new as-
signment, 16, 221

Non assumpsit, 16, 170

Note, 16, 194, 209

Notice:

Particular equitable defenses,
16, 217*Nul tiel record*, 16, 172Plea of payment and *nul tiel rec-*
ord, 19, 173

Official bonds, 15, 151

Open and close, 16, 170

Particularity, see *infra*, Certainty
and particularity.

Part payment, 16, 201, 205

Actions on specialties and rec-
ords, 16, 205

Complete defense, 16, 203

Confession or plea as to residue,
16, 202Definiteness and certainty, 16,
203

In general, 16, 201

Joinder with other pleas, 16, 205

Plea of, 16, 201

Smaller sum in discharge of
greater, 16, 204Where plea is silent as to the
part of demand unanswered,
16, 202Payment in manner other than that
provided for in contract, 16,
193

In general, 16, 193

Payment by check, draft, or
note, 16, 194

Payment in property, 19, 193

Payment in suspension, 16, 195

Satisfaction, 16, 195

PAYMENT, *cont'd.**Payment into court*, see FUNDS AND
DEPOSITS IN COURT.Plea of payment (see *infra*, Evidence
admissible under plea of pay-
ment), 19, 171Actions on bonds and records,
16, 201

As affirmative defense, 16, 167

Conclusion of law, 16, 190

Conclusion of plea, 16, 198

Construction of plea of pay-
ment, 16, 169Denial of original liability, 16,
185Evidence admissible under plea
of payment, 16, 205

Information and belief, 16, 192

Joinder with other pleas, 16, 200

Matters of evidence, 16, 191

Nature and operation, 16, 167

Necessity for plea of payment, see
infra, Necessity for plea of
payment.

Negative pregnant, 16, 191

Part payment, see *infra*, Part
payment.Payment after action brought,
16, 198

Payment after breach, 16, 197

Payment as garnishee, 16, 196

Payment by stranger, 16, 196

*Payment in manner other than that
provided for in contract*, see *in-*
fra, Payment in manner other
than that provided for in con-
tract.

Payment into court, 16, 228

Payment to agent, 16, 196

Payment to assignor, 16, 197

Payment to one of several joint
plaintiffs, 16, 198Plea of payment as dispensing
with proof of cause of action,
16, 168

Presumption of payment, 16, 192

Replication to plea of payment, see
infra, Replication to plea of
payment.*Requisites of plea of payment*, see
infra, Requisites of plea of
payment.

Right to open and close, 16, 170

Time to plead payment, 16, 200

Whether general issue plea, 16,
168

Pleas:

Necessity of special plea, 19, 173

Sufficiency of plea, 19, 174

Presumptions:

Presumption of payment, 16, 192

Property, see *infra*, Evidence admis-
sible under plea of payment.

PAYMENT, *cont'd.**Puis darrein continuance*, 17, 267

Records:

Action on records, 16, 201

Replication to plea of payment, 16, 218

Construction of plea with reference to necessity for replication, 16, 220

In general, 16, 218

Replication by way of new assignment, 16, 221

Rule as affected by conclusion of plea, 16, 219

Similiter, 16, 220

Requisites of plea of payment, 16, 183

Actions on bonds and records, 16, 201

Averment of facts constituting payment, 16, 184

Certainty and particularity, see *infra*, *Certainty and particularity*.

Conclusion of law, 16, 190

Conclusion of plea, 16, 198

Denial of original liability, 16, 185

Information and belief, 16, 192

Joinder with other pleas, 16, 200

Matters of evidence, 16, 191

Negative pregnant, 16, 191

Part payment, see *infra*, *Part payment*.

Payment after action brought, 16, 199

Payment after breach, 16, 197

Payment as garnishee, 16, 196

Payment by stranger, 16, 196

Payment in manner other than that provided for in contract, see *infra*, *Payment in manner other than that provided for in contract*.

Payment to agent, 16, 196

Payment to assignor, 16, 197

Payment to one of several joint plaintiffs, 16, 198

Presumption of payment, 16, 192

Time to plead payment, 16, 200

Scope of article, 16, 166

Set-off, recoupment, and counterclaim, 19, 789

Evidence under plea of payment, 16, 212

Reduction of debt by payment below jurisdictional limit, 16, 223

Similiter, 16, 220

Statutes, see *infra*, *Necessity for plea of payment*.

Stranger, payment by, 19, 196

Sufficiency and particularity:

Part payment, 16, 203

PAYMENT, *cont'd.*

Supplemental pleadings, 21, 49

Tender, see *TENDER*.

Testamentary provision:

Evidence under plea of payment, 16, 210

Third parties, payment to, 16, 210

Time to plead payment, 16, 200

Verdict, 16, 221

PAYMENT INTO COURT, see *FUNDS AND DEPOSITS IN COURT*.**PAYMENT OF COSTS**, see *COSTS*.**PEACE**, see *BILLS OF PEACE*; *BREACH OF THE PEACE*; *JUSTICES OF THE PEACE*.**PECUNIARY NATURE:**

Amount in controversy, 1, 719

PEDDLERS, see *HAWKERS AND PEDDLERS*.**PEDIGREE:**

Evidence, 8, 30

PENALTIES AND FORFEITURES, see *PENALTIES AND PENAL ACTIONS*.**PENALTIES AND PENAL ACTIONS**, 16, 229See *FINES AND COSTS IN CRIMINAL CASES*; *OFFICIAL BONDS*.

Abatement of action, 16, 301

Actions on remedial statutes, 16, 301

Death of defendant, 16, 301

Death of informer, 16, 301

Action by informer, 16, 246

Action by informer in another's name, 16, 247

Compounding penal actions, 16, 247

Control over suit, 16, 246

Jurisdiction by United States and state courts, 16, 251

Leave to compound, 16, 247

Nolle prosequi, 16, 247

United States, 16, 247

Admiralty:

Amendments, 16, 289

Decrees in admiralty condemning property:

Appeal, 16, 306

Agency:

Acts of agents, 16, 264

Amendments, 1, 509; 16, 289

Actions before justices of the peace, 16, 290

Admiralty, 16, 289

At common law, 16, 289

Delay in asking amendment, 16, 290

In what particulars allowed, 16, 289

Parties, 16, 290

Statute of jeofails, 16, 299

Statutes, 16, 289

PENALTIES AND PENAL ACTIONS, *cont'd.*

- Amount, allegation of, 16, 279
- Another suit pending, 1, 771
 - Identity of parties, 1, 759
- Answers*, see *infra*, Pleas and answers.
- Appeal bonds and undertakings, 1, 1016
- Appeals, 16, 304
 - Bonds, 16, 305
 - Decrees in admiralty condemning property, 16, 306
 - In general, 16, 304
 - Special statutory provisions, 16, 305
 - Trial *de novo*, 16, 307
 - Where indictment lies, 16, 305
 - Who may appeal, 16, 307
- Appearances:
 - Voluntary appearance, 16, 288
- Arbitration and award, 16, 236
- Bankruptcy:
 - Jurisdiction, 16, 251
- Bills of particulars, 3, 554
- Carriers:
 - Actions to recover penalty for illegal charges, 3, 865
- Change of venue, 16, 257
- Chattel mortgages:
 - Actions for penalties, 4, 534
- Civil or criminal actions, 16, 234
 - Arbitration and award, 16, 236
 - Attachment, 16, 236
 - Character of pleadings and procedure, 16, 235
 - Damages, 16, 235
 - Depositions, 16, 237
 - Directing verdict, 16, 236
 - Fine, 16, 234
 - Forfeiture of property, 16, 236
 - Nonsuit, 16, 237
 - Penalty, 16, 234
 - Process, 16, 284
 - Technical words, 16, 234
 - Terms loosely used, 16, 234
 - Use of technical words, 16, 234
- Complaint*, see *infra*, Declaration, information, petition, or complaint.
- Compounding offenses, 16, 247
- Conclusions of law, 16, 271, 272, 273
- Conditions precedent, 4, 657
- Confiscation, 16, 255, 264
- Control over suit, 16, 246
 - Action by informer, 16, 246
 - Action by state, 16, 248
- Copyright, 5, 22
 - Actions for penalties, 5, 22
 - False notice of copyright, 5, 23
 - In general, 5, 22
 - Jurisdiction, 5, 17
 - Waiver of forfeiture, 5, 22

PENALTIES AND PENAL ACTIONS, *cont'd.*

- Costs, 16, 307
 - Amount in controversy, 5, 171
 - At common law, 16, 307
 - By statute, 16, 308
 - Security for costs, 16, 308
- Courts*, see *infra*, Jurisdiction.
- Criminal action*, see *infra*, Civil or criminal actions.
- Criminal prosecutions, 16, 241
 - Criminal prosecution allowed by implication, 16, 242
 - No form of action prescribed, 16, 242
 - Penal action designated by statute, 16, 242
 - When criminal prosecutions lie, 16, 241
- Crossings, 5, 689, 691
- Cumulative remedies*, see *infra*, Whether remedies are cumulative.
- Damages, 16, 235
 - Actions for double damages, 16, 245
 - Alleging nonpayment of damage, 16, 268
 - Assessment of damages by court or jury, 16, 297
 - Authority of court to increase damages, 16, 298
 - Civil or criminal action, 16, 235
 - Complaint in actions for double damages, 16, 273
 - Discovery in action for double or treble damages, 16, 293
 - Double or treble damages for acts of trespass, 16, 238
 - Form of action for double damages, 16, 245
 - Province of court and jury in actions for double or treble damages, 16, 297
 - Sum given by statute called damages, 16, 235
- Death, 16, 301
 - Death of defendant, 5, 833
 - Death of one of several plaintiffs, 5, 817
 - Death of plaintiff, 5, 811
- Debt, 5, 907; 16, 238
 - Character of the action, 5, 907
 - "Damages," 5, 908
 - "Fine," 5, 908
 - Infringement of municipal ordinances, 5, 908
 - In general, 5, 907
 - Penal remedies strictly pursued, 5, 907
 - Qui tam* actions, 5, 909
 - Statutory damages computable by verdict, 5, 908

PENALTIES AND PENAL ACTIONS, *cont'd.*

Declaration, see *infra*, Declaration, information, petition, or complaint.

Declaration, information, petition, or complaint, 16, 268

Action by party aggrieved, 16, 269

Allegation of amount, 16, 279

Allegation of substance, 16, 274

Alleging damage, 16, 268

Alleging nonpayment, 16, 268

Averments in language of statute, 16, 278

Conclusion, 16, 271

Conclusion not indispensable, 16, 273

Conclusions in singular or plural, 16, 272

Conclusion surplusage, 16, 273

Counting on statute, 16, 270

Declaring *qui tam*, 16, 268

Double damages, 16, 273

Effect of conclusion, 19, 272

Formal allegations, 16, 268

Form of remedy, 16, 268

General allegations, 16, 276

General reference to statute, 16, 271

Informations for forfeiture of goods, 16, 277

In general, 16, 268

Issuing marriage license to or marrying minor, 16, 277

Joinder of causes, 16, 281

Liberal rules of pleading, 16, 269

Necessary circumstances must be alleged, 16, 275

Negating exceptions and provisos, 16, 278

Oral pleadings, 16, 280

Pleading in inferior courts, 16, 280

Popular actions and actions by the state, 16, 269

Private statutes and ordinances, 16, 270

Same strictness as in indictment, 16, 276

Statutory forms, 16, 280

Substance, 16, 274

Surplusage, 16, 269

Variance between writ and declaration, 16, 270

Where all of penalty does not go to state, 16, 269

Written pleadings, 16, 280

Definitions, 16, 231

Ancient and modern actions, 16, 233

Penal actions, 16, 232

PENALTIES AND PENAL ACTIONS, *cont'd.*

Definitions, *cont'd.*

Penal statutes and actions, 16, 231

Popular actions, 16, 233

Qui tam actions, 16, 233

Depositions, 16, 237

Directing verdict, 16, 236

Discovery, production, and inspection, 6, 743, 745; 16, 292

Actions against individuals, 16, 292

Actions against property, 16, 294

Actions for double or treble damages, 16, 293

Interrogatories, 16, 292

Penal action barred by statute of limitations, 16, 294

Production of books and papers, 16, 293

Statutory provisions, 16, 294

Dismissal, discontinuance, and nonsuit, 16, 237

Double damages, see *infra*, Damages.

Elections:

Actions for penalties, 7, 396

Executors and administrators, 16, 265

Fine, 16, 234

Forfeiture, 16, 236

Bail and recognizance, 3, 234

Appeal, 3, 238

Calling accused and entering default, 3, 237

Conclusiveness of record, 3, 240

Conditions of remission, 3, 243

Debt, 3, 240

Discharge, 3, 241, 244

Effect of remission, 3, 243

Enforcement, 3, 238

Grounds, 3, 235, 243

Judgment of forfeiture, 3, 238

Money as bail, 3, 215

Motion, 3, 242

Power, 3, 234

Proceedings, 3, 237

Recognizance, 3, 234

Remission, 3, 241

Requisite of complaint, 3, 241

Review on appeal, 3, 244

Scire facias, 3, 239

Setting aside, 3, 244

Forthcoming and delivery bonds, see FORTHCOMING AND DELIVERY BONDS.

Informations for forfeiture of goods, 16, 277

PENALTIES AND PENAL ACTIONS, *cont'd.***Forfeiture, *cont'd.*****Internal revenue:**

Suits for forfeiture for violation of internal revenue laws, 11, 439

Information, 11, 440

Jurisdiction, 11, 439

Jurisdiction of suits *in personam*, 11, 440

Jurisdiction of suits *in rem*, 11, 439

Nature of suit, 11, 439

Intoxicating liquors, 11, 580

Adopting complaint as part of warrant, 11, 586

Amendment, 11, 587

Building occupied by defendant and another, 11, 584

Claim to seized liquors, 11, 587

Complaint, libel, or information after seizure, 11, 582

Description of liquors to be seized, 11, 585

Description of place in complaint and warrant, 11, 582

Description of vehicle, 11, 584

Directing search of several places, 11, 587

Direction as to time of service of warrant, 11, 587

Kinds of liquor, 11, 585

Name, 11, 584

Nature of the proceeding, 11, 580

Occupancy, street, and number, 11, 584

Officer's return, 11, 587

Ownership, 11, 584

Proof, 11, 585

Quantity of liquor, 11, 585

Repugnant words of description, 11, 584

Requisites of complaint or information, 11, 581

Requisites of warrant generally, 11, 585

Variance, 11, 585

Obscenity, 14, 1164***Quo warranto*, see QUO WARRANTO.*****Scire facias*, see SCIRE FACIAS.****Sentence, 19, 483*****Taxation*, see TAXATION.*****Forma pauperis*, 16, 684****Game and game laws, 9, 763****General issue, 16, 290****PENALTIES AND PENAL ACTIONS, *cont'd.*****Indictments:**

Appeals, 16, 305

Indorsements on process, 16, 285

Date when process issued, 16, 287

Reference to penal statute, 16, 285

Infants, 16, 263

Information (see *infra*, Declaration, information, petition, or complaint), 16, 239, 240

Informers (see *infra*, Action by informer):

Death of informer, 16, 301

Joinder of parties, 16, 266

Parties plaintiff, 16, 259

Instructions, 16, 295

Interrogatories, 16, 293

Jeofails, 16, 299

Joinder of counts and causes, 1, 172; 16, 281

Code pleading, 1, 191

Construction of statutes, 16, 283

Distinct penalties, 16, 281

Effect on jurisdiction, 16, 283

Limitations upon joinder, 16, 282

Separate counts, 16, 282

Statutory and common-law causes, 16, 281

Joinder of parties, 16, 266

Construction of statutes, 16, 267

Defendants, 16, 267

Distinction between remedial and penal actions, 16, 266

Informers, 16, 266

Party aggrieved, 16, 266

Plaintiffs, 16, 266

Qui tam actions, 16, 266

Torts, 16, 267

Judgments, 16, 299

Actions against property, 16, 300

Actions upon foreign and sister state judgments, 11, 1101

Amount found due, 16, 300

Form, 16, 299

Remittitur, 16, 301

Where the whole penalty does not go to the plaintiff, 16, 299

Jurisdiction, 12, 134; 16, 248

Courts of general jurisdiction, 16, 242

Courts of law, 16, 252

Disqualification of magistrate, 16, 254

English and federal courts, 16, 249

Extraterritorial jurisdiction, 16, 248

How jurisdiction determined, 16, 249

Inferior courts, 16, 253

PENALTIES AND PENAL ACTIONS, *cont'd.*Jurisdiction, *cont'd.*

- Jurisdiction for breach in foreign state, 16, 249
- National bankruptcy acts, 16, 251
- Raising objection to jurisdiction, 16, 253
- United States and state courts, 16, 250
- United States courts, 16, 255
- Want of jurisdiction over person, 16, 253
- What particular court has jurisdiction, 16, 252

Jury:

- Trial by jury, 16, 245
 - As in civil cases, 16, 245
 - Forfeiture of property, 16, 246
 - Violations considered as misdemeanors, 16, 246

Liens, 16, 236

Limitations, 13, 282

- Arrest of judgment, 13, 283
- Special plea or general issue, 13, 282

Lotteries, 13, 399

Marriage:

- Issuing marriage license to or marrying minor, 16, 277

Master and servant:

- Acts of servants, 16, 264

Negating exceptions and provisos, 16, 278

New trial, 16, 302

Nolle prosequi, 16, 247

Ordinances (see ORDINANCES):

- Penal and other civil actions, 16, 244

Parties to actions, 16, 258

- Actions against property, 16, 263
- Agents, 16, 264
- Assignee for the benefit of creditors, 16, 261
- Confiscation cases, 16, 264
- Corporations, 16, 260
- Defendant, 16, 262
- Infants, 16, 263
- Informers, 16, 259
- Joinder of parties, 16, 266
- Legal representatives, 16, 261, 265
- Liability for acts of servants under remedial statutes, 16, 264
- "Other persons," 16, 263
- Participants in penal act, 16, 264
- Persons injured or aggrieved, 16, 260
- Plaintiff, 16, 258
- Public officer, 16, 259, 266
- Receivers of railroads, 16, 263

PENALTIES AND PENAL ACTIONS, *cont'd.*Parties to actions, *cont'd.*

- Refusal to satisfy mortgage of record, 16, 262
- Servants, 16, 264
- State, 16, 258
- Statutory provisions as to participants, 16, 265
- Strangers, 16, 265
- Trustees, 16, 265
- Passengers, 15, 1147
- Patents*, see PATENTS.
- Penalty, 16, 234
- Petition*, see *infra*, Declaration, information, petition, or complaint.
- Pleas and answers, 16, 290
 - Answers, 16, 291
 - General issue, 16, 290
 - Pleas in bar, 16, 290
 - Special pleas, 16, 291
 - Verified answer, 16, 292

Process, see *infra*, Summons and process.

Public officers, 16, 259, 266

- Refusal to accept office, 17, 143, 145

Questions of law and fact, 16, 296

- In actions for double or treble damages, 16, 297

- In actions for fixed amount, 16, 296

- When court may increase damages, 16, 298

Qui tam actions, 16, 233

- Definition, 16, 233

Railroads, see RAILROADS.

Reasonable doubt, 16, 295

Receivers, 16, 263

Records, 16, 303

- Actions in inferior courts, 16, 303

- In general, 16, 303

- Reference to statutes, 16, 304

- Where the action is local, 16, 304

References, 16, 236

Remittitur, 19, 301

Satisfaction and discharge of judgments, 19, 137

Scope of article, 16, 231

Security for costs, 16, 308; 19, 357

Set-off, recoupment, and counterclaim, 16, 240

- Equitable set-off, 16, 241

- In general, 16, 240

- Usury exacted by national bank, 16, 240

Sheriffs and constables, 20, 122

Special pleas, 16, 291

State:

- Action by state, 16, 248

- Parties plaintiff, 16, 258

State courts, see *infra*, Jurisdiction.

PENALTIES AND PENAL ACTIONS, *cont'd.*

Statutes (see *infra*, Declaration, information, petition, or complaint):

Definitions of penal statutes, 16, 231

Joinder of counts and causes, 16, 283

Penal statutes, 16, 231

Statutory form of action, 16, 237

Streets and highways, see **STREETS AND HIGHWAYS**.

Summons and process, 16, 284

Arrest in civil actions, 16, 285

Civil or criminal action, 16, 284

Date when process issued, 16, 287

Indorsements, 16, 285

Not applicable to complaint, 16, 286

Ordinances, 16, 286

Raising objection to lack of indorsement, 16, 286

Reference to penal statute, 16, 285

Service of process, 16, 285

Statutory provisions, 16, 285

United States courts, 16, 288

Voluntary appearance, 16, 288

Where copy of complaint is delivered, 16, 287

Sundays and holidays:

Action for penalty for violation of Sunday law, 20, 1201

Averment of petition or complaint, 20, 1201

Averment that work was not necessary, 20, 1201

Verdict or finding, 20, 1201

Surplusage, 16, 269

Survival of actions, 21, 356

Taxation, see **TAXATION**.

Telegraphs and telephones, see **TELEGRAPHS AND TELEPHONES**.

Tolls, see **TOLLS**.

Trade-marks and trade names, 21, 774

Trespass, 16, 238

Trover and conversion:

Joinder of counts and causes, 21, 1033

Trusts and trustees, 16, 265

United States, 16, 255

Actions against property, 16, 255

Compounding penal actions, 16, 247

Confiscation cases, 16, 255

Exclusive original jurisdiction, 16, 255

Remission or mitigation of penalties, 16, 247

Seizure of land, 16, 255

PENALTIES AND PENAL ACTIONS, *cont'd.*

United States courts:

Summons and process, 16, 288

United States and state courts, 16, 250

Usury (see **USURY**):

Reasonable doubt, 16, 296

Venue, 16, 256; 22, 780, 791

Action by party aggrieved, 16, 257

Change of venue, 16, 257

Local or transitory, 16, 256

Verdict, 16, 298

Form, 16, 298

General verdict, 16, 298

Several defendants, 16, 298

Statute of jeofails, 16, 299

Whether remedies are cumulative, 16, 239

Actions to recover penalty, 16, 239

Bill, plaint, and information, 16, 240

Common-law injuries, 16, 244

Criminal prosecution, 16, 241

Criminal prosecution allowed by implication, 16, 242

Double damages, 16, 245

Equitable set-off, 16, 241

Injunction and mandamus, 16, 245

No form of action prescribed, 16, 242

Ordinances, 16, 244

Penal action designated by statute, 16, 242

Penal and other civil actions, 16, 243

Set-off and counterclaim, 16, 240

Usury exacted by national banks, 16, 240

Witnesses, see **WITNESSES**.

PENDENTE LITE:

Equitable assignments:

Parties, 7, 772

PENDING, see **ANOTHER SUIT PENDING**.

PENDING ACTION:

Creditors' bills, 5, 613

Death, 5, 788

Receivers, see **RECEIVERS**.

PENSIONS, 16, 309

Fees of pension agents, 16, 309

Fraudulent claims, 16, 310

In general, 16, 309

Unlawful retention of money by agent, 6, 310

PERFORMANCE, 16, 312

See **CONDITIONS PRECEDENT**.

Answers in code pleading, 1, 819

Arbitration bond, 3, 141

Bills of review, 3, 585

PERFORMANCE, *cont'd.*

- Bonds, 3, 662
 - Arbitration bonds, 3, 141
- Breach of promise, 3, 687
- Conclusions of law, 16, 313
- Conditions precedent, 2, 299; 4, 626; 14, 529
- Contracts, 4, 932
- Covenant*, see COVENANT.
- Departure, 6, 462
- Funds and deposits in court, 9, 727
- General averment of performance, 16, 313
- General issue, 16, 312
- Guardian's bond, 9, 990
- Insurance:

As to performance of conditions of insurance policy, see INSURANCE.

- Mechanics' liens, 13, 978

Payment, 19, 164

PERJURY, 16, 314

- Affidavits (see AFFIDAVITS), 16, 346, 347
 - Affidavit accompanying bank officer's report, 16, 334
 - Allegation that affidavit was made, 16, 330
 - Materiality, 16, 345
 - Test, 1, 310
 - Where perjury is assigned upon several parts of an affidavit, 16, 335
 - Whether assignable, 1, 310
- Arrest of witness for perjury in presence of jury, 21, 998
- Assignment of perjury, 16, 338
 - Averment as to knowledge, 16, 341
 - Averment of falsity must be made expressly and positively, 16, 338
 - General allegation, 16, 339
 - In general, 16, 338
 - Setting forth the truth, 16, 340
- Bills to impeach decrees and judgments, 3, 630
- Corruptly, 16, 337
- Evidence (see *infra*, Setting forth the testimony):
 - Indictment as evidence, 8, 31
 - Materiality of the testimony, see *infra*, Materiality of the testimony.
- Extra-judicial oaths, 16, 323
- Falsely, 16, 335
- Falsity, averment as to, 16, 338
- Feloniously, 16, 337
- Indictments, 16, 316
 - At common law, 16, 316
 - Attempt to suborn perjury, 16, 319
 - By statute, 16, 316
 - Concluding averment, 16, 318

PERJURY, *cont'd.***Indictments, *cont'd.***

- Following words of statute, 16, 317
- Innuendo, 16, 318
- Subornation of perjury, 16, 318
- United States, 16, 317
- Innuendo, 16, 318
- Instructions, 16, 349
- Intent, 16, 335
 - Corruptly, 16, 337
 - Falsely, 16, 335
 - Feloniously, 16, 337
 - In general, 16, 335
 - Knowingly, 16, 338
 - Subornation of perjury, 16, 337
 - Wilfully, 16, 336

Judgments:

- Equitable relief against judgments, 11, 1183
- Jurisdiction, 16, 315
- Jurisdiction and authority to administer oaths, 16, 325
 - At common law, 16, 325
 - English statutes, 16, 325
 - Justices of the peace, 16, 327
 - Name of court, 16, 327
 - Name of officer, 16, 327
 - Quasi-judicial bodies, 16, 328
 - United States, 16, 325
- Justices of the peace, 16, 328
- Knowingly, 16, 338
- Knowledge, averments as to, 16, 341

Materiality of the testimony, 16, 342

- Essential element of the crime, 16, 345
- Ex parte* proceedings, 16, 345
- Immateriality apparent on face of indictment, 16, 344
- In general, 16, 342
- Instructions, 16, 350
- Materiality of affidavits, 16, 345
- Questions of law and fact, 16, 350
- Two methods of averring materiality, 16, 343
- Name of action, 16, 321
- Name of court, 16, 327
- Name of officer, 16, 327
- Names of parties, 16, 322
- Oath (see *infra*, Jurisdiction and authority to administer oaths), 16, 329
 - Allegation that accused was sworn, 16, 329
 - Allegation that oath was made, 16, 330
 - By whom administered, 16, 332
 - Extra-judicial oaths, 16, 323
 - Manner of taking oath, 16, 331
 - Oath in general, 16, 329
- Pending action, 16, 323

PERJURY, *cont'd.*

- Place, 16, 346
 - County, 16, 349
 - In general, 16, 346
 - Materiality, 16, 346, 347
 - Time of administration of oath, 16, 347
 - Variance between pleading and proof, 16, 248
- Proceeding in which offense was committed, 16, 319
 - At common law, 16, 319
 - Extra-judicial oaths, 16, 323
 - In general, 16, 319
 - Name of action, 16, 321
 - Names of parties, 16, 322
 - Pending action, 16, 323
 - Statutes, 16, 320
- Quasi-judicial bodies, 16, 328
- Questions of law and fact, 16, 349, 350
- Scandal and impertinence, 19, 221
- Setting forth the testimony, 16, 333
 - According to substance and effect, 16, 333
 - Affidavit accompanying bank officer's report, 16, 334
 - Manner in which testimony was obtained, 16, 334
 - Perjury assigned upon written instrument, 16, 334
 - Where perjury is assigned upon several parts of an affidavit, 16, 335
- Sham and frivolous pleadings, 20, 89
- Subornation of perjury, 16, 318
 - Attempt to suborn perjury, 16, 319
 - Feloniously, 16, 337
 - Indictments, 16, 318
- Time, 16, 346
- Truth, setting forth, 16, 340
- Variance, 16, 322
 - Time and place, 16, 348
- Verdict, 15, 350
- Wilfully, 16, 336, 349

PER MINAS, see DURESS.

PERPETUATION OF TESTIMONY, 16, 353

- Answers in equity pleading, 19, 361
- Bills de bene esse*, see *BILLS DE BENE ESSE*.
- Bills to perpetuate testimony, 16, 353
 - Against whom lies, 16, 358
 - Answer of defendant, 16, 261
 - Averments in bill, 16, 358
 - Costs, 16, 364
 - Definition, 16, 353
 - Determination of costs, 16, 364
 - Effect of neglect to proceed, 16, 362
 - Examination, 16, 363
 - Index Pl. & Pr. — 52

PERPETUATION OF TESTIMONY, *cont'd.*

- Bills to perpetuate testimony, *cont'd.*
 - Examination, before whom taken, 16, 363
 - Hearing, 16, 362
 - Impediment of trying case at law, 16, 356
 - Interest necessary to maintain, 16, 357
 - Interest of defendant, 16, 359
 - Interest of plaintiff, 16, 359
 - Manner of examination, 15, 363
 - Nature, 16, 354
 - Nature of title or claim, 16, 356
 - Necessity for perpetuation, 16, 359
 - Notice of motion, 16, 364
 - Order for examination, 16, 363
 - Order for publication, 16, 364
 - Penalties, 16, 356
 - Plea, 16, 360
 - Prayer, 16, 360
 - Purpose, 16, 354
 - Subject-matter, 16, 358
 - Subject-matter likely to be litigated, 16, 354
 - Testimony in danger of being lost, 16, 355
 - When lies, 16, 354
 - Who may maintain, 16, 357
- Costs, 16, 364
- Definition, 16, 353
- Depositions*, see *DEPOSITIONS*.
- Depositions in perpetuum*, 16, 364
 - Allegation of good faith, 16, 367
 - Application, 16, 366
 - Averments of petition, 16, 366
 - Commission, 16, 370
 - Granting of petition, 16, 368
 - In general, 16, 364
 - Manner of taking deposition, 16, 369
 - Materiality and necessity of testimony, 16, 367
 - Name and address of adverse parties, 16, 367
 - Notice, 16, 369
 - Order of examination, 16, 369
 - Probable inability of witness to attend, 19, 367
 - Purpose, 16, 365
 - Recording, 16, 370
 - Verification of petition, 16, 368
 - When depositions may be taken, 16, 365
 - When proper, 16, 365
- Examination:
 - Before whom taken, 16, 363
 - Determination of costs, 16, 364
 - Manner, 16, 363
 - Order for examination, 16, 363
 - Order of examination, 16, 369

PERPETUATION OF TESTIMONY, *cont'd.***Examination, *cont'd.***

Where testimony to be taken, 16, 363

Examination of parties before trial, see EXAMINATION OF PARTIES BEFORE TRIAL.

Hearing, 16, 363

Plea in equity, 16, 360

Verification, 16, 368

PERSON:

Convicts, 5, 15

PERSON AGGRIEVED, *see* AGGRIEVED PARTY.

PERSONAL INJURIES, 16, 371

See DAMAGES; STREETS AND HIGHWAYS.

Aggravation of former impaired condition, 16, 429

Instructions in behalf of defendant, 16, 429

Instructions in behalf of plaintiff, 16, 429

Amendments, 16, 406

Annulity, 16, 461

Answers, 16, 409

Argumentative instructions, 16, 412

Assault and battery, *see* ASSAULT AND BATTERY.

Bill of particulars, 16, 408

Carriers, *see* PASSENGERS.

Children, *see infra*, Infants.

Condition in life, 16, 404

Conditions (*see infra*, Aggravation of former impaired condition; Self-aggravation):

Instructions as to future and permanent effects, 16, 461

Consolidation of actions, 16, 376

Contributory negligence (*see* CONTRIBUTORY NEGLIGENCE):

Self-aggravation, 16, 430

Evidence demanding instruction in behalf of defendant, 16, 432

Nature of negligence retarding recovery, 16, 431

Objections that instructions are too general, 16, 433

Want of due care or medical attention, 16, 430

Crossings, *see* CROSSINGS.

Cure of erroneous instructions, *see infra*, Instructions.

Damages (*see infra*, Instructions; Pleading and proof):

Actions by married women, 5, 757

Actions for injuries to infants, 5, 759

Assault and battery, 5, 649

Business engagements, 5, 753

PERSONAL INJURIES, *cont'd.***Damages, *cont'd.***

Cost of medicines, 5, 752

Describing injuries, 5, 746

Earnings, 5, 754

Effect or result of injury, 5, 747

Future effect of injuries, 5, 749

General damages, 5, 648

In general, 5, 746

Loss of earnings, 5, 753

Loss of infant's service, 5, 760

Loss of time, 5, 758

Medical attendance, 5, 751

Mental agony, 5, 758

Nursing, 5, 751

Pain and suffering, 5, 750

Permanency of injuries, 5, 750

Plaintiff's earning power extraordinary, 5, 754

Special damages, 5, 750

Death by wrongful act (*see* DEATH BY WRONGFUL ACT):

Joinder, 16, 375

Declaration and complaint, see infra, Pleading and proof.

Definiteness and certainty in pleadings, 16, 405

Allegations not redundant, 16, 406

Declaration and complaint, 16, 405

Injury, 16, 378

Result of not objecting to indefiniteness and uncertainty, 16, 406

Directing verdict, 6, 706

Discretion of court, see infra, Instructions.

Double recovery of damages:

Instructions, 16, 419

Earning capacity, see infra, Impairment of earning capacity.

Earnings:

Instructions as to future and permanent effects, 16, 457

Instructions as to loss of earnings or profits, 16, 440

Evidence (*see infra*, Pleading and proof):

Comments on evidence in instruction, 16, 417

Matters testified to without objection, 16, 428

Physical examination, see infra, Physical examination.

Sufficiency of evidence to warrant instruction, 16, 417

Exceptions and objections, 16, 461

Exemplary damages:

Instructions, 16, 435

Expenditures, 16, 390

Allegation of expense, 16, 391

In general, 16, 390

PERSONAL INJURIES, *cont'd.*

- Expenditures, *cont'd.*
 - Instructions, 16, 444
 - Examples, 16, 444, 449
 - In general, 16, 444
 - Instructions must be clear and explicit, 16, 448
 - Medical attendance not paid for, 16, 447
 - Reasonableness of charge for medicines and attendance, 16, 446
 - Medical attendance, 16, 391
 - Necessity for expense, 16, 392
 - Payment of expense incurred, 16, 392
 - Value of services, 16, 392
- Eyesight, 16, 402
- Family relations, 16, 404
- Form of action, 16, 373
 - Contract or tort, 16, 373
 - Trespass or case, 16, 374
- Future effects*, see *infra*, Permanent effects.
- Habits, 16, 404
- Harmless error:
 - Admission of evidence as to matters which are not appropriately alleged, 16, 385
- Husband and wife, 16, 473
 - Action by husband, 16, 476
 - Husband necessary party, 16, 476
 - Husband proper but not necessary party, 16, 477
 - Action by husband and wife for injuries to wife, 16, 473
 - In general, 16, 473
 - Prejudicial errors, 16, 473
 - Recovery in joint action by husband and wife, 16, 473
 - Action by wife for injuries to herself, 16, 474
 - Husband a nominal party, 16, 476
 - In general, 16, 474
 - Right of action in wife must be alleged and proved, 16, 476
- Joinder of causes of action, 16, 375
- Recovery by one of damages belonging to other, 16, 478
- Impairment of earning capacity, 16, 393
 - Contingency, 16, 396
 - Future ability to earn, 16, 396
 - General averments of plaintiff's inability to work, 16, 393
 - Inability to attend to business as proof of extent of injury, 16, 400
 - In general, 16, 393

PERSONAL INJURIES, *cont'd.*

- Impairment of earning capacity, *con.*
 - Loss of profits dependent on special engagement, 16, 397
 - Loss of time directly or inferentially alleged, 16, 395
 - Particular business or engagement, 16, 396
 - Special allegations, 16, 397
 - Testimony admissible, 16, 399
 - When person injured is engaged in practice or profession, 16, 398
- Impairment of eyesight, 16, 402
- Infants, 16, 466
 - Action by minor, 16, 468
 - Action by parent, 16, 466
 - In general, 16, 466
 - Pleading and proof, 16, 466
 - Injuries to, 16, 466
 - Instructions, 16, 469
- Injury, 16, 377
 - Definiteness and certainty, 16, 378
 - Details as to injury and wounds, 16, 377
 - Internal and invisible ailments, 16, 379
 - Itemization, 16, 380
- Instructions, 16, 410
 - Aggravation of former impaired condition, 16, 429
 - Instructions in behalf of defendant, 16, 429
 - Instructions in behalf of plaintiff, 16, 429
- Argumentative instructions, 16, 412
- Assumption of facts, 16, 411
- Authorizing conjecture or speculation, 16, 413
- Authorizing double recovery, 16, 419
- Children, 16, 469
- Comments on evidence, 16, 417
- Cure of erroneous instructions, 16, 463
 - By other instructions, 16, 463
 - By verdict, 16, 465
- Damage, separate items of, 16, 420
- Damages, measure of, 16, 418
- Damages not pleaded or proven, 16, 424
- Discretion, 16, 421
- Discretion of jury, 16, 421, 422
- Elements of damage not pleaded or proven, 16, 424
- Evidence sufficient to warrant instruction, 16, 427
- Exceptions and objections, 16, 461
- Exemplary damages, 16, 435

PERSONAL INJURIES, *cont'd.*

- Instructions, *cont'd.*
 - Expenditures, 16, 444
 - Failure to request instructions, 16, 462
 - Fright, 16, 437
 - Future effects*, see *infra*, Permanent effects.
 - Improper exercise of authorized discretion, 16, 421
 - Infants, 16, 469
 - Injury unconnected with accident, 16, 433
 - Jury not misguided, 16, 422
 - Leaving matters discretionary with jury, 16, 421
 - Limit of recovery, 16, 424
 - Loss of earnings or profits, 16, 440
 - Marriage prospects, 16, 427
 - Matters testified to without objection, 16, 428
 - Measure of damages, 16, 418
 - Medical attendance, 16, 447
 - Mental suffering unattended by physical injury, 16, 438
 - Minors, 16, 469
 - Misleading instructions, 16, 415
 - Negligence retarding recovery, 16, 431
 - Obscure instructions, 16, 415
 - Pain and suffering, 16, 413, 436
 - Peril, 16, 437
 - Permanency, 16, 415
 - Physical and mental suffering, 16, 426
 - Reasonableness of charge for medicines and attendance, 16, 446
 - Reference to pleadings to determine issue, 16, 416
 - Request for, 16, 462
 - Self-aggravation, 16, 430
 - Separate items of damage, 16, 420
 - Sufficiency of instruction, 16, 439
 - Suggesting mode of computing damages, 16, 410
 - Suggesting price, 16, 437
 - Verbal inaccuracies, 16, 414
 - Want of due care or medical attention, 16, 430
- Invisible ailments, 16, 379
- Itemization, 16, 380
- Joinder of counts and causes, 16, 374
 - Injuries to husband and wife, 16, 375
 - Injuries to person and property, 16, 374
 - Injury to person and cause of action for death, 16, 375
- Legal and equitable causes of action, 16, 376

PERSONAL INJURIES, *cont'd.*

- Jurisdiction, 16, 373
- Jury*, see *infra*, Instructions.
- Lameness, 16, 402
- Life expectancy, 16, 404
 - Instructions as to future and permanent effects, 16, 461
- Limitation of actions, 16, 407
- Loss of time (see *infra*, Impairment of earning capacity):
 - Instructions, 16, 440
 - Instructions as to future and permanent effects, 16, 457
- Marriage:
 - Instructions on element of damage not pleaded or proven, 16, 427
 - Instructions on marriage prospects, 16, 427
 - Loss to a woman of a prospect of marriage, 16, 384
- Married women*, see *infra*, Husband and wife.
- Master and servant*, see MASTER AND SERVANT.
- Measure of damages:
 - Instructions, 16, 418
- Medical attendance, 16, 391
 - Instructions as to medical attendance not paid for, 16, 447
 - Instructions as to reasonableness of charge for medicines and attendance, 16, 446
 - Want of due medical attention, 16, 430
- Mental suffering, 16, 388
 - Instructions on elements of damage not pleaded or proven, 16, 426
 - Unattended by physical injury, 16, 438
- Minors*, see *infra*, Infants.
- Mortality tables, 16, 404, 461
- Pain and suffering, 16, 387
 - Argumentative instructions, 16, 413
 - Instructions as to future and permanent effects, 16, 453
 - Instructions upon pain and suffering endured, 16, 436
 - In general, 16, 436
 - Mental suffering unattended by physical injury, 16, 438
 - Sufficiency of instruction, 16, 439
 - Suggesting price, 16, 437
- Parent and child*, see *infra*, Infants; and see PARENT AND CHILD.
- Parties to actions:
 - Parties plaintiff for injuries to person, 15, 518
- Passengers*, see PASSENGERS.

PERSONAL INJURIES, *cont'd.*

- Permanent effects, 16, 401
 - Expression used inadvertently, 16, 414
 - Impairment of eyesight, 16, 402
 - Instructions as to future and permanent effects, 16, 449
 - Age and life expectancy, 16, 459
 - Annuity, 16, 461
 - Condition in life, 16, 461
 - Evidence upon which to base instruction, 16, 455, 458
 - Future or permanent effects patent, 16, 451
 - Impairment of ability caused by declining years, 16, 460
 - In general, 16, 449
 - Loss of earnings or profits, 16, 457
 - Mortality tables, 16, 461
 - Necessity of averment and proof, 16, 449
 - One instruction cured by another, 16, 454
 - Pain and suffering, 16, 453
 - Probability of injury being permanent, 16, 452
 - Sufficiency of instructions, 16, 452
 - Insufficiency of pleading, 16, 403
 - Lameness, 16, 402
 - Necessity to allege permanency in terms, 16, 401
- Physical condition, see infra, Pleading and proof.*
- Physical condition prior and subsequent to injury, 16, 386
- Physical examination, 16, 483
 - Application, 16, 488
 - Abandonment of application, 16, 491
 - Adjunct to ordinary examination of adverse party, 16, 492
 - Application made after commencement of trial, 16, 488
 - Application must be made with diligence, 16, 488
 - Granting, 16, 492
 - Necessity for examination, 16, 489
 - Refusal of request to submit voluntarily to examination, 16, 490
 - Refusing, 16, 492
 - Specification as to what must be shown, 16, 491
 - What application must show, 16, 489
 - Examination, 16, 498

PERSONAL INJURIES, *cont'd.*

- Physical examination, *cont'd.*
 - Examiners, 16, 497
 - Appointment of female physician, 16, 497
 - Examiner distasteful to plaintiff, 16, 497
 - Members of medical profession, 16, 497
- Granting or refusing application, 16, 492
 - Order, 16, 493
 - By whom made, 16, 493
 - Compliance with statute, 16, 494
 - Enforcement of order, 16, 495
 - Matters not regulated by statute, 16, 494
 - Power to direct and control examination, 16, 493
 - Vacation of order, 16, 495
 - Power and discretion to order, 16, 483
 - Interference with trial court's exercise of discretion, 16, 486
 - Jurisdiction in which power is asserted, 16, 483
 - Jurisdiction in which power is denied, 16, 484
 - Refusal to allow examination is error, 16, 487
 - Refusal to order examination not prejudicial, 16, 487
 - Statutory provisions, 16, 484
 - Whether absolute right to examination, 16, 485
 - Statutory provisions, 16, 484
 - Absolute right, 16, 485
 - Refusal as error, 16, 487
 - Time of making application, 16, 488
- Plea, 16, 409
- Pleading and proof, 16, 376
 - Action by parent for injuries to minor, 16, 467
 - Amendments, 16, 406
 - Cause of injury, 16, 376
 - Condition in life, 16, 404
 - Definiteness and certainty, 16, 378, 405
 - Details as to injury and wounds, 16, 377
 - Distress or anxiety occasioned by suffering of another, 16, 390
 - Earning capacity, 16, 393
 - Evidence of circumstances other than trespass, 16, 388
 - Expenditures, 16, 390
 - Family relations, 16, 404

PERSONAL INJURIES, *cont d.*

- Pleading and proof, *cont d.*
 - General allegation of expense, 16, 391
 - Generally, 16, 376
 - Habits, 16, 404
 - Harmless error, 16, 385
 - Impairment of earning capacity, 16, 393
 - Impairment of eyesight, 16, 402
 - Inability to attend to business as proof of extent of injury, 16, 400
 - Infants, 16, 467
 - Injury, 16, 377
 - Instructions on elements of damage not pleaded or proven, 16, 424
 - Instructions referring to pleadings to determine issue, 16, 416
 - Internal and invisible ailments, 16, 379
 - Itemization, 16, 380
 - Lameness, 16, 402
 - Liberality in admitting proof, 16, 385
 - Life expectancy, 16, 404
 - Loss of profits dependent on special engagement, 16, 397
 - Loss of prospect of marriage, 16, 384
 - Loss of time, 16, 395
 - Medical attendance, 16, 391
 - Mental suffering, 16, 388
 - Natural and necessary consequences, 16, 381
 - Necessity to allege permanent effects, 16, 401
 - Pain and suffering, 16, 387
 - Particular business or engagement, 16, 396
 - Particular injuries, 16, 383
 - Payment of expenses incurred, 16, 392
 - Permanent effects, 16, 401
 - Person injured engaged in practice or profession, 16, 398
 - Physical condition prior and subsequent to injury, 16, 386
 - Practice or profession, 16, 398
 - Proof of cause of injury other than that alleged, 16, 377
 - Value of services, 16, 392
 - Waiver and cure of variance, 16, 407
- Profits (see *infra*, Impairment of earning capacity):
 - Instructions as to future and permanent effects, 16, 457
 - Instructions as to loss of earnings or profits, 16, 440
- Proof*, see *infra*, Pleading and proof.

PERSONAL INJURIES, *cont d.*

- Property:
 - Joinder of causes of actions for injuries to person and property, 16, 374
- Questions of law and fact*, see *infra*, Instructions.
- Railroads, see RAILROADS.
- Self-aggravation, 16, 430
 - Evidence demanding instruction in behalf of defendant, 16, 432
 - Nature of negligence retarding recovery, 16, 431
 - Objections that instructions are too general, 16, 433
 - Want of due care or medical attendance, 16, 430
- Street railways*, see STREET RAILWAYS.
- Streets and highways*, see STREETS AND HIGHWAYS.
- Suffering (see *infra*, Pain and suffering), 16, 387
- Survival of actions*, see SURVIVAL OF ACTIONS.
- Threats and threatening letters, 21, 674
- Torts:
 - Contract or tort, 16, 373
- Trespass, 16, 374
 - Trespass or case, 16, 374
 - Trespass on the case, 16, 374
- Trial:
 - Physical examination, 16, 487
- Variance (see *infra*, Pleading and proof):
 - Waiver and cure of variance, 16, 407
- Venue, 16, 373
- Verbal inaccuracies:
 - Instructions, 16, 414
- Verdict, 16, 480
 - Apportionment of damages, 16, 482
 - Cure of erroneous instruction, 16, 465
 - Elements of damage or evidence disregarded, 16, 480
 - Form of verdict, 16, 481
 - General verdict, 16, 481
 - Itemization of damages, 16, 482
 - View by jury, 22, 1057, 1058
- PERSONAL REPRESENTATIVES**, see EXECUTORS AND ADMINISTRATORS.
- PERSONAM** (see ADMIRALTY; JURISDICTION):
 - Publication*, see PUBLICATION.
- PERSONATION**, see FALSE PERSONATION.
- PERSONS**:
 - Commitments*, see COMMITMENTS.
- PETITIONS**, 16, 500
 - See DECLARATION AND COMPLAINT.

PETITIONS, *cont'd.*

- Address, 16, 515
- Admiralty, 1, 286
- Adoption, 10, 847
- Affidavits, 16, 521
- Amendments, 1, 655; 16, 517
 - Costs, 16, 522
 - Supplemental petition, 16, 518
- Bankruptcy (see **BANKRUPTCY**):
 - Necessity for petition, 22, 343
- Bill in equity:
 - As substitute for bill, 16, 511
 - Decrees and orders affecting strangers, 16, 513
 - Defendant raising no objection, 16, 512
 - Discharge of trustees, 16, 514
 - Discretion of court, 16, 511
 - Infants, 16, 511
 - Matters arising after bill filed, 16, 514
 - Miscellaneous cases, 16, 517
 - Trust proceedings, 16, 513
 - Where bill is necessary, 16, 513
 - Where term used, 16, 511
- Bills of exceptions*, see **BILLS OF EXCEPTIONS**,
- Certiorari*, see **CERTIORARI**.
- Contents, 16, 515
 - Examples, 16, 515, 516
 - Fund in court, 16, 516
 - In general, 16, 515
 - Prolixity, 16, 516
- Copy filed, 16, 519
 - Costs, 16, 522
- Costs of the application, 16, 521
 - Amended petition, 16, 522
 - Appearance of party having no interest, 16, 522
 - Copy filed, 16, 522
 - Discretion of court, 16, 523
 - Examples, 16, 522
 - In general, 16, 521
 - Two petitions on same subject, 16, 522
 - Where petitioner does not appear, 16, 522
- Courts:
 - Discretion of court as to bill in equity or petition, 16, 507, 511
 - Discretion of court as to costs, 16, 523
 - Petition for further directions, 16, 506
- Decrees:
 - Determining scope of decree, 16, 509
 - Enforcement of decree, 16, 509
 - Petition as substitute for bill, 16, 513
- Definition, 16, 501

PETITIONS, *cont'd.*

- Discretion of court (see *infra*, **Courts**), 16, 511
- Divorce*, see **DIVORCE**.
- Eminent domain*, see **EMINENT DOMAIN**.
- Filing petitions, 16, 519
 - Copy, 16, 519
 - In general, 16, 519
- Foreclosure of mortgages*, see **FORECLOSURE OF MORTGAGES**,
- Form, 16, 515
- Funds and deposits in court, 16, 504
 - By a stranger, 16, 505
 - Contents of petition, 16, 516
 - Examples, 16, 504, 505
 - Funds in the hands of a receiver, 16, 505
 - To affect a fund in court, 16, 504
- General nature, 16, 501
 - Cause, 16, 501
 - In matter not connected with pending suit, 16, 502
 - When used in a cause, 16, 502
- Guardians:
 - Bill in equity or petition, 16, 511
- Habeas corpus*, see **HABEAS CORPUS**.
- Hearing, 16, 520
 - Affidavits, 16, 521
 - In general, 16, 520
 - Order of hearing, 16, 521
 - Right to answer, 16, 521
- Husband and wife:
 - Married women, 16, 518
- Infants, 16, 518
 - Bill in equity or petition, 16, 511
- Insane persons, 16, 518
- Insolvency*, see **INSOLVENCY**.
- Insurance*, see **INSURANCE**.
- Liens:
 - Priority of liens, 16, 510
- Limited partnerships*, see **LIMITED PARTNERSHIPS**,
- Local improvements*, see **LOCAL IMPROVEMENTS**.
- Marriage (annulment)*, see **MARRIAGE (ANNULMENT)**.
- Married women, 16, 518
- Master and servant*, see **MASTER AND SERVANT**.
- Mechanics' liens*, see **MECHANICS' LIENS**.
- Motions:
 - Petitions and motions distinguished, 16, 503
 - In general, 16, 503
 - Viva voce* or in writing, 16, 503
 - When petition is preferable, 16, 503
- Petitions distinguished from, 14, 74

PETITIONS, *cont'd.*

Municipal corporations, see MUNICIPAL CORPORATIONS.

Municipal securities, see MUNICIPAL SECURITIES.

New trial, see NEW TRIAL.

Notice of petitions, 16, 519

In general, 16, 519

Ordinary procedure, 16, 520

Prayer for process, 16, 520

Where process is essential, 16, 520

Officers of court:

Protection and control, 16, 507

Official bonds, see OFFICIAL BONDS.

Open and close, 16, 521

Ordinances, see ORDINANCES.

Parties to petitions, 16, 518

Infants, 16, 518

In general, 16, 518

Lunatics, 16, 518

Married women, 16, 518

Strangers to the suit, 16, 518

Partnership, see PARTNERSHIP.

Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.

Prayer for process, 16, 520

Process, 16, 520

Prohibition:

What should be set forth, 16, 1138

Redemption, see REDEMPTION.

Rehearing, see REHEARING.

Removal of causes, see REMOVAL OF CAUSES.

Rent, 16, 510

Review, see REVIEW.

Revival of judgments, 18, 1073

Rules of court, 18, 1251

Scandal and impertinence, 16, 516; 19, 207

Seduction, see SEDUCTION.

Sequestration, see SEQUESTRATION.

Sham and frivolous pleadings, 20, 44

Signature, 16, 516

Specific performance (see SPECIFIC PERFORMANCE), 16, 510

Stay of proceedings, 16, 509

Subscriptions, see SUBSCRIPTIONS.

Summons and process, 16, 520

Supersedeas and stay of proceedings, 16, 509

Supplemental petition:

Amendments, 16, 518

Supplemental pleadings, see SUPPLEMENTAL PLEADINGS.

Surplusage, irrelevant or redundant matter, see SURPLUSAGE IRRELEVANT OR REDUNDANT MATTER.

Taxation, see TAXATION.

Title, 16, 515

Trespass to try title, see TRESPASS TO TRY TITLE.

PETITIONS, *cont'd.*

Trusts and trustees:

Administration of trusts, 16, 506

Appointment of trustee, 16, 506

Discharge of trustees, 16, 514

Petition as substitute for bill, 16, 513

Use of petitions, 16, 504

Administration of trusts, 16, 506

Administration proceedings, 16, 511

As substitute for bill, 16, 511

Where bill is necessary, 16, 513

Where they may be so used, 16, 511

Determining scope of decree, 16, 509

Enforcement of decree, 16, 509

For further directions, 16, 506

Fund in court, 16, 504

By a stranger, 16, 505

Examples, 16, 504, 505

Funds in the hands of a receiver, 16, 505

To affect a fund in court, 16, 504

In general, 16, 504

Miscellaneous uses, 16, 507, 511

Payment of rent, 16, 510

Priority of liens, 16, 510

Protection and control of officers of the court, 18, 507

Rent, 16, 510

Specific performance, 16, 510

Stay of proceedings, 16, 509

Vendor and purchaser, see VENDOR AND PURCHASER.

Vendor's liens, see VENDOR'S LIENS.

Verification, 16, 517

Viva voce, 16, 503

Ways, 22, 1181

Writing, 16, 503

PHYSICAL EXAMINATION:

Personal injuries, 16, 483

Application, 16, 488

Abandonment of application, 16, 491

Adjunct to ordinary examination of adverse party, 16, 492

Application made after commencement of trial, 16, 488

Application must be made with diligence, 16, 488

Granting, 16, 492

Necessity for examination, 16, 489

Refusal of request to submit voluntarily to examination, 16, 490

Refusing, 16, 492

PHYSICAL EXAMINATION, *cont'd.*Personal injuries, *cont'd.*Application, *cont'd.*

Specification as to what must be shown, 16, 491

Time of making, 16, 488

What application must show, 16, 489

Examination, 16, 498

Examiners, 16, 497

Appointment of female physician, 16, 497

Examiner distasteful to plaintiff, 16, 497

Members of medical profession, 16, 497

Granting or refusing application, 16, 492

Order, 16, 493

By whom made, 16, 493

Compliance with statute, 16, 494

Enforcement of order, 16, 495

Matters not regulated by statute, 16, 494

Power to direct and control examination, 16, 493

Vacation of order, 16, 495

Power and discretion to order, 16, 483

Interference with trial court's exercise of discretion, 16, 486

Jurisdiction in which power is asserted, 16, 483

Jurisdiction in which power is denied, 16, 484

Refusal to allow examination is error, 16, 487

Refusal to order examination not prejudicial, 16, 487

Statutory provisions, 16, 484

Whether absolute right to examination, 16, 485

Statutory provisions, 16, 484

Absolute right, 16, 485

Refusal as error, 16, 487

Time of making application, 16, 488

PHYSICIANS AND SURGEONS,

16, 524

See DRUGGISTS.

Abortion, see ABORTION.

Coroner's inquests, 5, 43

Compensation, 5, 43

Employment discretionary, 5, 43

Summoning, 5, 43

Discovery:

Privileged communications, 6,

757

PHYSICIANS AND SURGEONS, *cont'd.*

Indictments:

Wrongfully procuring registration, 16, 535

Insane persons:

Action for wrongfully certifying that patient is insane, 16, 535

Licenses (see *infra*. Practicing without a license):

Proceedings to revoke, 16, 535

Malpractice, see MALPRACTICE.

Negating statutory provisos and exceptions, 16, 527

Personal injuries, see PERSONAL INJURIES.*Physical examination*, see PHYSICAL EXAMINATION.

Practicing without a license, 16, 525

Allegation that the accused practiced medicine, 16, 526

By whom employed, 16, 527

Compensation, 16, 527

Different methods charged in single count, 16, 526

Indictment generally, 16, 525

Necessity to allege facts, 16, 526

Negating statutory provisos and exceptions, 16, 527

Sufficiency of indictment following language of statute, 16, 526

PILOTAGE, see SHIPPING.**PIRACY**, 16, 537

Definition, 16, 537

Homicide:

Indictment for piratical murder, 16, 538

Indictments, 16, 537

United States courts, 16, 537

United States statute, 16, 537

PLACE:

Abduction, 1, 52

Definiteness and certainty in pleadings, 6, 254

Payment, see PAYMENT.**PLACE OF TRIAL**, see CHANGE OF VENUE; TRIAL; VENUE.**PLEADINGS** (see CODE PLEADING):*Disclaimers*, see DISCLAIMERS.*Filing*, see FILING PLEADINGS AND PAPERS.*Sham and frivolous pleadings*, see SHAM AND FRIVOLOUS PLEADINGS.**PLEA OF PAYMENT**, see PAYMENT.**PLEAS** (see ANSWERS IN CODE PLEADING; ANSWERS IN EQUITY PLEADING; ARRAIGNMENT AND PLEA; CORPORATIONS; FORMER CONVICTION OR ACQUITTAL):

Accord and satisfaction (see ACCORD AND SATISFACTION), 19, 171

PLEAS, *cont'd.*

Account stated, see ACCOUNTS AND ACCOUNTING.

Affidavits of merits or defense:

Plea in abatement, 1, 345

Agency, see AGENCY.

Agreed case, 1, 389

Amendments, 1, 495

Answers in equity pleading:

Answer accompanied by plea or demurrer, 1, 901

Pleading an answer to different parts of the bill, 1, 889

Appeals:

Presumption in favor of, 2, 469

Arbitration and award, see AWARDS.

Assumpsit, 2, 1027

Accord and satisfaction, 2, 1028

Demand not due, 2, 1028

Failure of consideration, 2, 1029

Form, 2, 1031

General issue, 2, 1027

Implied assumpsit, 2, 1030

Limitations of action, 2, 1032

Notice of special defense, 2, 1030

Ordinance, 2, 1030

Payment, 2, 1028

Special pleas, 2, 1032

Special pleas amounting to the general issue, 2, 1033

Technically, 2, 1031

Tender, 2, 1032

Work or materials not in accordance with contract, 2, 1029

Awards, see AWARDS.

Bankruptcy, 22, 355

Bills and notes, see NEGOTIABLE INSTRUMENTS.

Bills to enforce decrees, 3, 606

Bonds, see BONDS.

Breach of promise of marriage, see BREACH OF PROMISE OF MARRIAGE.

Carriers (see CARRIERS), 3, 855

Actions *ex contractu*, 3, 855

Actions *ex delicto*, 3, 855

Compounding felony, 7, 253

Conditions precedent, 4, 661, 662

Confession and avoidance, see CONFESSION AND AVOIDANCE.

Contracts, see CONTRACTS.

Contributory negligence, see CONTRIBUTORY NEGLIGENCE.

Coram nobis and coram vobis, 5, 36

Covenant, see COVENANT.

Criminal cases, see ARRAIGNMENT AND PLEA.

Criminal conversation, see CRIMINAL CONVERSATION.

Cross-bills, see CROSS-BILLS.

Death by wrongful act, 5, 884

Debt, see DEBT.

PLEAS, *cont'd.*

Definiteness and certainty in pleadings (see DEFINITENESS AND CERTAINTY IN PLEADINGS), 6, 252

Dilatory pleas and pleas in estoppel, 6, 253

In general, 6, 252

Insufficient pleas, 6, 252

Demurrers (see DEMURRERS):

Demurrer in conjunction with other pleadings, 6, 382

General demurrer to several pleas, 6, 305

Departure, see DEPARTURE.

Detinue, see DETINUE.

Devises, see HEIRS AND DEVICES.

Discovery, see DISCOVERY.

Dower, see DOWER.

Duplicity, see DUPLICITY.

Duress, see DURESS.

Ejectment, see EJECTMENT.

Elections, 7, 388

Eminent domain, see EMINENT DOMAIN.

Entry, writ of, 7, 727

Estoppel, see ESTOPPEL.

Exceptions and objections, see EXCEPTIONS AND OBJECTIONS.

Executors and administrators:

Administration bonds, 8, 725

Denial of representative capacity, 8, 685

Ne unques executor or administrator, 8, 671

Plene administravit, 8, 686

Puis darrein continuance, 8, 685

False imprisonment, 8, 850

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

Former adjudication, see FORMER ADJUDICATION.

Forthcoming and delivery bonds, 9, 669

Frauds, statute of (see FRAUDS, STATUTE OF), 9, 702

General issue, see GENERAL ISSUE.

Guaranty, see GUARANTY.

Guardians, see GUARDIANS.

Heirs and devisees, see HEIRS AND DEVICES.

Homesteads and exemptions, 10, 81

Husband and wife, see HUSBAND AND WIFE.

Infants, see INFANTS.

Insurance, see INSURANCE.

Justices of the peace, see JUSTICES OF THE PEACE.

Laches, see LACHES.

Landlord and tenant:

Covenant, 12, 859

Debt, 12, 862

PLEAS, *cont'd.*

Libel and slander, see **LIBEL AND SLANDER**.

Limitations, see **LIMITATIONS**.

Malicious prosecution, see **MALICIOUS PROSECUTION**.

Master and servant, see **MASTER AND SERVANT**.

Mechanics' liens, see **MECHANICS' LIENS**.

Motions, see **MOTIONS**.

Multifariousness, 14, 212

Negligence, see **NEGLIGENCE**.

Negotiable instruments, see **NEGOTIABLE INSTRUMENTS**.

Notice, see **NOTICE**.

Notice or brief statement of defense, see **NOTICE OR BRIEF STATEMENT OF DEFENSE**.

Nuisances, see **NUISANCES**.

Nul tiel record, see **RECORDS**.

Officers of private corporations, 15, 78

Official bonds, see **OFFICIAL BONDS**.

Ordinances, 15, 435

Pardons, 15, 449

Parties to actions (see **PARTIES TO ACTIONS**):

Nonjoinder in equity, 15, 685

Partnership, see **PARTNERSHIP**.

Patents, see **PATENTS**.

Payment, 19, 171

Necessity of special plea, 19, 173

Sufficiency of plea, 19, 174

Penalties and penal actions, see **PENALTIES AND PENAL ACTIONS**.

Personal injuries, 16, 409

Pleas at law, see **PLEAS AT LAW**.

Pleas in abatement, see **ABATEMENT IN PLEADING**.

Pleas in abatement distinguished from pleas at bar, 1, 2

Pleas in equity, see **PLEAS IN EQUITY**.

Poor and poor laws:

Violation of poor laws, 16, 664

Public officers, see **PUBLIC OFFICERS**.

Quieting title, see **QUIETING TITLE**.

Quo warranto, see **QUO WARRANTO**.

Receivers, 17, 826

Release, see **RELEASE**.

Replevin, see **REPLEVIN**.

Replications and replies, see **REPLICATIONS AND REPLIES**.

Repugnancy, 18, 739

Rescission, cancellation, and reformation of contracts, see **RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS**.

Sales, see **SALES**.

Scire facias, see **SCIRE FACIAS**.

Seduction, 19, 411

Set-off, recoupment, and counterclaim, see **SET-OFF, RECOUPMENT, AND COUNTERCLAIM**.

PLEAS, *cont'd.*

Sheriffs and constables, see **SHERIFFS AND CONSTABLES**.

Special plea:

Payment, 19, 173

Premature suits, 16, 879

Specific performance, see **SPECIFIC PERFORMANCE**.

Statement of defense, see **NOTICE OR BRIEF STATEMENT OF DEFENSE**.

Stock and stockholders, see **STOCK AND STOCKHOLDERS**.

Suretyship, see **SURETYSHIP**.

Taxation, 21, 411

Telegraphs and telephones, 21, 521, 540

Time to plead, see **TIME TO PLEAD**.

Tolls, 21, 746

Trespass, see **TRESPASS**.

Trespassing, vicious, and diseased animals, 21, 896

Trespass on the case, see **TRESPASS ON THE CASE**.

Trespass to try title, see **TRESPASS TO TRY TITLE**.

Trover and conversion, see **TROVER AND CONVERSION**.

Usury, see **USURY**.

Vendor and purchaser, see **VENDOR AND PURCHASER**.

Vendor's liens, see **VENDOR'S LIENS**.

Verification, see **VERIFICATION**.

Waste, 22, 1111

Work and labor:

Special pleas, 22, 1372

PLEAS AT LAW, 16, 539

See **EXCEPTIONS AND OBJECTIONS**.

Admission by failure to deny, 16, 567

Exceptions, 16, 567

General rules, 16, 567

Protestation, 16, 568

Affidavits of defense, see **AFFIDAVITS OF MERITS OR DEFENSE**.

Aggravation, 16, 566

Alder by plea:

In general, 16, 580

Matters of substance, 16, 581

Allowing plea, effect of, 16, 622

Argumentativeness, 16, 565

Bar, see *infra*, **Pleas to the action**.

Classification, 16, 541

Commencement and prayer, 16, 553

Effect of improper prayer or commencement, 16, 556

Fixed forms dependent upon character of matter, 16, 553

Matters arising after the commencement, 16, 555

Matters in bar or abatement, 16, 554

Protestation, 16, 568

PLEAS AT LAW, *cont'd.*

- Conclusions, 16, 559
 - Conclusion to the country, 16, 556
 - Effect of wrong conclusion, 16, 559
- Confession and avoidance*, see CONFESSION AND AVOIDANCE.
- Covenant*, see COVENANT.
- Criminal cases*, see ARRAIGNMENT AND PLEA.
- Damages:
 - Plea to damages, 16, 566
- Declaration*, see *infra*, Pleas to distinct part of declaration.
- Definiteness and certainty in pleading, 16, 562
 - Certainty to a certain intent, 16, 563
 - In general, 16, 562
 - Matter informally pleaded, 16, 563
- Definition, 16, 541
- Demurrers at common law and under the codes, 16, 582
 - Harmless error in striking out or sustaining demurrer to plea, 16, 584
 - Pleas to distinct part of declaration, 16, 578
 - Propriety of motion or demurrer, 16, 582
- Detinet, 16, 544
- Distinct part of declaration*, see *infra*, Pleas to distinct part of declaration.
- Double pleading, 16, 569
 - Consistency, 16, 570
 - Different issues in same court, 16, 573
 - Discretion in permitting and filing, 16, 571
 - Each plea stands upon its own ground, 16, 571
 - Extent of the right, 16, 569
 - Filing additional pleas, 16, 572
 - General issue and tender, 16, 571
 - Pleas of like import, 16, 572
 - Pleas triable in different tribunals, 16, 573
 - Right to file, 16, 569
 - Statute of Anne, 16, 569
- Dower*, see DOWER.
- Duplicity*, see *infra*, Double pleading.
- Eminent domain*, see EMINENT DOMAIN.
- Equitable pleas, 16, 583
- Exceptions and objections, 16, 582
- Form of plea, 16, 553
 - Commencement and prayer*, see *infra*, Commencement and prayer.
 - Conclusion to country, 16, 556
 - General division, 16, 553
 - Short pleas, 16, 559

PLEAS AT LAW, *cont'd.*

- Form of plea, *cont'd.*
 - Tender of issue*, see *infra*, Tender of issue.
 - Verification, 16, 557
- General issue*, see *infra*, Traverse of confession and avoidance.
- Harmless error, 16, 584
- Irregularity, 16, 621
- Issue*, see *infra*, Tender of issue.
- Joint and several pleas, 16, 579
 - General issue in action of tort, 16, 580
 - In general, 16, 579
 - Matter not joint, 16, 580
 - Severance after pleading jointly, 16, 580
- Justification, 16, 566
- Legal conclusions, 16, 564, 565
- Materiality, 16, 565
- Materiality of issue, 16, 604
- Mitigation:
 - Special plea amounting to general issue, 16, 552
- Motions
 - Propriety of motion or demurrer, 16, 582
- Motion to strike out, 16, 582
- Negative pregnant, 16, 567
- Nil debet*, 16, 545
- Non assumpsit*, 16, 544
- Non cepit*, 16, 544
- Non detinet*, 16, 544
- Non est factum*, 16, 545, 546
- Not guilty, 16, 544
- Notice or brief statement of defense*, see NOTICE OR BRIEF STATEMENT OF DEFENSE.
- Plea in bar*, see *infra*, Pleas to the action.
- Pleas to distinct part of declaration, 16, 574
 - Conflict, 16, 574
 - Demurrer, 16, 578
 - In general, 16, 574
 - Plea too broad, 16, 577
 - Plea to part of cause or count, 16, 574
 - Separate pleas to different parts, 16, 577
 - Several counts, one plea, 16, 579
 - Specific direction to part covered, 16, 577
 - Unrestricted plea taken as plea to whole, 16, 578
- Pleas to the action, 16, 541
 - Nature, 16, 541
 - Some matters may be pleaded either in abatement or in bar, 16, 554
 - Traverse of confession and avoidance*, see *infra*, Traverse of confession and avoidance.

PLEAS AT LAW, *cont'd.*

Prayer, see *infra*, Commencement and prayer.

Protestation, 16, 568

Puis darrein continuance, see PUIS DARREIN CONTINUANCE.

Records:

Contradiction of record, 16, 566

Matter of record, 16, 565

Repugnancy, 16, 564

Requisites and sufficiency of pleas, 16, 561

Admission by failure to deny, see *infra*, Admission by failure to deny.

Argumentativeness, 16, 564

Complete defense, 16, 561

Contradiction of record, 16, 566

Definiteness and certainty, 16, 562

Each of several pleas must stand alone, 16, 561

Express reference, 16, 562

In general, 16, 561

Justification of matters in aggravation, 16, 566

Legal conclusions, 16, 564

Materiality, 16, 565

Matter of record, 16, 565

Matter which should come from plaintiff, 16, 566

Necessity of pleading facts, 16, 564

Negative pregnant, 16, 567

Plea to damages, 16, 566

Repugnancy, 16, 564

Scope of traverse, 16, 566

Statutory defense, 16, 568

Surplusage, 16, 565

Test of sufficiency:

Setting down for argument, 16, 618

Set-off, recoupment, and counterclaim, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

Short pleas, 16, 559, 580, 582

Nature, 16, 559

Propriety, 16, 560

Sufficiency, 16, 559

Signature, 16, 553

Special plea, see *infra*, Traverse of confession and avoidance.

Statutory defense, 16, 568

Sufficiency of pleas, see *infra*, Requisites and sufficiency of pleas.

Surplusage, 16, 565

Tender of issue, 16, 556

Effect of wrong conclusion, 16, 559

To country, 16, 556

Verification, 16, 557

Time to plead, see TIME TO PLEAD.

Title, 16, 553

PLEAS AT LAW, *cont'd.*

Traverse of confession and avoidance, 16, 542

Absque hoc, 16, 547

Confession and avoidance, 16, 548

General traverse or general issue, 16, 542

Form and nature of general issue in particular actions, 16, 543

Nature, 16, 512

Nil debet, 16, 545

Non assumpsit, 16, 544

Non cepit, 16, 544

Non detinet, 16, 544

Non est factum, 16, 545

Not guilty, 16, 544

Nul tiel record, 16, 545

Plea must be appropriate to action, 16, 546

Special *non est factum*, 16, 546

Verification of *non est factum*, 16, 546

Inducement cannot be traversed or confessed and avoided, 16, 548

Nature of traverse, 16, 542

Necessity for special plea, 16, 548

Necessity of one form, 16, 542

Requisites and sufficiency of pleas, 16, 561

Special plea amounting to general issue, 16, 549

Manner of raising objection, 16, 552

Matters in mitigation, 16, 552

Overruling special plea when general issue is filed, 16, 551

Rule against, 16, 549

Scope of rule, 16, 550

Special pleading, 16, 548

Specific traverse, 16, 542, 547

Statutory defense, 16, 549

Verification, 16, 558

Non est factum, 16, 546

Plea nullity because not sworn to, 16, 582

PLEAS IN ABATEMENT, see ABATEMENT IN PLEADING.

PLEAS IN BAR, see PLEAS IN EQUITY.

PLEAS IN EQUITY, 16, 585

See EXCEPTIONS AND OBJECTIONS.

Admissions:

Setting down for argument as admission of truth, 16, 620

Amendments, 16, 627

Amendment of bill before argument of plea, 16, 628

PLEAS IN EQUITY, *cont'd.*

- Amendments, *cont'd.*
 - Exception to answer filed with plea, 16, 628
 - Imposition of terms, 16, 627
 - In general, 16, 627
 - Liberty to amend bill and plead *de novo*, 16, 628
- Anomalous plea, 16, 592
 - In supporting answer, 16, 612
 - Plea to bill anticipating defense, 16, 612
- Another suit pending, 16, 600
 - Replications, 16, 621
- Answer and plea compared, 16, 588
 - Defense by plea or answer, 16, 588
 - Plea as evidence, 16, 588
 - Special answer, 16, 588
 - To avoid answering, 16, 588
 - To avoid expense of answering, 16, 588
- Answers (see *infra*, Overruling pleas; Supporting and accompanying answers):
 - Denial of plea and answer, 16, 616
- Answers in equity pleading:
 - Plea to part and answer to part, 16, 606
- Anticipating defense:
 - Necessity of supporting answers, 16, 612
- Argument*, see *infra*, Setting down for argument.
- Bar*, see *infra*, Plea in bar.
- Bills of revivor, 16, 602
- Cross-bills, 16, 602
- Decrees, 16, 601
 - Plea to bills to enforce decrees, 16, 601
 - Plea to bills to impeach decrees, 16, 601
- Definiteness and certainty in pleadings, 6, 290; 16, 603
- Definition, 16, 587
- Demurrers in chancery*, see DEMURRERS IN CHANCERY.
- Discovery*, see DISCOVERY.
- Dower*, see DOWER.
- Demurrers in chancery:
 - Plea and demurrer compared, 16, 589
 - Plea to part and demurrer to part, 16, 606
- Discovery, production, and inspection, 16, 601, 605
 - Necessity of supporting answers, 16, 613
 - Discovery of documents or papers, 16, 614
 - Matter of bill insufficient to require answer, 16, 613

PLEAS IN EQUITY, *cont'd.*

- Discovery, production, and inspection, *cont'd.*
 - Necessity of supporting answers, *cont'd.*
 - Nature of supporting answer for discovery alone, 16, 615
 - Necessity dependent on sufficiency of bill, 16, 613
 - Plea overruled by supporting answer, 16, 615
 - Plea to relief and discovery, 16, 605
 - Plea to relief good for discovery, 16, 605
 - Plea to relief only, 16, 606
 - Refusal to make discovery, 16, 605
 - Requisites and sufficiency of plea, 16, 605
- Double pleading*, see *infra*, Duplicity.
- Duplicity, 16, 607
 - Answer instead of duplicitous plea, 16, 607
 - In general, 16, 607
 - Several matters tending to one point, 16, 608
 - Several pleas by leave of court, 16, 608
- Eminent domain*, see EMINENT DOMAIN.
- Evidence:
 - Plea as evidence, 16, 588
- Exceptions and objections:
 - Exception to answer filed with plea, 16, 628
 - Liberty to accept, 16, 625
 - Necessity of taking exception in plea overruled, 16, 626
- Filing, 16, 595
 - After amendment of bill, 16, 596
 - After full answer, 16, 596
 - Time of filing in general, 16, 595
 - Under rule to answer, 16, 595
- Frame of plea, 16, 593
 - Commencement, 16, 593
 - Conclusion, 16, 593
 - Direction to specify part of bill, 16, 593
 - Signature of counsel, 16, 595
 - Title, 16, 593
 - Verification, 16, 594
- Fraud, statute of, 16, 600
- Hearing:
 - Effect of saving plea to the hearing, 16, 622
- Jurisdiction, 16, 597
 - Generally, 16, 597
 - Jurisdiction of person, 16, 597
- Legal conclusions, 16, 603
- Limitations of actions, 16, 600
- Matters arising after bill filed, 16, 601

PLEAS IN EQUITY, *cont'd.*
Motions:

Questions of form or irregularity, 16, 621

Multifariousness, 14, 203

Nature, 16, 587

Negative plea, 16, 504, 591

Necessity of supporting answers, 16, 611

Orders:

Nature of order overruling or allowing plea, 16, 627

Order to answer where plea is overruled, 16, 623

Overruling pleas, 16, 623

Answer covers whole bill, 16, 625

Defense set up in answer after plea overruled, 16, 626

Effect of, 16, 623

Liberty to accept, 16, 625

Nature of order overruling plea, 16, 627

Necessity of taking exception, 16, 626

Order to answer, 16, 623

Plea ordered to stand for answer, 16, 624

Plea overruled by answer, 16, 624, 625

Several pleas allowed to stand for answer, 16, 625

Sufficient only for part of bill covered, 16, 626

Parties to actions:

Defect of parties, 16, 599

Partnership:

Objection to nonjoinder of partners, 15, 994

Perpetuation of testimony, 16, 360

Person:

Jurisdiction of person, 16, 597

Plea to the person, 16, 597

Denial of character in which plaintiff sues, 16, 598

Denial of interest in plaintiff, 16, 598

In general, 16, 597

Insanity, 16, 597

Plea bad in part and good in part, 16, 604

In general, 16, 604

Meaning of rule, 16, 604

Must cover all to which directed, 16, 604

Whether allowed to stand, 16, 604

Plea in bar, 16, 598

Another suit pending, 16, 600

Bills for discovery, 16, 600

Defect of parties, 16, 599

Denial of interest in defendant, 16, 600

PLEAS IN EQUITY, *cont'd.*
Plea in bar, *cont'd.*

Displacement of equity in bill, 15, 598

Matter in *pais* generally, 16, 598

Statute of frauds, 16, 600

Statute of limitations, 16, 600

Statutory bar, 16, 600

Pleas not pure, 16, 591

Anomalous plea, 16, 592

Negative averment in pure plea, 16, 592

Negative plea, 16, 591

Supporting answer, 16, 591

Plea to bill for relief and discovery, 16, 601

Plea to pure bill of discovery, 16, 601

Plea unusual in practice, 16, 590

Proceedings upon the plea, 16, 618

Amendment, see *infra*, *Amendments*.

Effect of allowing plea, 16, 622

Effect of overruling plea, see *infra*, *Overruling pleas*.

Effect of saving plea to the hearing, 16, 622

Effect of setting down for argument, 16, 620

Exception to answer filed with plea, 16, 628

Pleas referred before argument, 16, 620

Questions of form or irregularity, 16, 621

Replication, 16, 628

Reply to or setting down for argument, 16, 168

Setting down for argument, 16, 618

Test of sufficiency, 16, 618

Pure plea (see *infra*, *Pleas not pure*), 16, 591

References:

Disposition of plea after reference, 16, 621

Pleas referred before argument, 16, 620

Release, see *RELEASE*.

Replications and replies, 16, 618, 628

Replying to or setting down for argument, 16, 618

Test of sufficiency, 16, 618

Requisites and sufficiency, 16, 602

Certainty of plea to bill of revivor, 16, 603

Double pleading, see *infra*, *Duplicity*.

Inconsistency, 16, 604

Legal conclusions, 16, 603

Materiality of issue, 16, 604

Negative plea, 16, 604

Plea bad in part and good in part, 16, 604

PLEAS IN EQUITY, *cont'd.*

- Requisites and sufficiency, *cont'd.*
 - Plea to part and answer or demurrer to part, 16, 606
 - Plea to part or whole of bill, 16, 606
 - Plea to relief and discovery, 16, 605
 - Plea to relief good for discovery, 16, 605
 - Refusal to make discovery, 16, 605
 - Same strictness required as at law, 16, 602
 - Several pleas in order, 16, 606
 - Statement of perfect defense, 16, 603
 - Surplusage, 16, 608
 - Test of sufficiency, 16, 618
 - Demurrer, 16, 619
 - Motion to strike out, 16, 620
- Revivor, 16, 602
- Revivor of suits and actions, 18, 1112, 1118, 1119
- Saving plea to the hearing, 16, 622
- Setting down for argument:
 - Admission of truth, 16, 620
 - Demurrer, 16, 619
 - Effect of setting down for argument, 16, 620
 - Pleas referred before argument, 16, 620
 - Replying to or setting down for argument, 16, 618
 - Test of sufficiency, 16, 618
- Signature of counsel, 16, 595
- Striking out plea from files:
 - Motion to strike, 16, 620
 - Striking for noncompliance with terms, 16, 621
- Subsidium*, answers in, 16, 618
- Sufficiency*, see *infra*, Requisites and sufficiency.
- Supplemental bills, 16, 602
- Supporting and accompanying answers, 16, 609
 - Anomalous pleas, 16, 612
 - Answer as to collateral facts, 16, 611
 - Answers in *subsidium*, 16, 618
 - Bill anticipating defense, 16, 612
 - Bill asking discovery, 16, 611
 - Denial by plea and answer, 16, 616
 - Discovery of documents or papers, 16, 614
 - Effect of waiver of answer under oath, 16, 614
 - In general, 16, 609
 - Matter of bill insufficient to require answer, 16, 613
 - Nature of supporting answer, 16, 615

PLEAS IN EQUITY, *cont'd.*

- Supporting and accompanying answers, *cont'd.*
 - Necessity and propriety of supporting answers, 16, 610
 - Necessity dependent on sufficiency of bill, 16, 613
 - Negative plea, 16, 611
 - Plea and answer to different parts of bill, 16, 609
 - Plea and answer to same parts of bill, 16, 609
 - Plea overruled by supporting answer, 16, 615
 - Plea to bill anticipating defense, 16, 612
 - Pure plea, 16, 610
 - Rule as to necessity of answer, 16, 612
 - Supporting answers, 16, 610
 - When discovery is not necessary, 16, 613
 - Surplusage, 16, 608
 - Time to plead*, see **TIME TO PLEAD.**
 - Unusual in practice, 16, 590
 - Use of pleas in particular cases, 16, 597
 - Verification, 16, 594
 - Necessity to verify plea, 16, 594
 - Objection, 16, 594
 - Permission to file new plea duly verified, 16, 595
 - Plea of matter of record, 16, 594
 - Withdrawal of plea, 16, 597
 - Discretion of court, 16, 597
 - Effect of withdrawal, 16, 597
- PLEAS TO THE JURISDICTION,**
see **ABATEMENT IN PLEADING.**
- PLEDGES, 16, 629**
- Accounting, 16, 646
 - Action against sheriff for wrongful seizure, 16, 643
 - Action on pledged note, 16, 639
 - Answer, 16, 641
 - In general, 16, 639
 - Parties, 16, 640
 - Pleadings, 16, 640
 - Action on principal debt, 16, 631
 - Allegation of indebtedness, 16, 633
 - Arrest as waiver of lien, 16, 635
 - Attachment of debtor's property, 16, 636
 - Averments, 16, 633, 635
 - Defenses generally, 16, 632
 - Execution as waiver of lien, 16, 635
 - Judgment as waiver of lien, 16, 635
 - Not barred by possession of collateral, 16, 631
 - Pleadings, 16, 633
 - Pledgee's lien not waived, 16, 635

PLEDGES, *cont'd.*

- Action on principal debt, *cont'd.*
 - Return of pledge, 16, 632
 - Set-off, recoupment, and counter-claim, 16, 633
- Actions at law to enforce pledgor's rights, 16, 648
 - Action on the case, 16, 649
 - Assumpsit, 16, 649
 - Detinue, 16, 649
 - Forms of action available, 16, 648
 - Joinder of causes of action, 16, 650
 - Parties, 16, 650
 - Pleadings, 16, 650
 - Replevin, 16, 649
 - Set-off, 16, 648
 - Tender, 16, 649, 650
- Actions to enforce pledgee's rights, 16, 630
 - Action against sheriff for wrongful seizure, 16, 643
 - Action on pledged note, *see infra*, Action on pledged note.
 - Action on the case, 16, 641
 - Action on the principal debt, *see infra*, Action on principal debt.
 - Assumpsit, 16, 641
 - Detinue, 16, 642
 - In general, 16, 630
 - Miscellaneous suits in equity, 16, 643
 - Negotiable paper held in pledge, 16, 630
 - Parties to suit in equity, 16, 644
 - Pleadings to suit in equity, 16, 644
 - Replevin, 16, 642
 - Sale of pledge, 16, 630
 - Suit to foreclose pledge, *see infra*, Suit to foreclose pledge.
 - Trover, 16, 642
- Actions to enforce pledgor's rights, 16, 645
 - Actions at law, 16, 648
 - Bill in equity, 16, 645
 - In general, 16, 645
- Actions to enforce rights of third persons, 16, 651
- Agency:
 - Owner of property wrongfully pledged by agent, 16, 652
- Arrest:
 - Waiver of lien, 16, 635
- Assumpsit, 16, 641, 649
- Attachment:
 - Waiver of lien, 16, 636
- Bills in equity, 16, 645
 - Assignments, 16, 646
 - Bill for accounting, 16, 646
 - Essential averments, 16, 647
 - Pledgee refusing to sue, 16, 646
 - Possession of pledge, 16, 647
 - Index Pl. & Pr. — 53

PLEDGES, *cont'd.*

- Bills in equity, *cont'd.*
 - Remedy at law, 16, 645
 - Specific performance, 16, 647
 - Subrogation, 16, 647
 - Tender of debt, 16, 647
 - When bill lies, 16, 645
- Detinue, 16, 642, 649
- Equity, *see infra*, Bills in equity; Suits in equity.
- Executions:
 - Waiver of lien, 16, 635
- Foreclosure, *see infra*, Suit to foreclose pledge.
- Joinder of counts and causes, 16, 637, 650
- Judgments:
 - Waiver of lien, 16, 635
- Jurisdiction:
 - Foreclosure, 16, 637
- Liens, *see infra*, Waiver of lien.
- Negotiable instruments (*see* NEGOTIABLE INSTRUMENTS):
 - Action on pledged note, 16, 639
 - Answer, 16, 641
 - In general, 16, 639
 - Parties, 16, 640
 - Pleadings, 16, 640
 - Actions to enforce pledgee's rights, 16, 630
 - When sale will be decreed, 16, 638
- Parties to actions:
 - Action at law by pledgor, 16, 650
 - Action on pledged note, 16, 640
 - Suits in equity, 16, 644
- Principal debt, *see infra*, Action on principal debt.
- Redemption, *see* REDEMPTION, 16, 645
- Remedy at law, 16, 645
- Replevin, 16, 642, 649
- Sale of pledge, 16, 360
- Seizures:
 - Action against sheriff for wrongful seizure, 16, 643
- Set-off, recoupment, and counter-claim, 16, 633, 638, 648
- Sheriffs:
 - Action against sheriff for wrongful seizure, 16, 643
- Subrogation, 16, 647
- Suits in equity, 16, 643
 - In general, 16, 643
 - Parties, 16, 644
 - Pleadings, 16, 644
- Suit to foreclose pledge, 16, 636
 - Averments in plea, 16, 638
 - Debt due and unpaid, 16, 638
 - In general, 16, 636
 - Joinder of causes of action, 16, 637
 - Jurisdiction, 16, 637
 - Jurisdiction not ousted by counterclaim, 16, 638

PLEDGES, *cont'd.*

- Suit to foreclose pledge, *cont'd.*
 - Necessity of prior action at law, 16, 637
 - Pleadings, 16, 638
 - Pledgor's absence, 16, 638
 - When sale will be decreed, 16, 638

Tender

- Actions at law by pledgor, 16, 649, 650

Tender of debt, 16, 647**Third persons, actions to enforce rights of, 16, 651****Trespass on the case, 16, 641, 649****Trover and conversion, 16, 641**

- Pledgor and pledgee as parties to action, 21, 1048

Waiver of lien:

- Arrest, 16, 635
- Attachment, 16, 636
- Execution, 16, 635
- Judgment, 16, 635

PLENE ADMINISTRAVIT (see EXECUTORS AND ADMINISTRATORS):

- Executors and administrators, 8, 686

POINTING FIREARMS, 16, 653**POINT RESERVED, see CERTIFIED CASES****POINTS, see BRIEFS.****POISONS:**

- Druggists, 7, 226

POLICY, see INSURANCE.**POLITICAL CORPORATIONS:**

- Appearances, 2, 643

POLLING JURY, see VERDICT.**POLLUTION, see WATERS AND WATERCOURSES.****POLYGAMY, 16, 655****POOL ROOMS:**

- Gaming, 9, 802

POOR AND POOR LAWS, 16, 656**See POOR DEBTORS.**

- Action against kindred of pauper, see *infra*, Procedure against kindred of pauper.

- Action by individual against poor district, 16, 660

- Action by one poor district against another, 16, 658

- Declaration and complaint, 16, 659

- Form of action, 16, 658

- Jurisdiction, 16, 651

- Parties, 16, 658

- Pleading, 16, 659

- Poor officers as parties, 16, 659

- Setting forth statute, 16, 660

- Venue, 16, 658

- Actions against poor officers, 16, 665

- Actions for removal of pauper, see *infra*, Removal of pauper,

POOR AND POOR LAWS, *cont'd.*

- Actions for violation of poor laws, see *infra*, Violation of poor laws.

- Amendments, 16, 667, 668

Appeals:

- Procedure against kindred of pauper, 16, 663

- Removal of pauper, 16, 670

- Hearing and determination of appeal, 16, 671

- Jurisdiction, 16, 670

- Manner of raising issues on appeal, 16, 671

- Manner of taking appeal, 16, 670

- Record of appeal, 16, 671

- Time of taking appeal, 16, 670

Certiorari, 16, 671**Construction:**

- Reasonable construction, 16, 657

Costs, 16, 672

- Procedure against kindred of pauper, 16, 663

Criminal procedure:

- Procedure against poor officers, 16, 665

Declaration and complaint:

- Action by one poor district against another, 16, 659

- Procedure against kindred of pauper, 16, 662

- Removal of pauper, 16, 666

- Violation of poor laws, 16, 664

Definition, 16, 657

- Districts, see *infra*, Action by one poor district against another.

- Forma pauperis*, see *FORMA PAUPERIS*.

Indictments:

- Procedure against poor officers, 16, 665

Jurisdiction:

- Action by one poor district against another, 16, 658

- Removal of pauper, 16, 665

Justices of the peace:

- Removal of pauper, 16, 665

- Kindred, see *infra*, Procedure against kindred of pauper.

Notice:

- Notice to pauper where removal proceedings are brought, 16, 666

- Procedure against kindred of pauper, 16, 662

Order of removal, 16, 667

- Amendment of order, 16, 668

- Enforcement of order, 16, 669

- Requisites of order, 16, 667

- Service of order, 16, 668

Orders:

- Order to county to support pauper, 16, 662

- Modification of order, 16, 663

POOR AND POOR LAWS, *cont'd.*

- Orders, *cont'd.*
 - Order to county to support pauper, *cont'd.*
 - Requisites of order, 16, 662
 - Security for performance of order, 16, 663

Parties to actions:

- Action by one poor district against another, 16, 658

Petition, see *infra*, Declaration and complaint.

Place of removal, 16, 669

Pleas:

- Violation of poor laws, 16, 664

Poor debtor acts, see **POOR DEBTOR ACTS.**

Poor district (see *infra*, Action by one poor district against another):

- Action by individual against poor district, 16, 660

Poor officers, see *infra*, Public officers.

Procedure against kindred of pauper, 16, 661

- Appeal, 16, 663
- Costs, 16, 663
- Demand, 16, 662
- Form of remedy, 16, 661
- Modification of order, 16, 663
- Notice, 16, 662
- Order to support, 16, 662
- Petition or complaint, 16, 662
- Security for performance of order, 16, 663
- Who may institute proceedings, 16, 661

Public officers:

- Indictment, 16, 665
- Procedure against poor officers, 16, 665

Questions of law and fact:

- Violation of poor laws, 16, 664

Records:

- Appeals, 16, 671

Relation, see *infra*, Procedure against kindred of pauper.

Removal of pauper, 16, 665

- Amendment of complaint, 16, 667
- Appeal, 16, 670
- Complaint, 16, 666
- Conformity with statute, 16, 665
- Costs, 16, 672
- Disqualification of justice, 16, 665
- Jurisdiction, 16, 665
- Notice to pauper, 16, 666
- Order of removal*, see *infra*, Order of removal.

- Place of removal, 16, 669
- Proceeding in general, 16, 665
- Removal out of state, 16, 670
- Warrant of removal, 16, 669

Service of process:

- Order of removal, 16, 668

POOR AND POOR LAWS, *cont'd.*

- Violation of poor laws, 16, 664
 - Declaration and complaint, 16, 664
 - Form of remedy, 16, 664
 - Plea, 16, 664
 - Pleading, 16, 664
 - Question for jury, 16, 664
 - Successive actions, 16, 665
 - Who may maintain action, 16, 664

Warrants:

- Warrant of removal, 17, 669

POOR DEBTOR ACTS, 16, 698

Action on bond, 16, 741

Declaration, 16, 742

In general, 16, 741

Plea, 16, 742

Adjournment, 16, 722

Agency:

- Service of notice or citation on creditor's agent, 16, 711

Amendments, 16, 731

Charges of fraud, 16, 735

Notice or citation to creditor, 16, 708

Appeals, 16, 735

Charges of fraud, 16, 735

Appearances:

Failure of creditor to appear, 16, 720

Failure to attend and appear, 16, 718

Magistrates, 16, 720

Time for appearance, 16, 721

Waiver of objections to notice of service, 16, 618

Application:

Who may apply for discharge, 16, 705

Attendance of parties and magistrates, 16, 718

Creditor's failure to appear, 16, 720

Debtor, 16, 718

Debtor's duty to procure attendance of magistrate, 16, 720

Failure to appear breach of recognizance, 16, 718

Keeping open after the hour, 16, 722

Time for appearance, 16, 721

Waiting one hour, 16, 721

Waiver of opposition to discharge by failure to appear, 16, 720

Attorneys:

- Service of notice or citation to creditor, 16, 711

Bail and recognizance, see *infra*, Bond or recognizance.

Bond or recognizance, 16, 736

Action on bond, 16, 741

POOR DEBTOR ACTS, *cont'd.*

- Bond or recognizance, *cont'd.*
 - Bond good at common law, 16, 738
 - Breach, 16, 739
 - Computing time for performance, 16, 741
 - Conformity with statute, 16, 737
 - Declaration in action on bond, 16, 742
 - Effect of, 16, 737
 - Form, 16, 737
 - In general, 16, 736
 - Nil debet*, 16, 743
 - Non est factum*, 16, 743
 - Performance and breach, 16, 739
 - Performance by surrender of debtor, 16, 740
 - Performance by taking oath, 16, 740
 - Performance of condition, 16, 738
 - Plea in action on bond, 16, 742
 - Provisions of statute not recited in bond, 16, 739
 - Sufficiency, 16, 737
 - Who may take, 16, 737
- Certificate of discharge, 16, 729
 - Conclusiveness, 16, 731
 - Delivery of certificate to jailer, 16, 730
 - In general, 16, 729
 - Surplusage, 16, 730
- Certiorari, 16, 727
- Citation to creditor, *see infra*, Notice or citation to creditor.
- Creditor, *see infra*, Notice or citation to creditor.
- Declaration and complaint:
 - Action on bond, 16, 742
- Discharge:
 - Certificate of discharge, 16, 729
 - Delivery of certificate to jailer, 16, 730
 - In general, 16, 729
 - Surplusage, 16, 730
 - Who may apply for discharge, 16, 703
 - In general, 16, 703
 - Tort, 16, 704
- Disclosure, *see infra*, Examination and disclosure.
- Examination, *see infra*, Examination and disclosure.
- Examination and disclosure, 16, 723
 - Appraisal of property, 16, 725
 - Disposition of property, 16, 725
 - In general, 16, 723
 - Payment of money, 16, 725
 - Place, 16, 724
 - Refusal of debtor to submit, 16, 723
 - Refusal to assign, 16, 726

POOR DEBTOR ACTS, *cont'd.*

- Examination and disclosure, *cont'd.*
 - Review of proceedings, 16, 727
 - Time, 16, 724
- Fraud, 16, 732
 - Amendments, 16, 735
 - Appeal, 16, 735
 - Charges of fraud in general, 16, 732
 - Charges of fraud in nature of civil proceeding, 16, 733
 - Discharge in insolvency, 16, 733
 - Effect of appeal, 16, 736
 - Form of charges, 16, 734
 - Information and belief, 16, 734
 - Judgment against debtor, 16, 733
 - Judgment in favor of debtor on charges of fraud, 16, 733
 - Specifications, 16, 735
 - Sufficiency of charges, 16, 734
 - When charges filed, 16, 732
 - When fraudulent acts sufficiently alleged, 16, 734
- Hearing, *see infra*, Examination and disclosure.
- Information and belief, 16, 734
- Jurisdiction, 16, 698
 - In general, 16, 698
 - Jurisdiction should appear from record, 16, 703
 - Selection of justices, 16, 700
 - Who qualified to act, 16, 702
- Justices of the peace:
 - Attendance of parties and magistrates*, *see infra*, Attendance of parties and magistrates.
 - Selection of justices, 16, 700
- Misnomer:
 - Notice or citation to creditor, 16, 710
- Names:
 - Misnomer in notice or citation to creditor, 16, 710
- New notice, *see infra*, Notice or citation to creditor.
- Non est factum*, 16, 743
- Notice of citation to creditor, 16, 706
 - Amendment, 16, 708
 - Appointing time and place, 16, 709
 - Describing execution, 16, 709
 - Duty of debtor to furnish evidence of service, 16, 707
 - Form, 16, 707
 - In general, 16, 706
 - Misnomer, 16, 710
 - New notice, 16, 715
 - Effect of appearance, 16, 718
 - How soon issued after former notice, 16, 715
 - Upon change of circumstances, 16, 716
 - Waiver of objections, 16, 718

POOR DEBTOR ACTS, *cont'd.*

Notice or citation to creditor, *cont'd.*
Not governed by strict rules, 16, 707

Service, 16, 710

By whom, 16, 710

Certificate as conclusive evidence of service, 16, 731

Conclusiveness of return, 16, 714

Now served, 16, 714

On creditor's attorney or agent, 16, 711

On officer who made arrest, 16, 712

On the creditor, 16, 711

On whom, 16, 710

Place of service, 16, 713

Return, 16, 714

Several creditors, 16, 711

When served, 16, 712

Where served, 16, 713

Sufficiency, 16, 707

Oaths, 16, 727

Bond or recognizance, 16, 740

Departure of debtor, 16, 729

In general, 16, 727

Refusal of oath, 16, 728

Place:

Examination, 16, 726

Notice or citation to creditor, 16, 709

Service of notice or citation to creditor, 16, 713

Pleas:

Action on bond, 16, 742

Recognizance, see *infra*, Bond or recognizance.

Records, 16, 729

Amendment, 16, 731

Certificate of discharge, 16, 729

Conclusiveness, 16, 731

Delivery of certificate to jailer, 16, 730

In general, 16, 729

Surplusage in certificate of discharge, 16, 730

Notice or citation to creditor, 16, 714

Review of proceedings, 16, 727

Service of process, see *infra*, Notice or citation to creditor.

Surrender of debtor, 16, 740

Time:

Appearances, 16, 722

Examination, 16, 724

Notice or citation to creditor, 16, 709

Service of notice or citation to creditor, 16, 713

Torts, 16, 704

Usual place of abode, 16, 713

Who may apply for discharge, 16, 703

POOR PERSONS:

Forma pauperis, see FORMA PAUPERIS.

Poor debtor acts, see POOR DEBTOR ACTS.

POSSESSION (see ANSWERS IN CODE PLEADING; TITLE, OWNERSHIP, AND POSSESSION):

Assistance, writ of, see ASSISTANCE, WRIT OF.

Landlord and tenant, see LANDLORD AND TENANT.

Larceny, see LARCENY.

POSSESSION, WRIT OF, 16, 744

See RESTITUTION.

Alias writs, 16, 758

Contents of writ, 16, 745

Control of writ, 16, 749

Equitable control of court, 16, 749

Examples, 16, 749, 750

In general, 16, 749

Laches, 16, 749

Motion by defendant to compel return, 16, 751

Officer may demand indemnity, 16, 750

Plaintiff must identify premises, 16, 750

Restitution of property improperly taken, 16, 750

Definition, 16, 744

Description of premises recovered, 16, 746

Ejectment, 7, 350

Alias writ, 7, 352

Dispossession must be immediately or soon after delivery of possession, 7, 352

Duty and liability of plaintiff, 7, 353

Duty and liability of sheriff, 7, 354

Execution for damages and costs, 7, 350

In general, 7, 350

Method of execution, 7, 353

Name and form, 7, 351

Peaceable entry without writ, 7, 351

Plaintiff must point out and locate property, 7, 353

When to issue and when to be executed, 7, 351

Writ returned unexecuted, 7, 352

Eviction (see *infra*, Executions):

Relief against writ after execution, 16, 756

Executions (see *infra*, Relief against writ after execution), 16, 748, 751

Danger of insufficient execution, 16, 755

Delivery good in part, 16, 753

POSSESSION, WRIT OF, *cont'd.***Executions, *cont'd.***

Delivery of undivided interest,
16, 753

Ejectment for undivided part,
16, 753

How effected, 16, 751

Presumption against all persons
in possession, 16, 753

Property not named in writ, 16,
752

Remedy if injury probable, 16,
754

Resistance, 16, 752

Sufficiency of, 16, 755

Time of making, 16, 751

What it affects, 16, 752

Who may be evicted, 16, 753

Who may not be evicted, 16,
754

Whom writ affects, 16, 753

Form, 16, 745

Indemnity:

Officer's right to demand, 16,
750

Issuance of writ, 16, 747

Limitation, 16, 747

Motion, 16, 748

Writ issuing of course, 16, 747

Laches, 16, 757

Limitation of actions, 16, 747

Mandamus, 16, 748

Motions, 16, 748

Notice, 16, 749

Pluries writ, 16, 758

Relief against writ after execution,
16, 756

Feigned issue, 16, 758

Grounds, 16, 756

Illegal eviction of stranger, 16,
756

In general, 16, 756

Laches, 16, 757

Restoration to possession, 16, 757

When officer has delivered
premises not recovered, 16, 757

Restitution, 18, 878

Return, 16, 747

Motion by defendant to compel
return, 16, 751

Return day unnecessary, 16, 747

Scire facias:

Effect of issuance without scire
facias, 16, 747

Scope of article, 16, 745

Trespass to try title, 21, 951

Use of possession, 16, 745

Writ issuing of course, 16, 747

In general, 16, 747

Mandamus, 16, 748

Order for issuance unnecessary,
16, 748

POSSESSORY ACTIONS, 17, 670**POSTAL LAWS:**

Lotteries, 13, 393

Indictment in general, 13, 393

Intent, 13, 394

Letter or circular, 13, 395

Postage and address, 13, 396

Shall knowingly deposit, 13, 395

Using words of statute, 13, 394

Obscenity, see OBSCENITY.

POST OFFICES, 16, 759

Actions against postmasters for neg-
ligence, misconduct, etc., 16,
767

Declaration and complaint, 16,
767

Jurisdiction, 16, 767

Pleading and proof, 16, 768

Advertisements:

Indictment for mailing improper
medical advertisements, 16,
762

Declaration and complaint:

Actions against postmasters for
negligence, misconduct, etc.,
16, 767

Franking, unlawful, 16, 766

Fraud, see *infra*. Indictment for
using mails to defraud.

Illegal carriage of letters, 16, 166

Indictment for using mails to de-
fraud, 16, 759

Allegation of act in furtherance
of scheme, 16, 762

Allegation of intent to use mail.
16, 762

Averment of scheme to defraud,
16, 760

Charging several offenses in one
indictment, 16, 759

Description of scheme to defraud,
16, 761

Jurisdiction:

Actions against postmasters for
negligence, misconduct, etc.,
16, 767

Larceny:

Indictment for breaking into
post office with intent to com-
mit larceny, 16, 767

Indictment for theft from mail,
16, 763

Medical advertisements, 16, 762

Obstructing correspondence, 16, 763

Obstructing passage of mails, 16, 765

Offenses against postal regulations,
16, 759

Indictment for breaking into
post office with intent to com-
mit larceny, 16, 767

Indictment for illegal carriage
of letters, 16, 766

Indictment for mailing improper
medical advertisements, 16, 762

POST OFFICES, *cont'd.*

Offenses against postal regulations,
cont'd.

Indictment for obstructing correspondence, 16, 763

Indictment for obstructing passage of mails, 16, 765

Indictment for robbing mails, 16, 762

Indictment for theft from mail, 16, 763

Indictment for unlawful franking 16, 766

Indictment for using mails to defraud, see *infra*, Indictment for using mails to defraud.

Indictment of postmaster for detaining mail, 16, 766

Robbery:

Indictment for robbing mails, 16, 762

POSTPONEMENT, see ADJOURNMENT; CONTINUANCES.

POWER OF ATTORNEY:

Abiding the event, 1, 54

POWER OF SALE OF MORTGAGE, see FORECLOSURE OF MORTGAGES.

POWERS:

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

PRÆCIPLE, 16, 769

See SUMMONS AND PROCESS.

Amendments, 16, 773

Amount of debt or damages, 16, 773

Attachment, 16, 770

Contents, 16, 772

Criminal procedure, 16, 771

Definition, 16, 769

Demand for process, 16, 773

Dower, 7, 158; 16, 770

Eminent domain, 16, 770

Error, writ of, 16, 770

Executions, 16, 770

Nature of action, 16, 772

Necessity, 16, 769

Parties, 16, 772

Returns, 16, 773

Signing, 16, 772

Statute, 16, 770

Sufficiency, 16, 772

Summons and process, 20, 1106

Waiver, 16, 771

Writing, 16, 772

PRAYER:

Abatement in pleading, 1, 27

Form of prayer, 1, 28

Necessity of proper prayer, 1, 27

Pleas to the jurisdiction, 1, 8

Accounts and accounting, 1, 99

Admiralty:

Prayer for relief, 1, 255

PRAYER, *cont'd.*

Alimony, 1, 418

Permanent alimony, 1, 420

Temporary alimony, 1, 418

Amendments, 1, 484

Appeals, see APPEALS.

Injunctions, see INJUNCTIONS.

Marriage (annulment), 13, 879

Mechanics' liens, 13, 992, 1010

Pleas at law, see PLEAS AT LAW.

PRAYER FOR PROCESS:

Discovery, 6, 770

PRAYERS FOR RELIEF. 3, 346; 16, 774

See MOTIONS.

Actions:

Determining nature of action, 16, 776

Alternative relief, 16, 787

Amendments, 16, 790

Changing to prayer for relief, 1, 631

In general, 16, 790

Notice of motion, 1, 639

Time of amendment, 16, 791

What amendments permissible, 16, 790

Bills in equity, see BILLS IN EQUITY.

Bills of review, 3, 593

Complaint:

Determining sufficiency of complaint, 16, 779

Whether prayer part of complaint, 16, 776

Consistency, 16, 784, 788

Joinder of issue, 16, 812

Relief must be consistent with case made, 16, 809

Construction of pleading, 16, 784

Creditors' bills, 5, 568

Cross-bills, 5, 652

Declaration or complaint, 4, 623

Defaults, 16, 805

Answer stricken out, 16, 817

Effect of default by defendant, 16, 815

Granting relief not prayed, 16, 817

Measure of relief, 16, 815

Defective prayers, 16, 785

Defects in special prayer, 3, 348

Definition, 16, 775

Demurrers, 6, 324

Objections by demurrer, 16, 793

Demurrers in chancery, 6, 398

Determining nature of action, 16, 776

All facts alleged should be taken under consideration, 16, 779

Demand for money only, 6, 778

Different from that asked, 16, 796

Different relief, 3, 349

Directness, 16, 784

PRAYERS FOR RELIEF, *cont'd.*

- Disclaimer, 16, 805
- Discovery, 6, 771
 - Adding prayer for relief, 6, 771
- Divorce, 7, 84
- Double aspect, 3, 364
- Equitable and legal relief, 16, 787, 797
 - Complaint showing right to equitable relief only, 16, 802
 - Complaint showing right to legal redress, 16, 800
 - Equitable relief under prayer for legal redress, 16, 799
 - Legal redress under prayer for equitable relief, 16, 800
 - Measure of relief, 16, 797
- Exceptions and objections, 16, 792
 - By motion, 16, 792
 - Demurrer, 16, 793
- Foreclosure of mortgages (see FORECLOSURE OF MORTGAGES), 16, 808
- Form, 16, 783
- Formal sufficiency of prayer, 3, 348
- General prayer:
 - Definition, 16, 775
 - Measure of relief, 16, 804
 - Default, 16, 805
 - Disclaimer, 16, 805
 - In general, 16, 804
 - Measure of relief under general and special prayers, 16, 805
 - Foreclosure, 16, 808
 - In general, 16, 805
 - Injunction, 16, 808
 - Plaintiff refusing specific relief asked, 16, 807
 - Necessity, 16, 781
- General relief alone, 3, 347
- Greater than asked, 16, 795
- Inconsistent relief, 3, 364, 365, 366
- In general, 3, 346
- Injunctions, 16, 808
- Interpleader, 11, 466
 - General relief, 11, 467
 - Prayer for injunction, 11, 466
 - Specific relief, 11, 467
 - That defendant interplead, 11, 466
- Irregular prayers, 16, 785
- Joinder, 16, 785
 - Alternative relief, 16, 787
 - Inconsistent prayers, 16, 788
 - In general, 16, 785
 - Injunction and damages, 16, 787
 - Legal and equitable relief, 16, 787
- Joinder of issue, 16, 810
 - Appearance, 16, 815
 - Consistency, 16, 812
 - Defendant's relief, 16, 811
 - Demurrer, 16, 815
 - Effect of joinder of issue, 16, 810

PRAYERS FOR RELIEF, *cont'd.*

- Joinder of issue, *cont'd.*
 - Equivalents of answer, 16, 815
 - Measure of relief, 16, 810
 - Relief within issues, 16, 814
- Less than asked, 16, 794
- Measure of relief, 16, 794
 - Complaint showing right to equitable relief only, 16, 802
 - Complaint showing right to legal redress, 16, 800
 - Consistency, 16, 809, 812
 - Default, 16, 805
 - Different from that asked, 16, 796
 - Disclaimer, 16, 805
 - Effect of default by defendant, 16, 815
 - Effect of joinder of issue, 16, 810
 - Equitable relief under prayers for legal redress, 16, 799
 - Equivalents of answer, 16, 815
 - Foreclosure, 16, 808
 - General and special prayer, 16, 805
 - General prayer, 16, 804
 - Greater than asked, 16, 795
 - In general, 16, 794
 - Injunction, 16, 808
 - Legal redress under prayer for equitable relief, 16, 800
 - Less than asked, 16, 794
 - Prayer for equitable relief, 16, 800
 - Prayer for legal and equitable relief, 16, 797
 - Relief within issues, 16, 814
 - Special prayer, 16, 803
- Mistake, 14, 45
- Motion (see MOTIONS):
 - Objections by motion, 16, 792
- Multifariousness*, see MULTIFARIOUSNESS.
- Nature of, 16, 776
- Necessity for, 16, 779
 - General prayer, 16, 781
 - In general, 16, 779
 - Omission of prayer, 16, 780
 - Prayer incorporated in each count, 16, 783
 - Several counts or causes, 16, 782
 - Special prayer, 16, 780
 - Utility of general prayer, 16, 782
- Objections*, see *infra*, Exceptions and objections.
- Omission of entire prayer from bill, 3, 346
- Partition, 15, 805
- Partnership:
 - Bill or complaint for accounting, dissolution, and settlement, 15, 1088
 - Accounting without a dissolution, 15, 1091

PRAYERS FOR RELIEF, *cont'd.*Partnership, *cont'd.*Bill of complaint for accounting,
dissolution, and settle-
ment, *cont'd.*Consistency of prayer, 15,
1089

Examples, 15, 1089, 1090

In general, 15, 1088

Necessity of praying disso-
lution, 15, 1090Relief under general prayer,
15, 1089

Purpose of prayer, 16, 783

Quieting title, 17, 345

Quo warranto, 17, 467

Receivers, 17, 715

Redemption, 17, 969

Relief against all defendants, 16,
784

Replevin, 18, 544

Requisites, 16, 783

Revivor of suits and actions, 18,
1108, 1117

Scope of article, 16, 775

Special and general relief, 3, 348

Any appropriate relief, 3, 348

Consistency with special prayer,
3, 350

Deserting special prayer, 3, 351

Different relief, 3, 349

Relief must be *secundum allegata*,
3, 349

Special prayer:

Measure of relief, 16, 803

Measure of relief under general
and special prayers, 16, 805

Foreclosure, 16, 808

In general, 16, 805

Injunction, 16, 808

Plaintiff refusing specific re-
lief asked, 16, 807

Necessity, 16, 780

Special relief alone, 3, 347

Specific performance, 20, 461, 511

Statement of cause of action, 16, 776

Sufficiency, 16, 779, 783

Surplusage, irrelevant or redundant
matter, 21, 286*Time to plead*, see **TIME TO PLEAD**.

Trove and conversion, 21, 1087

Trusts and trustees, 22, 103

Vendor's liens, 22, 730

Waiver, 3, 346

Whether part of complaint, 16, 776

Wills, 22, 1206

Winding up corporations, 22, 1272

PRECEPT:

Grand juries, 10, 360

PREFERRED CAUSES, see CALENDARS AND TRIAL DOCKETS.**PREGNANCY:**

Abortion, 1, 63

PREJUDICES, see ARGUMENTS OF COUNSEL.**PRELIMINARY EXAMINATION, 16, 818***Accused*, see *infra*, Examination of
accused.Adjournment and continuance, 16,
832Disposition of accused pending
adjournment, 16, 833

In general, 16, 832

Time for which hearing may be
adjourned, 16, 835

Affidavits:

Affidavit filed with attorney or
clerk of court, 16, 828

Appeals, 16, 870

Proceedings in the nature of ap-
peal from examination, 16, 870*Attorney and client*, see *infra*, Repre-
sentation by counsel.

Bail, 16, 858

Bail and recognizance:

Witnesses, 16, 868

Binding over witnesses, 16, 868

Change of venue, 16, 840

Decision as to who is nearest
magistrate, 16, 842Effect of denial of transfer, 16,
841

In general, 16, 840

Commitment (see **COMMITMENT**):

Commitment by coroner, 16, 824

Complaint, 16, 842

Defective complaint, 16, 843

Necessity for, 16, 842

Concurrent jurisdiction:

Procedure in cases of concurrent
jurisdiction, 16, 869

Conduct of examination, 16, 844

Commitment, 16, 862

Decision of magistrate, see *infra*,
Decision of magistrate.*Examination of accused*, see *infra*,
Examination of accused.*Examination of witnesses*, see *in-
fra*, Examination of witnesses.

Federal courts, 16, 844

Information as to charge, 16, 847

In general, 16, 844

Public examination, 16, 845

Representation by counsel, see *in-
fra*, Representation by coun-
sel.*Return*, see *infra*, Returns.Right of accused to be present,
16, 845Right to a public examination,
16, 845*Confession*, see *infra*, Examination
of accused.*Continuance*, see *infra*, Adjournment
and continuance.

PRELIMINARY EXAMINATION,*cont'd.*

- Coroner's inquest:
 - Where coroner's inquest and commitment have been had, 16, 824
- Counsel, see *infra*, Representation by counsel.
- Crimination, see *infra*, Examination of accused.
- Decision of magistrate, 16, 857
 - Degree of offense, 16, 858
 - Holding to bail, 16, 858
 - In general, 16, 757
 - Judicial determination, 16, 858
 - Magistrate to judge as to weight of evidence, 16, 850
 - Sufficiency of evidence, 16, 859
- Definition, 16, 820
- Delay, 16, 832
- Effect of irregularities in or want of examination, 16, 865
 - In general, 16, 865
 - Manner of raising objections, 16, 867
 - Objections for omission or irregularities preceding examination, 16, 866
 - Objections for want of examination or errors therein, 16, 866
 - Raising objections, 16, 866
 - Time of raising objections, 16, 866
 - Waiver of objection, 16, 866
- Evidence (see *infra*, Examination of accused; Examination of witnesses):
 - Magistrate to judge as to weight of evidence, 16, 860
 - Sufficiency of evidence, 16, 859
- Examination of accused, 16, 853
 - Caution as to effect of statement, 16, 854
 - Manner of taking statement, 16, 856
 - Reduction to writing, 16, 856
 - Right of accused to testify, 16, 853
 - Signature to statement, 16, 857
 - Statement must not be under oath, 16, 855
 - Statement to be read to accused, 16, 856
 - Voluntary statement, 16, 854
 - Waiver of right, 16, 854
- Examination of witnesses (see *infra*, Examination of accused), 16, 847
 - Cross-examination by accused, 16, 849
 - Number of witnesses to be examined, 16, 849

PRELIMINARY EXAMINATION,*cont'd.*

- Examination of witnesses, *cont'd.*
 - Power to exclude or separate witnesses, 16, 848
 - Power to summon witnesses, 16, 847
 - Reading testimony to witnesses, 16, 851
 - Reduction of testimony to writing, 16, 850
 - Refusal of witness to attend, 16, 848
 - Signature to testimony by the magistrate, 16, 853
 - Signature to testimony by witnesses, 16, 853
 - Waiver to testimony by witness, 16, 852
 - Witnesses for the accused, 16, 850
 - Witnesses for the prosecution, 16, 848
- Exceptions and objections:
 - Irregularities or want of examination, 16, 866
- Expert witnesses, see EXPERT WITNESSES.
- False imprisonment, 16, 832
- Former jeopardy, 16, 871
- Fugitive from justice, 16, 823
- Homicide, 10, 113
 - Before whom conducted, 10, 113
 - Necessity for, 10, 113
 - Waiver, 10, 114
- Immediate examination, 16, 832
- Indictments, 16, 825
 - Effect of indictment found while examination pending, 16, 826
 - Examination requisite to sustain indictment, 16, 825
 - Indictment founded on minutes of preliminary examination, 16, 826
 - Necessity of preliminary examination where indictment is found, 16, 825
- Information as to charge, 16, 847
- Informations, 10, 450
 - Affidavit filed with attorney or clerk of court, 16, 828
 - Information filed by leave of court, 16, 827
 - In general, 10, 450
 - Necessity, 10, 450
- Irregularities, see *infra*, Effect of irregularities in or want of examination.
- Judges:
 - Who may hold preliminary examination, 16, 837
- Jurisdiction and venue, 16, 835
 - Before whom held, 16, 836

PRELIMINARY EXAMINATION,*cont'd.*Jurisdiction and venue, *cont'd.**Change of venue*, see **CHANGE OF VENUE**.

Commitment by one magistrate and examination by another, 16, 839

Concurrent jurisdiction:

Procedure in cases of concurrent jurisdiction, 16, 869

Effect of examination without jurisdiction, 16, 835

Justice's absence or inability to act, 16, 839

Justices of the peace, 16, 836

Necessity in cases of concurrent jurisdiction, 16, 828

Officers who may hold, 16, 837

Power of examining magistrate, 16, 837

Right to call in another magistrate, 16, 839

Second examination before another magistrate, 16, 839

To whom warrant returned, 16, 836

Where held, 16, 835

Justices of the peace (see *infra*, Jurisdiction and venue):*Conduct of examination*, see *infra*, Conduct of examination.*Decision of magistrate*, see *infra*, Decision of magistrate.

Nearest magistrate, 16, 842

Power of examining magistrate, 16, 837

Magistrates, see *infra*, Jurisdiction and venue; Justices of the peace.

Mandamus, 13, 595

Mandamus to compel examination 16, 823

Nature, 16, 820

Nearest magistrate, 16, 842

Necessity, see *infra*, Effect of irregularities in or want of examination; Right to examination.

New trial, 16, 870

Oaths:

Examination of accused, 16, 855

Origin, 16, 820

Prosecuting attorney, 16, 846

Public officers:

Officer who may hold examination, 16, 837

Rehearing, 16, 870

Representation by counsel, 16, 846

Accused, 16, 846

Allowance of time to secure counsel, 16, 847

Private counsel, 16, 846

Prosecuting attorney, 16, 846

PRELIMINARY EXAMINATION,*cont'd.*Representation by counsel, *cont'd.*

Prosecution, 16, 846

Right of counsel to aid accused in statement, 16, 847

Res adjudicata, 16, 871

Returns, 16, 862

By whom made, 16, 864

Necessity for, 16, 862

Power to order further return, 16, 864

Reason for requirement, 16, 863

Termination of magistrate's power, 16, 865

To whom warrant returned, 16, 838

Right to examination (see *infra*, Effect of irregularities in or want of examination), 16, 821

Accused a fugitive, 16, 823

Affidavit filed with attorney or clerk of court, 16, 828

Cases of concurrent jurisdiction, 16, 828

Commitment, 16, 824

Concurrent jurisdiction, 16, 828

Coroner's inquest, 16, 824

Detention without examination unlawful, 16, 823

Examination requisite to sustain indictment, 16, 825

Fugitive from justice, 16, 823

General rule as to necessity, 16, 821

Indictment found, 16, 825

Indictment founded on minutes of preliminary examination, 16, 826

Indictment found while execution pending, 16, 826

Information filed by leave of court, 16, 827

Mandamus to compel examination, 16, 823

Requisite to warrant removal, 16, 822

Waiver of right, see *infra*, Waiver of right.

When necessary, 16, 821

When unnecessary, 16, 823

Self-crimination, see *infra*, Examination of accused.

Suretyship:

Binding over witnesses, 16, 868

Time:

Examination should be without delay, 16, 832

Time for which hearing may be adjourned, 16, 835

Treason, 21, 776

Waiver of right, 16, 828

Effect of waiver, 16, 831

PRELIMINARY EXAMINATION,
*cont'd.***Waiver of right, *cont'd.***

Immediate examination, 16, 832

In general, 16, 828

Objections for irregularities in
or want of examination, 16,
867

Probability of guilt, 16, 830

Voluntary nature of waiver, 16,
830When examination should be
waived, 16, 831**Warrants, 16, 843**Effect of failure to charge proper
offense, 16, 844

Necessity for, 16, 843

To whom warrant returned, 16,
838**Witnesses (see *infra*, Examination of
accused; Examination of wit-
nesses):**

Binding over witnesses 16, 868

PRELIMINARY INJUNCTIONS,
see INJUNCTIONS.**PREMATURE SUITS, 16, 873**

Abatement of action, 16, 878, 879

Amendments, 16, 874

Antecedent cause of action essential
to recovery, 16, 873

Demurrers, 16, 881

Dismissal, discontinuance, and non-
suit:Dismissal without prejudice, 16,
875Manner of raising objection, 16,
878

Equitable grounds for relief, 16, 874

Exceptions and objections, see infra,

Manner of raising objection;

Waiver of objection.

Exceptions to the rule, 16, 874

General issue:

Manner of raising objection, 16,
875

Instructions, 16, 886

Manner of raising objection, 16, 876

Demurrer, 16, 878, 881

Demurrer where conditions prece-
dent are imposed by statute,
16, 882General issue or general denial,
16, 876

Motion for nonsuit, 16, 878

Special plea in abatement, 16, 879

Special plea in bar, 16, 879

Waiver of objection, see infra,
Waiver of objection.Where it appears from the plain-
tiff's own evidence, 16, 878

Motions:

Manner of raising objection, 16,
878**PREMATURE SUITS, *cont'd.****Objections, see infra.* Manner of rais-
ing objection; Waiver of objection.

Pleas in abatement, 16, 878, 879

Questions of law and fact, 16, 886

Special plea, 16, 879

Statutory exceptions, 16, 875

Supplemental pleading, 16, 874

Waiver of objection, 16, 883

By answering to merits or failing
to plead, 16, 883By failure to object in primary
court, 16, 884

Without prejudice:

Dismissal without prejudice, 16,
875**PRESCRIPTION (see LIMITATIONS):**

Limitations, 13, 290

Definition, 13, 290

Findings, 13, 293

Manner of pleading, 13, 290

Necessity of pleading, 13, 292

Pleading and proof, 13, 292

**PRESENCE OF ACCUSED IN
COURT, see FINES AND COSTS IN
CRIMINAL CASES.****PRESENTATION OF CLAIM:***Counties, see COUNTIES.***PRESENTMENT, see INDICTMENTS;
INFORMATIONS.****PRESIDENT:***Extradition, see EXTRADITION.***PRESUMPTIONS (see ANSWERS IN
CODE PLEADING):***Appeals, see APPEALS.*

Appearances:

Appearance presumed from re-
citals in the record, 2, 596Authority of attorney to appear,
2, 679, 682

General appearance, 2, 632

Certiorari:

As to jurisdiction, 4, 291

As to regularity of procedure, 4,
288Omission of necessary matters
from record, 4, 290Presumptions in support of pro-
ceedings, 4, 290

Rulings on evidence, 4, 288

Sufficiency of evidence, 4, 289

Construction of pleadings, 4, 746,
759

Contempt, 4, 772

Presumption in favor of ac-
cused, 4, 769**Contributory negligence:**Overcoming presumption arising
from facts. 5, 7**Depositions (see DEPOSITIONS):**

Certificate, 6, 559

Officer, 6, 540

Regularity of return, 5, 537

PRESUMPTIONS, *cont'd.*

Instructions (see INSTRUCTIONS):

Presumption of innocence, 11, 354

Duty to instruct on when requested, 11, 354

Whether necessary to instruct on in absence of request, 11, 356

Jurisdiction, see JURISDICTION.*Jury*, see JURY.*New trial*, see NEW TRIAL.*Orders*, see ORDERS.

Payment:

Presumption of payment, 16, 192

PRETENSES, see FALSE PRETENSES.

PREVAILING PARTY, see ADDITIONAL ALLOWANCES OF COSTS; COSTS.

PRINCIPAL AND AGENT, see ACCESSORIES AND THE LIKE; AGENCY.

PRINCIPAL AND SURETY, see GUARANTY; SURETYSHIP.

PRISON:

Escape, see ESCAPE.

PRISON BREACH, see ESCAPE;

PRISON BREAKING; RESCUE.

PRISON BREAKING, 7, 919

See ESCAPE.

Examples, 7, 920

Indictment, 7, 919

In general, 7, 919

PRIVATE INTERNATIONAL

LAW, see CONFLICT OF LAWS.

PRIVATE WAYS, see WAYS.

PRIVILEGE, 16, 968

Abatement of action, 16, 978

Affidavits, 16, 973

Appeals:

Raising question on appeal, 16, 988

Appearances:

Appearing and answering to the merits, 16, 987

Bail and recognizance:

Discharge on common bail, 16, 975

Giving bail as waiver of privilege from arrest, 16, 987

Contempt, 16, 983

Discharge:

Absolute discharge, 16, 977

Discharge on common bail, 16, 975

Dismissal, discontinuance, and nonsuit, 16, 978

Extent of privilege, 16, 968

False imprisonment, 16, 984

Habeas corpus, 16, 981

Laches, 16, 986

Methods of asserting privilege, 16, 969

Action on the case for damages, 16, 985

PRIVILEGE, *cont'd.*Methods of asserting privilege, *cont'd.*

Contempt proceedings, 16, 981, 983

False imprisonment, 16, 984

Habeas corpus, 16, 981

Motion to court, see *infra*, Motion to court.

Plea in abatement, 16, 979

Trespass, 16, 983

Various actions for breach of privilege, 16, 983

Motion to court, 16, 970

Absolute discharge, 16, 977

Affidavits in support of motion, 16, 973

Discharge from arrest, 16, 970

Discharge on common bail, 16, 975

Dismissal of suits, 16, 978

Ex parte application, 16, 972

Form of motion, 16, 972

In general, 16, 970

Measure of the relief granted, 16, 975

Parliamentary bodies, 16, 975

Service of process set aside, 16, 971

United States courts, 16, 974

Where made, 16, 973

Plea in abatement, 16, 979

In general, 16, 979

Requisites of plea, 16, 980

Waived by plea in bar, 16, 981

Trespass, 16, 983

Trespass on the case, 16, 985

United States courts, 16, 974

Waiver of privilege, 16, 986

Appearing and answering to the merits, 16, 987

Giving bail, 16, 987

In general, 16, 986

Laches, 16, 986

Question on appeal, 16, 988

Witnesses, 22, 1350

Writ of privilege or protection, 16, 969

PRIVILEGED COMMUNICATIONS:

Answers in equity pleading, 1, 875

Attorneys:

Discovery, 6, 747

Attorney's clerks, 6, 751

Communications between clients of one attorney, 6, 751

Communications between codefendants, 6, 756

Communications between legal advisers of adverse parties, 6, 756

Communications through agents, 6, 750

PRIVILEGED COMMUNICATIONS, *cont'd.* **PRIVILEGED COMMUNICATIONS, *cont'd.***

Attorneys, *cont'd.*

Discovery, *cont'd.*

- Communications through interpreters, 6, 751
- Communications to obtain advice as to commission of crime, 6, 752
- Communications to obtain advice as to perpetration of fraud, 6, 753
- Communications to scriveners, stewards, and agents, 6, 756
- Information obtained from documents, 6, 748
- Knowledge acquired through other sources, 6, 851
- Limitation of privilege, 6, 751
- Limited by strict necessity, 6, 751
- Loss of privilege, 6, 754
- Necessity, 6, 751
- Pendency of suit unnecessary, 6, 748
- Person consulted must be attorney, 6, 749
- Principle on which the privilege is allowed, 6, 748
- Privilege exclusively of client, 6, 750
- Professional advice, 6, 748
- Retainer unnecessary, 6, 749
- Rule stated, 6, 747
- Several clients, 6, 754
- Termination of relationship, 6, 754
- Waiver of privilege, 6, 752
- What attorney need not disclose, 6, 747
- What client need not disclose, 6, 755
- Communications to scriveners, stewards, and agents, 6, 756
- Discovery:
 - Agents, 6, 750
 - Communications between attorney and client, 6, 747
 - Attorney's clerks, 6, 751
 - Communications between clients of one attorney, 6, 751
 - Communications between codefendants, 6, 756
 - Communications between legal advisers of adverse parties, 6, 756
 - Communications through agents, 6, 750

Discovery, *cont'd.*

Communications between attorney and client, *cont'd.*

- Communications through interpreters, 6, 750
- Communications to obtain advice as to commission of crime, 6, 752
- Communications to obtain advice as to perpetration of fraud, 6, 753
- Communications to scriveners, stewards, and agents, 6, 756
- Information obtained from documents, 6, 748
- Knowledge acquired through other sources, 6, 751
- Limitation of privilege, 6, 751
- Limited by strict necessity, 6, 751
- Loss of privilege, 6, 754
- Necessity, 6, 751
- Pendency of suit unnecessary, 6, 748
- Person consulted must be attorney, 6, 749
- Principle on which the privilege allowed, 6, 748
- Privilege exclusively of client, 6, 750
- Professional advice, 6, 748
- Retainer unnecessary, 6, 749
- Rule stated, 6, 747
- Several clients, 6, 754
- Termination of relationship, 6, 754
- Waiver of privilege, 6, 754
- What attorney need not disclose, 6, 747
- What client need not disclose, 6, 755
- Communications between codefendants, 6, 756
- Communications between government officials, 6, 758
- Communications between husband and wife, 6, 757
- Communications between legal advisers of adverse parties, 6, 756
- Communications to clergymen, 6, 757
- Communications to medical men, 6, 757
- Grounds for demurrer, 6, 778
- Interpreters, 6, 751
- Examination of witnesses, 8, 152
- Production of documents, 6, 793

PRIVITY:

Appeals:

Who are in privity, 2, 152

Assumpsit, 2, 1021

Covenant, 5, 350

Debt, see DEBT.

Ejectment, 7, 309

Intervention, 11, 500

PRIZE FIGHTING, 16, 990

PRIZES, see ADMIRALTY.

PROBABLE CAUSE (see CERTIFICATE OF DOUBT):

Malicious prosecution, see MALICIOUS PROSECUTION.

PROBATE (see SETTLEMENT OF DECEDENTS' ESTATES):

Heirs and devisees, see HEIRS AND DEVISEES.

Legatees and distributees, see LEGATEES AND DISTRIBUTEES.

PROBATE AND CONTEST OF WILLS (see EXECUTORS AND ADMINISTRATORS; SETTLEMENT OF DECEDENTS' ESTATES):

Abatement, 16, 1028

Administration, see SETTLEMENT OF DECEDENTS' ESTATES.

Amendments (see *infra*, Opening, vacating, and amending judgments):

Adding parties by amendment, 16, 1017

Contestant's pleading, 16, 1025

Another suit pending, 16, 1019

Appeals, 2, 30; 16, 1060

Costs, 16, 1054

Final judgments, 2, 56

Foreign wills, 16, 1076

For errors of law, 16, 1060

For trial *de novo*, 16, 1060

Joinder of parties, 2, 196

Omission of interested parties, 16, 1018

Application for probate, 16, 997

Application of any one's interest, 16, 999

Contents of application, 16, 999

Contestant's pleading, see *infra*, Contestant's pleading.

Executor's application, 16, 997

Form of application, 16, 999

Hearing on applications not formally contested, see *infra*, *Hearing on applications not formally contested*.

Interest of applicant, 16, 998

Notice, see *infra*, Notice.

Order on filing application, 16, 1003

Who may apply, 16, 997

Application to set aside probate, see *infra*, Opening, vacating, and amending judgments.

PROBATE AND CONTEST OF WILLS, *cont'd.*

Attorney's fees, 16, 1051

Awarding issues and frame and form thereof, see *infra*, Issue.

Bill of review, 16, 1059

Omission of interested parties, 16, 1018

Bill to set aside judgment or decree, 16, 1064

Change of venue, 4, 386

Citations, see CITATIONS.

Collateral attack on judgment or decree, 16, 1061

Absence or insufficiency of attestation, 16, 1063

Domicil or residence of decedent, 16, 1064

Foreign wills, 16, 1077

Various matters conclusively established by the probate, 16, 1063

Want of notice, 16, 1004

Where court has jurisdiction, 16, 1061

Where court has no jurisdiction, 16, 1063

Common form, 16, 993

United States, 16, 894

Complaint, see *infra*, Contestant's pleading.

Contest:

Form of contest, 16, 1007

Notice, see *infra*, Notice.

Parties to formal contests, see *infra*, Parties to formal contests.

Time of contest, 16, 1006

Contestant's pleading:

Amendments, 16, 1025

Averment as to time of bringing suit, 16, 1024

Averment of contestant's interest, 16, 1019

Indefiniteness in averment, 16, 1020

Necessity of averment, 16, 1019

Sufficiency of averment, 16, 1019

Averment of grounds of contest, 16, 1020

Concealed fraud, 16, 1023

Fraud concealed, 16, 1023

Fraud or undue influence, 16, 1022

Invalidity of execution, 16, 1023

Necessity of averment, 16, 1020

Revocation of will, 16, 1024

Sufficiency of averment, 16, 1021

PROBATE AND CONTEST OF WILLS, *cont'd.*

- Contestant's pleading, *cont'd.*
 - Averment of grounds of contest, *cont'd.*
 - Testamentary capacity, 16, 1023
 - Want of testamentary capacity, 16, 1023
 - Miscellaneous averments according to the nature of pleading or proceeding, 16, 1024
 - Plea of another application pending, 16, 1019
 - Prayer, 16, 1025
 - Verification, 16, 1025
- Continuance, 16, 1006
- Costs and expenses, 16, 1049
 - Allowances prior to probate and for purpose of contest, 16, 1049
 - Authority of probate court, 16, 1050
 - Chancery court, 16, 1050
 - Costs awarded directly to parties, 16, 1052
 - Counsel fees and expenses, 16, 1051
 - Discretion, 16, 1050
 - Executors, 16, 1053
 - Exercise of discretion, 16, 1052
 - Good faith and reasonable cause, 16, 1052
 - Inherent power to award costs, 16, 1050
 - Limited discretion, 16, 1050
 - Review on appeal, 16, 1054
 - Security for costs, 16, 1049
 - Statutory provision, 16, 1050
 - Unqualified discretion, 16, 1050
- Counsel fees, 16, 1051
- Courts:
 - Trial by the court, 16, 1043
- Creditor:
 - Right to contest wills, 16, 1014
- Death, 16, 1028
- Decrees, see *infra*, Judgment or decree.
- Defendant's pleading, 16, 1026
- Depositions, 6, 480
- Destroyed wills, see *infra*, Lost or destroyed wills.
- Directing verdict, 16, 1040
- Dismissal, discontinuance, and nonsuit:
 - Withdrawal of voluntary nonsuit or dismissal, 16, 1028
- Domestic wills, 16, 991
 - Abatement by death or transfer of interest, 16, 1028
 - Appeal and error, 16, 1060
 - Application for probate, 16, 997
 - Appointment of guardian *ad litem* for infants, 16, 1028

PROBATE AND CONTEST OF WILLS, *cont'd.*

- Domestic wills, *cont'd.*
 - Awarding issues and frame and form thereof, 16, 1032
 - Bill of review, 16, 159
 - Bill to set aside judgment or decree, 16, 1064
 - Collateral attack on judgment or decree, 16, 1061
 - Contestant's pleading, see *infra*, Contestant's pleading.
 - Costs and expenses, see *infra*, Costs and expenses.
 - Defendant's pleading, 16, 1026
 - Directing verdict, 16, 1040
 - Form and contents of application, 16, 999
 - Form of contest, 16, 1007
 - Hearing on applications not formally contested, 16, 1005
 - Judgment and decree, 16, 1043
 - New trials, 16, 1059
 - Notice of proceedings for probate or contest, 16, 1003
 - Order on filing application, 16, 1003
 - Parties to formal contests, see *infra*, Parties to formal contests.
 - Removal of proceeding to federal court, 16, 1030
 - Replication, 16, 1026
 - Repropounding a will once probated or rejected, 16, 1000
 - Right to jury trial of will contests, 16, 1030
 - Statutory suit to establish rejected wills, 16, 1005
 - Time for contesting probated will, 16, 1006
 - Trial by the court, 16, 1043
 - Trial of issues by jury, see *infra*, Trial of issues by jury.
 - Vacating judgment or decree, see *infra*, Opening, vacating, and amending judgments.
 - Various forms of probate and contest, 16, 993
 - Verdict, 16, 1040
 - Who may apply, 16, 997
 - Withdrawal or voluntary nonsuit or dismissal, 16, 1028
 - Writing, 16, 1007
- Error, writ of, 16, 1060
- Executors and administrators (see *infra*, Common form):
 - Application for probate, 16, 997
 - Costs, 16, 1053
- Ex parte*, see *infra*, Common form.
- Expenses, see *infra*, Costs and expenses.
- Final judgments and decrees, 2, 56

PROBATE AND CONTEST OF PROBATE AND CONTEST OF WILLS, *cont'd.*

Foreign wills, 16, 1066
 Admission of foreign probated will to record, 16, 1066
 Appeal, 16, 1076
 Collateral attack on order or judgment admitting to record, 16, 1077
 Contents of petition, 16, 1070
 Error, 16, 1076
 Form and contents of application, 16, 1070
 Form of contest and trial thereof, 16, 1074
 Grounds of contest, 16, 1073
 Hearing, 16, 1071
 Judgment, 16, 1075
 Notice of hearing, 16, 1071
 Order, 16, 1075
 Original probate, 16, 1066
 Power and duty of court, 16, 1066
 Second application after allowance or rejection of former, 16, 1076
 Statutory contest of order or judgment admitting to record, 16, 1076
 Who may make application, 16, 1069
 Form of contest, 16, 1007
 Fraud:
 Averment of fraud, 16, 1022
 Fraud as to part of will, 16, 1046
 Guardians *ad litem*, 16, 1028
 Hearing on applications not formally contested, 16, 1005
 Continuance or postponement, 16, 1006
 In general, 16, 1005
 Summary character of proceeding, 16, 1005
 Heirs and devisees (see HEIRS AND DEVISEES):
 Right to contest wills, 16, 1010
 Husband and wife, 16, 1046
 Infants (see GUARDIANS AD LITEM), 16, 1046
 Instructions, 16, 1038
 Duty to instruct, 16, 1039
 Features common to all instructions, 16, 1039
 Fraud, 16, 1038
 Limiting instructions to evidence, 16, 1039
 Obscure or confused instructions, 16, 1040
 Repetition of instructions, 16, 1039
 Testamentary capacity, 16, 1038
 Undue influence, 16, 1038
 Undue prominence, 16, 1039
 Validity of execution, 16, 1038
 Index Pl. & Pr. — 54

WILLS, *cont'd.*
 Interest (see *infra*, Parties to formal contests):
 Application, 16, 998
 Issue:
 Awarding issues and frame and form thereof, 16, 1032
 Demand for issues, 16, 1035
 General issues, 16, 1032
 General requisites of special issues, 16, 1035
 Issue directed to part of a will, 16, 1036
 Plaintiffs and defendants in issue, 16, 1035
 Special issues, 16, 1032, 1035
 Successive issues, 16, 1037
 Trial by the court, 16, 1043
 Trial of issues by jury, see *infra*, Trial of issues by jury.
 Joinder of parties, 16, 1008
 Judgment or decree, 16, 1043
 Bill to set aside judgment or decree, 16, 1064
 Collateral attack on judgment or decree, see *infra*, Collateral attack on judgment or decree.
 Determining construction or operation of will, 16, 1048
 Foreign wills, 16, 1075
 Form, 16, 1043
 Fraud as to part of will, 16, 1046
 General requisites, 16, 1043
 Infants, 16, 1046
 Judgment on verdict, 16, 1045
 Libelous matter in will, 16, 1048
 Limited probates, 16, 1046
 Married women, 16, 1046
 Must decide the issue, 16, 1045
 Opening, vacating, and amending judgments, see *infra*, Opening, vacating, and amending judgments.
 Partial probates, 16, 1046
 Qualified probates, 16, 1046
 Rendition, 16, 1043
 Signature of judge, 16, 1044
 Translation of will in foreign language, 16, 1046
 Two or more instruments, 16, 1049
 Judicial sales, 12, 7, 8
 Jurisdiction:
 Wills of real estate, 16, 996
 Jury:
 Right to jury trial of will contests, 16, 1030
 Constitutional question, 16, 1030
 Statutory provision or established usage, 16, 1031
 Trial of issues by jury, see *infra*, Trial of issues by jury.

PROBATE AND CONTEST OF WILLS, *cont'd.*

Legatees and distributees (see LEGATEES AND DISTRIBUTEES):

Right to contest wills, 16, 1013, 1014

Letters testamentary or of administration, see SETTLEMENT OF DECEDENTS' ESTATES.

Libelous matter in will, 16, 1048

Lost or destroyed wills, 16, 1065

English ecclesiastical courts, 16, 1065

Form of probate, 16, 1066

Probate courts in the United States, 16, 1065

Procedure, 16, 1066

Mandamus, 13, 612

Admitting will to probate, 13, 612

Allowance to widow, 13, 613

Appointment of guardian, 13, 614

Assignment of dower, 13, 613

Claims against decedent, 13, 613

Extension of time for persons to claim official settlement, 13, 613

Grant of administration, 13, 613

Refusal of writ, 13, 612

To determine sanity, 13, 614

Vacating probate, 13, 62

Married women, 16, 1046

Necessity, see *infra*, Contestant's pleading.

New trials, 16, 1059

Next of kin:

Right to contest wills, 16, 1010

Nonsuit, 16, 1028

Notice, 16, 1003

Character of notice, 16, 1003

Collateral attack for want of notice, 16, 1004

Court directing notice, 16, 1003

Foreign wills, 16, 1071

Necessity of notice and opportunity to contest, 16, 994, 1003

Objection for want of notice, 16, 1003

Of proceedings for probate or contest, 16, 1003

Opening, vacating, and amending judgments, 16, 1058

Sufficiency of notice and proof thereof, 16, 1003

Nuncupative wills, 16, 1065

Opening, vacating, and amending judgments, 16, 1054

Allegations of petition, 16, 1058

Bill to set aside judgment or decree, 16, 1064

Discretion of surrogate, 16, 1057

Effect of vacating, 16, 1058

Laches in making application, 16, 1058

PROBATE AND CONTEST OF WILLS, *cont'd.*

Opening, vacating, and amending judgments, *cont'd.*

Notice of application, 16, 1058

Petition, 16, 1058

Power of ecclesiastical courts, 16, 1054

Power to vacate, 16, 1054

Power to vacate in the United States, 16, 1054

Statutory power, 16, 1057

Who may make application, 16, 1058

Order of proof, 15, 406

Parties to formal contests, 16, 1008

Adding parties by amendment, 16, 1017

Appeal where parties are omitted, 16, 1018

Bill of review where parties are omitted, 16, 1018

Collateral attack on judgment for omission of parties, 16, 1018

Contestants, 16, 1008

Contestants by virtue of interest or relationship, 16, 1009

Creditor, 16, 1014

Defendants, 16, 1016

Devises and legatees under a lost will, 16, 1013

Effect of omitting interested parties, 16, 1018

Error where parties are omitted, 16, 1018

General rule, 16, 1008

Heirs, 16, 1010

Heirs refusing to join as plaintiffs may be made defendants, 16, 1017

Interest as a general requisite, 16, 1009

Interest, determination of question of, 16, 1016

Interest, want of, 16, 1015

Intervention, 16, 1017

Joinder of plaintiffs, 16, 1008

Legatee, 16, 1013

Legatee under prior will, 16, 1013

Miscellaneous interests, 16, 1015

Next of kin, 16, 1010

Objection for want of interest, 16, 1015

Objection taken in defendant's pleading to admit interested parties, 16, 1018

Omission of interested parties, 16, 1018

One beneficiary contesting will of another, 16, 1014

Parties not heard at original probate, 16, 1008

- PROBATE AND CONTEST OF WILLS, *cont'd.***
- Parties to formal contests, *cont'd.*
 - Plaintiffs, 16, 1008
 - Public administrator, 16, 1014
 - Residuary legatee, 16, 1014
 - State, 16, 1014
 - Survival of interest, 16, 1015
 - Widow, 16, 1012
 - Prayer, 16, 1025
 - Prohibition, 16, 1122
 - Public administrator:
 - Right to contest wills, 16, 1014
 - Questions of law and fact, 16, 1038
 - Fraud, 16, 1038
 - Testamentary capacity, 16, 1038
 - Undue influence, 16, 1038
 - Validity of execution, 16, 1038
 - Records, see infra, Foreign wills.*
 - Rejected wills, see infra, Repropounding a will once probated or rejected.*
 - Removal of causes, 16, 1030
 - Rendition and entry of judgment, 16, 1043
 - Replications and replies, 16, 1026
 - Repropounding a will once probated or rejected (see *infra*, Collateral attack on judgment or decree), 16, 1000
 - In general, 16, 1000
 - Insufficiency of allegations, 16, 1001
 - Parties not cited or under disability, 16, 1001
 - Will already probated, 16, 1000
 - Will once rejected, 16, 1000
 - Residuary legatee:
 - Right to contest wills, 16, 1014
 - Revocation of will, 16, 1024
 - Right to jury trial of will contests, see infra, Jury.*
 - Security for costs, 16, 1049
 - Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.*
 - Solemn form, 16, 993
 - United States, 16, 994
 - State:
 - Right to contest wills, 16, 1014
 - Statutory suits to establish rejected wills, 16, 1065
 - Testamentary capacity, 16, 1023
 - Time for contesting probated will, 16, 1006
 - Trial by the court, 16, 1043
 - Trial of issues by jury, 16, 1037
 - In general, 16, 1037
 - Open and close, 16, 1038
 - Order of proof, 16, 1038
 - Questions of law and fact and instructions, 16, 1038
 - Duty to instruct, 16, 1039
- PROBATE AND CONTEST OF WILLS, *cont'd.***
- Trial of issues by jury, *cont'd.*
 - Questions of law and fact and instructions, *cont'd.*
 - Features common to all instructions, 16, 1039
 - Fraud, 16, 1038
 - Limiting instructions to evidence, 16, 1039
 - Obscure or confused instructions, 16, 1040
 - Repetition of instructions, 16, 1039
 - Testamentary capacity, 16, 1038
 - Undue influence, 16, 1038
 - Undue prominence, 16, 1039
 - Validity of execution, 16, 1038
 - Undue influence:
 - Averment of, 16, 1022
 - Venue, 22, 831
 - Verdict, 16, 1040
 - Certainty, 16, 1042
 - Conclusiveness, 16, 1042
 - Consistency, 16, 1041
 - Directing verdict, 16, 1040
 - Form, 16, 1040
 - General, 16, 1040
 - Rendition, 16, 1042
 - Responsiveness, 16, 1041
 - Special, 16, 1040
 - Validity, 16, 1040
 - Verdict for and against different provisions, 16, 1041
 - Verification:
 - Application to set aside probate, 16, 1058
 - Contestant's pleading, 16, 1025
 - Necessity, 16, 1025
 - Sufficiency, 16, 1025
 - Waiver of objection, 16, 1025
 - Who may contest, see infra, Parties to formal contests.*
 - Widow:
 - Right to contest wills, 16, 1012
 - Writing:
 - Objections, 16, 1007
- PROBATE COURTS, see SURREGATES.**
- PROCEDENDO (see MANDATE):**
- Certiorari, 4, 252
 - Mandamus, 13, 501
 - Mandamus compared with procedendo, 13, 501, 536
 - Mandamus to entertain and try cause, 13, 536
 - Sentence, 19, 502
- PROCESS AND SUMMONS, see ADMIRALTY; MESNE PROCESS; SUMMONS AND PROCESS.**

PROCHEIN AMI, see GUARDIANS AD LITEM; NEXT FRIEND:

PRO CONFESSO (see CONFESSION OF JUDGMENT; DECREES.

Issues to the jury, 11, 677

PRODUCTION OF DOCUMENTS, see DISCOVERY, PRODUCTION, AND INSPECTION.

PROFANE SWEARING, 16, 1079

Abusive and offensive language, see ABUSIVE AND OFFENSIVE LANGUAGE.

Definition, 16, 1079

Indictment, 16, 1080

PROPERT, see PROPERT AND OYER.

PROPERT AND OYER, 16, 1082

Abatement in pleading, 1, 20

Awards, 3, 136

Covenant, 5, 364

Debt, 5, 921

Defaults:

Demand of oyer, 6, 76

Executors and administrators, see EXECUTORS AND ADMINISTRATORS.

Judgments:

Profert of record in actions on judgments, 11, 1140

Lost instruments and records:

Jurisdiction in equity, 13, 356

Oyer, 16, 1086

Averment of prayer of oyer, 16, 1089

Definition, 16, 1086

Demanding oyer, 16, 1089

Effect of craving oyer, 16, 1091

Effect of misrecital, 16, 1091

Necessity of oyer in certain cases, 16, 1087

Object, 16, 1087

Of what not demandable, 16, 1090

Pleading after oyer, 16, 1092

Profert does not make instrument a part of record, 16, 1087

Setting out oyer, 16, 1091

Time at which oyer must be craved, 16, 1089

Time to take advantage, 16, 1090

Variances, 16, 1088

Patents:

Action at law for infringement, 16, 83

Bill in equity for infringement, 16, 99

Profert, 16, 1082

Copy, 16, 1083

Definition, 16, 1082

Failure to make profert and its effect, 16, 1086

How made, 16, 1083

Modification of common law, 16, 1083

Object of profert, 16, 1082

Original document, 16, 1083

PROPERT AND OYER, *cont'd.*

Profert, *cont'd.*

Pleading records, 16, 1086

Repetition of profert, 16, 1085

When profert is not required, 16, 1085

When profert is required, 16, 1083

When profert may be excused, 16, 1084

Sham and frivolous pleadings, 20, 75

Stock and stockholders, 20, 694

Tender, 21, 566, 569, 577

Variance, 22, 624

PRO FORMA:

Decrees, 5, 954

PROHIBITION, 16, 1093

Adequate remedy:

Inadequate remedy, 16, 1131

Where there is another adequate remedy, 16, 1130

Affidavits, 16, 1138

Amount in controversy, 16, 1119

Answers, 16, 1140

Appeals, 2, 122; 16, 1143

Appellate court, 16, 1098

Effect of appeal, 16, 1144

Fact that no appeal lies, 16, 1127

For want of appeal, 16, 1114

Order granting writ, 16, 1143

Refusal to grant writ, 16, 1143

Supreme Court of the United States, 16, 1102

When court has lost jurisdiction by appeal, 16, 1116

After judgment by appellate court, 16, 1118

Attempt to enforce judgment, 16, 1116

Judgment not appealable, 16, 1116

Matters not affected by appeal, 16, 1118

Sufficiency and approval of appeal bond, 16, 1117

Applicants, 16, 1134

Boards, 16, 1106

Chambers and vacation, 4, 364; 16, 1140

Chancery courts, 16, 1097, 1103

Civil remedy, 16, 1095

Commissioners, 16, 1106

Compliance *ad interim*, 16, 1134

Contempt, 4, 820; 16, 1112

Enforcement of writ, 16, 1142

Continuation of prohibited suit, 16, 1095

Costs, 16, 1142

Judge of inferior court, 16, 1143

Plaintiff usually taxed, 16, 1142

Where petition is dismissed or rule discharged, 16, 1143

Where plaintiff below abandons or submits, 16, 1143

PROHIBITION, *cont'd.*

- Councils, 16, 1106
- Courts (see *infra*, Jurisdiction; Tribunals and officers prohibited):
 - Acts on the court, 16, 1096
 - Court exceeding its power, 16, 1111
 - Discretion, see *infra*, Issuance of writ discretionary.
- Courts-martial, 16, 1108
- Criminal procedure:
 - Proceedings summary and quasi-criminal, 16, 1129
- Definition, 16, 1094
- Demurrers, 16, 1140
- Disbarment and suspension of attorneys, 6, 720
- Discretion of court, see *infra*, Issuance of writ discretionary.
- Disqualification of judge, 16, 1124
- Eminent domain, 7, 665
- Landowner's rights, 7, 715
- Equity:
 - Chancery courts, 16, 1097, 1103
- Evidence:
 - Insufficiency of evidence, 16, 1127
- Executions:
 - Relief against the writ, 8, 457
- Executive officers, 16, 1108
- Governor, 16, 1108
- Injunctions:
 - Dissolution of injunction, 10, 1032
 - Where court exceeds jurisdiction, 10, 884
- Injury:
 - When no injury can result, 16, 1133
- Insolvency:
 - Assumption of jurisdiction by another court, 16, 1119
- Issuance of writ discretionary, 16, 1109
 - General rule, 16, 1109
 - Refused in doubtful cases or where other remedy exists, 16, 1110
- Judge (see *infra*, Jurisdiction; Tribunals and officers prohibited):
 - Disqualification of judge, 16, 1124
- Judicial acts, see *infra*, Jurisdiction.
- Judicial power, see *infra*, Tribunals and officers prohibited.
- Jurisdiction, 16, 1096
 - Court exceeding its power, 16, 1111
 - Departure from statute conferring jurisdiction, 16, 1123
 - Excess and absence of jurisdiction, 16, 1095

PROHIBITION, *cont'd.*

- Jurisdiction, *cont'd.*
 - Excess of territorial jurisdiction, 16, 1121
 - General rule, 16, 1121
 - When courts possess probate jurisdiction, 16, 1122
 - Where other remedy exists, 16, 1122
 - Jurisdiction the sole question, 16, 1125
 - State courts, 16, 1096
 - Appellate courts, 16, 1098
 - Chancery courts, 16, 1097
 - Courts having no original jurisdiction, 16, 1099
 - Courts of general jurisdiction, 16, 1096
 - Jurisdiction of particular courts, 16, 1097
 - Supreme courts, 16, 1098
 - United States courts, see *infra*, United States courts.
 - When amount involved exceeds court's jurisdiction, 16, 1119
 - In general, 16, 1119
 - Single indivisible cause of action cannot be split, 16, 1120
 - Voluntary remittitur, 16, 1121
 - When application for writ is too late, 16, 1132
 - When court has lost jurisdiction, 16, 1115
 - After judgment by appellate court, 16, 1118
 - Appeal taken, 16, 1116
 - Assumption of jurisdiction by another court, 16, 1119
 - By final order, 16, 1115
 - Insolvency proceedings, 16, 1119
 - Matters not affected by appeal, 16, 1118
 - Plaintiff voluntarily withdrawing, 16, 1116
 - Removal proceedings, 16, 1118
 - Sufficiency and approval of appeal board, 16, 1117
 - When court has never acquired jurisdiction, 16, 1113
 - For want of appeal, 16, 1114
 - For want of service of process, 16, 1113
 - Insufficiency of service, 16, 1113
 - When jurisdiction depends upon void act, 16, 1122
 - When no act in excess of jurisdiction is threatened, 16, 1133

PROHIBITION, *cont'd.*Jurisdiction, *cont'd.*

- When no objection has been made to jurisdiction of inferior court, 16, 1128
- Inadequate remedy, 16, 1131
- Objection to record, 16, 1129
- Plea filed and overruled, 16, 1129
- Premature actions, 16, 1128
- Proceedings summary and quasi-criminal, 16, 1129
- When there is another adequate remedy, 16, 1130
- When the want of jurisdiction is apparent upon the face of the proceedings, 16, 1132
- When writ issued, 16, 1110
- When writ refused, 16, 1125
- Justices of the peace, 16, 1103
- Legislative officers, 16, 1108
- Mandamus, 13, 501, 614
 - Mandamus as affected by other proceedings, 13, 502
 - Mandamus compared with prohibition, 13, 501
- Motion to quash, 16, 1140
- Nature of writ, 16, 1094
- Officers, see infra, Tribunals and officers prohibited.*
- Original civil proceeding, 16, 1095
- Parties to actions, 16, 1134
 - Applicants, 16, 1134
 - Either party to suit, 16, 1134
 - Name of state, 16, 1134
 - Respondents, 16, 1135
 - Stranger, 16, 1134
- Peremptory writ, 16, 1141
 - Affirmative act, 16, 1142
 - Checking proceedings, 16, 1141
 - Effect, 16, 1141
 - Quashing acts already done, 16, 1141
- Petitions:
 - What should be set forth, 16, 1138
- Preliminary writ, 16, 1139
 - Cannot be dispensed with, 16, 1139
 - Declaration by relator, 16, 1140
 - Demurrer, answer, and motion to quash, 16, 1140
 - Effect of rule or preliminary writ, 16, 1139
 - In general, 16, 1139
 - Return of rule or preliminary writ, 16, 1140
 - Upon filing suggestion, 16, 1139
- Prerogative writ, 16, 1095
- Probate and contest of wills, 16, 1122
- Procedure, 16, 1135
 - Absolute writ, 16, 1141
 - Answer, 16, 1140

PROHIBITION, *cont'd.*Procedure, *cont'd.*

- Appeals, 16, 1143
- Common law, 16, 1135
- Contempt proceedings, 16, 1142
- Costs, 16, 1142
- Demurrer, 16, 1140
- Denial of writ not conclusive, 16, 1137
- Enforcement of writ, 16, 1142
- Modern practice, 16, 1137
- Motion to quash, 16, 1140
- Ordering plaintiff to declare, 16, 1136
- Peremptory writ, 16, 1141
- Preliminary writ, 16, 1139
- Presenting suggestion, 16, 1135
- Return of rule or preliminary writ, 16, 1140
- Rule to show cause, 16, 1136, 1139
- Suggestion or petition and affidavit, 16, 1138
- Public officers, see infra, Tribunals and officers prohibited.*
- Purpose of writ, 16, 1094
- Quo warranto, 17, 409
- Receivers:
 - Appointing receiver improperly, 16, 1112
 - Appointment of receiver, 17, 859
- Remedial or preventive, 16, 1096
- Remittitur, 16, 1121
- Removal of causes, 16, 1118; 18, 386
 - Removal from state to federal court, 16, 1118
 - When court has lost jurisdiction, 16, 1118
- Rule to show cause, 16, 1139
 - Cannot be dispensed with, 16, 1139
 - Common-law practice, 16, 1136
 - Declaration by relator, 16, 1140
 - Demurrer, answer, and motion to quash, 16, 1140
 - Effect of rule or preliminary writ, 16, 1139
 - In general, 16, 1139
 - Return of rule or preliminary writ, 16, 1140
 - Upon filing suggestion, 16, 1139
- Service of process:
 - Defective service, 19, 706
 - Insufficiency of service, 16, 1113
 - Want of service of process, 16, 1113
- State courts, see infra, Jurisdiction.*
- Suggestion:
 - Common-law practice, 16, 1135
 - What should be set forth, 16, 1138
- Supersedeas and stay of proceedings, 16, 1141; 20, 1247

PROHIBITION, *cont'd.***Taxes:**

Tax assessors or collectors, 16,

1107

Time of application, 16, 1132

Tribunals and officers prohibited, 16,

1102

Boards, 16, 1106

Bodies or officers having judicial

powers, 16, 1106

Chancery courts, 16, 1103

Commissioners, 16, 1106

Councils, 16, 1106

Courts-martial, 16, 1108

Executive officers, 16, 1108

Generally, 16, 1102

Inferior courts amenable to the

writ, 16, 1103

Judge out of office, 16, 1106

Judicial powers, 16, 1106

Justices of the peace, 16, 1103

Legislative officers, 16, 1108

Ministerial acts, 16, 1102

Nonexistent office, 16, 1104

Pretended court, 16, 1104

Private person, 16, 1105

Tax assessors or collectors, 16,

1107

Use of writ as quo warranto, 16,

1106

What constitutes judicial power,

16, 1106

United States courts, 16, 1101

Appeals, 16, 1102

Circuit and district courts, 16,

1102

Discretion, 16, 1110

Removal proceedings, 16, 1118

Supreme court of the United

States, 16, 1101

To circuit courts, 16, 1101

To district courts, 16, 1101

Where court is without special

or appellate authority, 16, 1102

Waste, see *WASTE*.

When application for writ is too late,

16, 1132

When issued, 16, 1110

Disqualification of judge, 16,

1124

General rule, 16, 1110

Jurisdiction, see *infra*, *Jurisdic-*

tion.

When refused, 16, 1125

Appeal, fact that no appeal lies,

16, 1127

Compliance *ad interim*, 16, 1134

Errors or irregularities, 16, 1126

General rule, 16, 1125

Insufficiency of the evidence, 16,

1127

Intrinsic merits of a case, 16,

1127

PROHIBITION, *cont'd.***When refused, *cont'd.***

Judicial acts only, 16, 1128

Jurisdiction depending on con-

tested questions of fact, 16,

1127

Matters of defense, 16, 1126

When application for writ is too

late, 16, 1132

When no act in excess of juris-

diction is threatened, 13, 1133

When no injury can result, 16,

1133

When no objection has been

made to the jurisdiction of the

inferior court, 16, 1128

When there is another adequate

remedy, 16, 1130

Winding up corporations, 22, 1297

PROLIXITY, see **SCANDAL AND IM-****PERTINENCE.**

Definiteness and certainty in plead-

ings, 6, 271

PROMISSORY NOTES, see **NEGOTI-****ABLE INSTRUMENTS.****PROOF**, see **ORDER OF PROOF.****PROPERTY**, see **RIGHT OF PROP-****ERTY, TRIAL OF.****PROSECUTING ATTORNEYS**, 17, 1

Appeals, 17, 3

Arguments of counsel:

Prosecuting attorney's expres-

sion of personal belief, 2, 726

Assistant (see *infra*, Associate

counsel), 17, 11

Associate counsel, 17, 12

Argument to jury, 17, 16

By whom appointed, 17, 14

Change of venue, 17, 16

Compensation, 17, 22

Counsel employed by private

parties, 17, 13

How appointment is made, 17,

15

In general, 17, 12

Number allowed, 17, 13

Powers and duties of associate

counsel, 17, 16

Procuring opinion of counsel,

17, 15

Upon change of venue, 17, 15

Who may be appointed, 17, 12

Assumpsit:

Fees, 17, 24

Authority to prosecute, 17, 5

Authority of deputy, 17, 7

Averments of authority treated

as surplusage, 17, 6

Presumption in favor of au-

thority, 17, 5

Questioning authority, 17, 7

Want of authority cured by sub-

sequent ratification, 17, 6

PROSECUTING ATTORNEYS, con.

Bail and recognizance, 17, 9
Binding force of agreements made by different classes, 17, 4

Certiorari:

District attorney as relator, 4, 165

Change of venue:

Associate counsel, 17, 15, 16

Compensation, see *infra*, Fees of prosecuting officers.

Concurrent powers, 17, 2

Conduct of prosecution, 17, 8

Actions to recover fines and forfeited recognizances, 17, 9

Action to try title to office, 17, 8

Appearance by assistant or deputy, 17, 11

Discretionary powers, 17, 8

Dismissal of prosecution, 17, 10

Duties preliminary to trial, 17, 9

Grand jury, 17, 9

Misconduct of prosecuting attorney, 17, 11

Relieving accused from responsibility, 17, 10

Signature and verification of indictments, 17, 10

Costs, see *infra*, Fees of prosecuting officers.

Deputy (see *infra*, Associate counsel), 17, 7, 11

Different classes, 17, 2

Dismissal, discontinuance, and nonsuit, 17, 10

Divorce, 7 66

Exclusive province, 17, 3

Fees of prosecuting officers, 17, 19

Allowance of fee for conviction, 17, 20

By whom audited and allowed, 17, 19

Change of venue, 17, 23

Compensation of associate counsel, 17, 22

Conditions precedent, 17, 23

Costs not taxed as in civil actions, 17, 20

Double fees, 17, 22

Enforcement of right to compensation, 17, 23

Estoppel, 17, 25

Form of proceeding to recover, 17, 24

Indictment containing several counts, 17, 21

Joint trial on several indictments, 17, 21

Mandamus, 17, 24

Maximum amount fixed by statute, 17, 22

Methods of taxation and allowance, 17, 20

PROSECUTING ATTORNEYS, con.

Fees of prosecuting officers, *cont'd.*

Quantum meruit, 17, 24

Set-off, 17, 25

Several offenses triable in different courts, 17, 21

Several persons jointly indicted, 17, 20

Grand jury, 17, 9

Examination of witnesses, 10, 400

Initiating proceedings, 10, 390

Indorsement of prosecutor, 10, 431

Objection for defect, 10, 433

Prosecution by district attorney *ex officio*, 10, 431

Prosecutor defined, 10, 432

Statutory requirement, 10, 431

Sufficiency of indorsement, 10, 432

Informations:

By whom filed, 10, 449

Signature of prosecuting officer, 10, 461

Mandamus, 13, 627

Fees, 17, 24

Misconduct, 17, 11

Nolle prosequi, see **NOLLE PROSEQUI.**

Powers of the various classes, 17, 2

Preliminary examination, 16, 846

Prosecuting attorneys *pro tempore*, 17, 16

By whom appointed, 17, 18

Disqualification, 17, 17

Entry in the record, 17, 18

How appointed, 17, 18

In general, 17, 16

Necessity of formal order of court, 17, 18

Number appointed, 17, 19

Powers and duties, 17, 19

Refusal to prosecute, 17, 17

Quantum meruit, 17, 24

Quo warranto (see **QUO WARRANTO**), 17, 7, 9

Signing and countersigning of indictment, 10, 446

Designation of district of county, 10, 448

Designation of official capacity, 10, 448

Necessity at common law, 10, 446

Necessity by statute, 10, 447

Signature by deputy or *pro tem.* officer, 10, 448

Sufficiency of signature, 10, 448

Stipulations, 20, 649

Binding force of agreements made by different classes, 17, 4

Surplusage:

Averments of authority, 17, 6

United States district attorney:

Venue, 17, 5

Venue, 17, 5

PROSECUTION, see **MALICIOUS PROSECUTION**.

PROSTITUTION (see **DISORDERLY CONDUCT**; **DISORDERLY HOUSES**; **VAGRANCY**; **FORNICATION**):
Immigration, 10, 278
Lewdness, 13, 23

PROTECTION, see **PRIVILEGE**.

PROTEST, see **NEGOTIABLE INSTRUMENTS**.

PROVISIONS:

English language, 7, 721
Health regulations, 10, 4, 6

PROXIMATE CAUSE:

Civil damage acts, 4, 548

Railroads:

Alleging failure to fence as proximate cause, 17, 581

Instructions, 17, 603

Telegraphs and telephones, 21, 514

PUBLICATION, 17, 26

See **APPEARANCES**.

Address, 17, 86

Affidavits, 17, 52, 108:

Affidavit sworn to in another state, 17, 57

Alleging inability to make personal service, 17, 62

Alleging nonresidence, 17, 67

Amendments, 17, 79

Attachment affidavit, 17, 55

Attorney, 17, 56

Authority to make, 17, 56

Averments on information and belief, 17, 60

Before whom sworn to, 17, 57

By whom made, 17, 55, 108

Collateral attack, 17, 59, 78

Compliance with statute, 17, 58

Direct attack, 17, 78

Due diligence, 17, 63

Editor instead of printer, 17, 108

Facts necessary to show due diligence, 17, 6

Facts showing cause of action, 17, 74

Facts showing due diligence, 17, 63

Form, 17, 111

How defects taken advantage of, 17, 78

Information and belief, 17, 60

Jurisdictional presumption, 17, 54

Jurisdiction of court to pass upon evidence, 17, 66

Mailing, 17, 105

Nature of action, 17, 74

Necessity for, in general, 17, 52
Nonresidence, see *infra*, *Nonresidence*.

Once a week, 17, 113

PUBLICATION, *cont'd.*

Affidavits, *cont'd.*

Personal service, inability to make, 17, 62

Person designated by statute, 17, 108

Place of residence, 17, 72

Pleading as substitute for affidavit, 17, 54

Pleadings in aid of affidavit, 17, 59, 76

Publisher or proprietor instead of printer, 17, 109

Presumption of regularity, 17, 57

Residence, place of, 17, 72

Should appear of record, 17, 53

Showing authority to make, 17, 110

Statements as to newspapers, 17, 114

Statements as to time of publication, 17, 112

Stating cause of action, 17, 73

Stating probative facts, 17, 59

Successive days, 17, 113

Successive weeks, 17, 113

Sufficiency, 17, 111

Suits against unknown parties, 17, 77

Summons returned not served, 17, 64

Swearing to affidavit, 17, 57

Unknown parties, 17, 77

When sworn to, 17, 58

Whether person making must be directly sworn, 17, 110

Alimony, 17, 44

Amendments:

Affidavit for publication, 17, 79

Declaration and complaint, 17, 52

Proof of publication, 17, 115

Appeals, 2, 225, 650

Construction of statute, 2, 226

Necessity of personal service, 2, 225

Notice by publication, 2, 226

Service of notice of appeal, 2, 225

Supreme court of the United States, 2, 225

Waiver of objection, 2, 227

When substituted service may be made, 2, 226

Appearances:

Directing time of appearance, 17, 85

Effect of voluntary appearance, 17, 123

Appearance by guardian *ad litem*, 17, 124

In general, 17, 123

Irregularity in proof of publication, 17, 123

Procuring reversal of judgment, 17, 124

PUBLICATION, *cont'd.*Appearances, *cont'd.*

Time of appearance, 17, 88

Attachment, 17, 43

Judgment of affidavit, 17, 55

Stating notice of attachment, 17, 93

Certificate of publication, see *infra*, Affidavits.

Collateral attack, 17, 120

Affidavit for publication, 17, 59, 78

Defects not jurisdictional, 17, 120

Effect of judgment recital of due service, 17, 48

Judgment *in personam*, 17, 116

Jurisdictional defects, 17, 121

Stating probative facts in affidavit, 17, 59

Compliance with statute, see *infra*, Statutes.Computation of time, see *infra*, Time of publication.

Constitutional law, 17, 31

Constitutionality of statutes in general, 17, 31

Foreclosure, 17, 31

Quieting title, 17, 31

Resident defendants, 17, 32

Death:

Effect of death pending publication, 17, 125

Declaration and complaint, 17, 51

Amendment after publication, 17, 52

Verification, 17, 51

When filed, 17, 51

Defaults, 6, 30

Attachment proceedings, 6, 36

Judgment *in personam*, 6, 34Judgment *in rem*, 6, 35

Material requirements must be fulfilled, 6, 31

Opening defaults, 17, 122

Order for publication, 6, 34

Preliminary affidavit, 6, 33

Statements merely defective, 6, 34

Strict compliance with statute, 6, 30

Strict construction of statute, 6, 30

What judgment is authorized against nonresident, 6, 34

Delay in making publication, 17, 124

Divorce, 17, 44

Amendment, 7, 113

By assignment, 7, 108

Decree on substituted service, 7, 107

Defendant entering a special appearance, 7, 113

PUBLICATION, *cont'd.*Divorce, *cont'd.*

Holding summons until return day, 7, 108

In general, 7, 107

Mailing copy of summons and petition, 7, 112

Notice or publication of summons, 7, 112

Order for publication, 7, 111

Order not complying with statute, 7, 111

Order of court, 7, 109

Personal notice in addition to publication, 7, 109

Personal service in another state or county, 7, 108

Proceedings to vacate decrees on constructive service, 7, 142

Application of usual statutes, 7, 143

Code provision, 7, 143

In general, 7, 142

Revision expressly prohibited, 7, 144

Special statutory provision, 7, 144

Weight of authority, 7, 144

Proof of constructive service, 7, 112

Proof that defendant is a nonresident, 7, 110

Publication without order, 7, 111

Record, 7, 112

Rule as to sufficiency, 7, 110

Service without publication, 7, 109

Statement of cause of action, 7, 111

Due diligence, 17, 34

Affidavit alleging nonresidence, 17, 68

Insufficient affidavits, 17, 69

Nonresidence as evidence of due diligence, 17, 71

Sufficient affidavits, 17, 70

Whether allegation of inability to make personal service necessary, 17, 69

Whether allegation of nonresidence sufficient, 17, 68

Affidavit setting out facts showing due diligence, 17, 63

Court has jurisdiction to pass upon evidence, 17, 66

In general, 17, 63

Insufficient affidavits, 17, 64

Sufficient affidavits, 17, 65

What facts must be stated in order to show the exercise of due diligence, 17, 65

Exercise of, 17, 34, 37

Personal service, 17, 34

Return of not found, 17, 37

PUBLICATION, *cont'd.*

- "Editor," 17, 108
- Eminent domain, 7, 494
 - Due process of law, 7, 494
 - Examples, 7, 494, 496
 - In general, 7, 494
 - Notice, 7, 494
 - Time of publication, 7, 495
 - Who bound, 7, 496
- English language, 17, 102
- Evidence, see *infra*, Affidavits; Proof of publication.
- Foreclosure of mortgages (see FORECLOSURE OF MORTGAGES), 17, 31, 43
- "Forthwith," 17, 87, 104
- Infants, 10, 609
 - Mailing copies, 17, 103
 - Nonresidents, 17, 33
- Information and belief:
 - Affidavit for publication, 17, 60
 - States in which not allowed, 17, 62
 - Usually allowed, 17, 60
 - Wholly on information and belief, 17, 62
- Insane persons:
 - Nonresidents, 17, 33
- Insolvency, 11, 24
- Judgments, 17, 116
 - Attacking judgment (see *infra*, Collateral attack), 17, 120
 - Direct attack, 17, 120
 - Direct attack, 17, 121
 - Effect of judgment recital of due service, 17, 48
 - On collateral attack, 17, 48
 - On direct attack, 17, 48
 - Recital contradicted by record, 17, 50
- In personam*, 17, 116
- In rem*, 17, 119
- Judicial sales, 12, 30
 - Character of newspaper, 12, 36
 - Computation of time, 12, 35
 - Conformity to decree, 12, 30
 - Contents of notice, 12, 30
 - Description, 12, 31
 - Designating place, 12, 33
 - Designating time, 12, 34
 - Duration of notice, 12, 34
 - Error in description, 12, 32
 - Exceptions, 12, 37
 - Improvements, 12, 33
 - In general, 12, 30
 - Name of defendant, 12, 31
 - Newspaper devoted to legal news, 12, 37
 - Premature publication, 12, 36
 - Prescribed number of days, 12, 35
 - Prescribed period, 12, 36
 - Proof of notice, 12, 38
 - Publication for the time prescribed, 12, 34

PUBLICATION, *cont'd.*

- Judicial sales, *cont'd.*
 - Religious newspapers, 12, 38
 - Signature, 12, 31
 - Successive weeks, 12, 35
 - Sufficiency of description in general, 12, 31
 - Title and amount, 12, 31
 - Weekly publications, 12, 36
- Justices of the peace, 17, 30
- Local improvements, see LOCAL IMPROVEMENTS.
- Mailing copies, 17, 85, 102
 - Address, 17, 86
 - Affidavit of mailing, 17, 105
 - Contents of affidavit, 17, 106
 - Directing mailing of copies in the order, 17, 85
 - Forthwith, 17, 87, 104
 - How proof of mailing made, 17, 105
 - Mailing forthwith, 17, 104
 - Mailing to wrong address, 17, 104
 - Necessity for, 17, 102
 - Necessity for proof of mailing, 17, 105
 - Place of residence unknown, 17, 87
 - Posting, 17, 106
 - Post office, 17, 86
 - Proof of mailing, 17, 105
 - Appearing of record, 17, 105
 - Service on infant, 17, 103
- Mandamus, 13, 766
- Marriage (annulment), 13, 879
- Mechanics' liens, 13, 949
- Names of parties to be served, 17, 84, 90
- Immaterial variances, 17, 91
- Maiden name of married woman, 17, 91
- Misnomer, 17, 91
 - Should be correctly stated, 17, 90
- Newspaper, see *infra*, Paper.
- Nonresidence:
 - Alleging nonresidence in affidavit, 17, 67
 - Alleged in petition, 17, 68
 - In general, 17, 67
 - Necessity for showing due diligence, 17, 68
 - Nonresidence as evidence of due diligence, 17, 71
 - Property within the state, 17, 72
 - Show fact of nonresidence, 17, 34
- Nonresidents, 17, 32
 - Due diligence, 17, 34, 37
 - Exclusiveness of method, 17, 32
 - Exercise of due diligence, 17, 34, 37
 - Infants, 17, 33

PUBLICATION, *cont'd.*Nonresidents, *cont'd.*

- In general, 17, 32
- Insane persons, 17, 33
- Occasional temporary presence, 17, 34
- Persons not found within state, 17, 36
- Persons temporarily absent, 17, 34
- Property within the state, 17, 35
- Return of "not found," 17, 37
- United States courts, 17, 32
- Unknown heirs, 17, 38
- Unknown parties, 17, 37
- War, 17, 33

Notice, 17, 88

- Amendment, 17, 90
- Compliance with statute, 17, 88
- Description of property, 17, 94
- Formal defects, 17, 89
- Immaterial variances in name, 17, 91
- In general, 17, 88
- Misnomer, 17, 91
- Names of parties to be served, 17, 90
- Notice of attachment, 17, 93
- Publication of order, 17, 89
- Publication of original summons, 17, 89
- Stating cause and nature of action, 17, 92
- Time of appearance, 17, 88

Obscene publication, see OBSCENITY.

Once a week, 17, 113

Opening defaults, 17, 122

Orders, 17, 79

- Address, 17, 86
- Based on affidavit, 17, 80
- By whom made, 17, 81
- Designating newspaper, 17, 85
- Directing mailing of copies, 17, 85
- Directing time of appearance, 17, 85
- Entry of order, 17, 80
- Form, 17, 81
- Immaterial defects, 17, 82
- In general, 17, 79
- Made within reasonable time after affidavit, 17, 80
- Mailing forthwith, 17, 87
- Necessity for, 17, 79
- Objecting to order, 17, 83
- Post office, 17, 86
- Recital of jurisdictional facts, 17, 82
- Stating names of parties, 17, 84
- Stating nature of cause of action, 17, 84
- Sufficiency, 17, 81
- Where alternative methods of service allowed, 17, 87

PUBLICATION, *cont'd.*

Paper, 17, 99

- Affidavit for publication, 17, 85
- All insertions in same paper, 17, 101
- Designating the paper in the order, 17, 85
- In general, 17, 99
- Language of publication, 17, 102
- Law journal, 17, 101
- "Newspaper," 17, 101
- Paper designated by statute or court order, 17, 99
- Paper most likely to give notice, 17, 100
- Religious paper, 17, 102
- Statements as to newspaper in certificate or affidavit of publication, 17, 114
- Sunday papers, 17, 102
- Supplement, 17, 102
- Weekly paper, 17, 101
- What constitutes a newspaper, 17, 101

Partition, 17, 43

Personal service outside of state, 17, 125

Effect of, 17, 126

When authorized, 17, 125

Pasting, see *infra*, Mailing copies.

Post office, 17, 86

"Printer," 17, 108, 109

Proceedings *in personam* and *in rem* (see *infra*, Judgments), 17, 39Proceedings *in personam*, 17, 39Proceedings *in rem*, 17, 40

Attachment, 17, 43

Corporate stock, 17, 41

Divorce, 17, 44

Foreclosure of mortgages, 17, 43

Partition, 17, 43

Quietting title, 17, 42

Suits affecting personal property, 17, 41

Suits affecting title to land, 17, 42

Proof, see *infra*, Affidavits.

Proof of publication, 17, 107

Affidavit or certificate of publication, see *infra*, Affidavits.

Amendment of proof, 17, 115

Appearing of record, 17, 115

Competent evidence, 17, 107

Effect of voluntary appearance, 17, 123

In general, 17, 107

Usually by affidavit, 17, 107

"Proprietor," 17, 109

"Publisher," 17, 109

Quietting title, 17, 42

Constitutionality of statutes, 17, 31

PUBLICATION, *cont'd.*

Records:

- Affidavit for publication, 17, 53
- Effect of judgment recital of due service, 17, 48
- Necessity of affirmative showing of compliance with statute, 17, 47
- Proof of appearing of record, 17, 115
- Proof of mailing, 17, 105

Rem, see *infra*, Proceedings in *personam* and in *rem*.

Residence:

- Alleging place of residence, 17, 72
 - Where known, 17, 72
 - Where unknown, 17, 73

Resident, see *infra*, Nonresidents.
Constitutionality of statutes, 17, 32

Returns:

- Necessity for return, 17, 50
- Not found, 17, 37

Rules of court, 18, 1272
Validity of rules of court, 18, 1242

Specific performance, 20, 409

Stating cause of action:

- Notice, 17, 92
 - Order for publication, 17, 84
- Stating cause of action in affidavit, 17, 73
- Facts showing cause of action, 17, 74
 - In general, 17, 73
 - Nature of action, 17, 74
 - Pleading in aid of affidavit, 17, 77

Statutes:

- Cases authorized by statute, 17, 39
- Compliance with statute, 17, 45
 - Affidavit, 17, 58
 - In general, 17, 58
 - Pleadings in aid of affidavit, 17, 59
 - Sufficiency, 17, 58
 - Appearing of record, 17, 47
 - Effect of judgment recital of due service, 17, 48
 - Effect of judgment recital of due service on collateral attack, 17, 48
 - Effect of judgment recital of due service on direct attack, 17, 48
 - Material deviation, 17, 46
 - Necessity for, 17, 45
 - Necessity for affirmative showing, 17, 47
 - Notice, 17, 88
 - Recital contradicted by record, 17, 50
 - Time of publication, 17, 94

PUBLICATION, *cont'd.*

Stock, 17, 41

Substitute for personal service, 17, 30

Successive days, 17, 113

Successive weeks, 17, 113

Taxation, 21, 389

Time of publication, 17, 94

Affidavit or certificate of publication, 17, 112

Once a week, 17, 113

Statements as to time of publication, 17, 112

Successive days, 17, 113

Successive weeks, 17, 113

"Calendar month," 17, 97

Compliance with statute, 17, 94

Expiration of prescribed period, 17, 95

Method of computing time, 17, 97

"Month," 17, 97

Publication for certain number of days, 17, 98

Publication for certain number of weeks, 17, 98

Publication for less than required time, 17, 94

Publication for more than required time, 17, 95

Time to answer, 17, 99

What constitutes period of publication, 17, 95

When service complete, 17, 95

United States courts:

Nonresidents, 17, 32

Unknown parties, 17, 37

Affidavit, 17, 77

Compliance with statute, 17, 39

Examples, 17, 38, 39

In general, 17, 37

Must appear that parties were unknown, 17, 38

Unknown heirs, 17, 38

Verification:

Declaration and complaint, 17, 51

Warning order, 17, 30

When service by publication is authorized, 17, 29

Attachment, 17, 43

Cases authorized by statute, 17, 39

Constitutionality of statute, 17, 31

Divorce, 17, 43

In general, 17, 29

In what proceedings, 17, 39

Nonresidents, 17, 32

On whom, 17, 32

Persons not found within state, 17, 36

Proceedings in *personam*, 17, 39

Proceedings in *rem*, 17, 40

PUBLIC LANDS, 17, 127

See LAND PATENTS.

Amendments, 17, 134

Answers, 17, 134

Claims to purchase lands, 17, 132

Amendments, 17, 134

Answer, 17, 134

Complaint, 17, 132

In general, 17, 132

Courts, 17, 128

Criminal procedure, 17, 136

Decisions of land department, 17, 128

Declaration and complaint, 17, 133

Indictments, 17, 136

Informations in equity, 10, 860

Injuries to public lands, 17, 134

Civil remedies at law, 17, 135

Civil remedies in equity, 17, 135

Criminal prosecutions, 17, 136

Indictment, 17, 136

Remedies in general, 17, 134

Jurisdiction, 17, 127

Courts, 17, 128

Criminal procedure, 17, 136

Federal jurisdiction, 17, 130

Land department, 17, 127

Land department, 17, 127

Land patents, see LAND PATENTS.

Miscellaneous questions, 17, 137

Schools, see SCHOOLS.

Setting aside land grants, 17, 131

Necessary averments, 17, 131

Remedy in equity, 17, 131

Setting out evidence, 17, 132

Tender of purchase money, 17, 132

United States courts, 17, 130

Criminal procedure, 17, 136

Variances, 17, 136

PUBLIC OFFICERS, 17, 139

See AFFIDAVITS; SHERIFFS AND CONSTABLES.

Abatement and revival, 17, 191

Abolition of office, 17, 194

Actions touching personal rights and liabilities, 17, 191

In general, 17, 191

Mandamus, 17, 192

Necessity of substitution, 17, 195

Option of adverse party, 17, 196

Procedure, 17, 196

Proceedings to compel performance of duty, 17, 195

Substitution of officers, 17, 194

Suspension and removal proceedings, 17, 226

Whether an officer's successor can be charged, 17, 194

Accounting:

Actions by public authorities against public officers after accounting and settlement, 17, 170

PUBLIC OFFICERS, *cont'd.*

Actions:

Ambassadors and consuls, 17, 259, 260

Actions against officers and ex-officials, 17, 168

By private persons, 17, 172

Change of venue, 17, 175

Debt or assumpsit, 17, 175

Declaration and complaint, see *infra*, Declaration and complaint.

Effect of change of incumbency, 17, 177

Form of action, 17, 175

Joinder of public body, 17, 177

Jurisdiction, 17, 172

Parties, 17, 176

Plea or answer, 17, 186

Process, 17, 178

Trespass and trover, 17, 175

Trespass on the case, 17, 175

Venue, 17, 173

By public authorities, 17, 168

After accounting and settlement, 17, 170

Alleging prerequisites to recovery, 17, 172

Anticipation of defense of declaration and complaint, 17, 172

By whom action instituted, 17, 169

Declaration and complaint, 17, 171

Election of remedies, 17, 168

Jurisdiction, 17, 168

Set-off and counterclaim, 17, 197

Suits for injunction, see *infra*, Injunctions.

Summary proceedings, 17, 186

Actions by officers (see *infra*, Actions to recover books, papers, and other office property; Actions to recover compensation), 17, 145

Addition to name of words descriptive of office, 17, 152

Amendments as to official character, 17, 153

Averments as to official character of plaintiff, 17, 151

Averments of appointment and qualification, 17, 153

Averments showing official character, 17, 152

Conditions precedent, 17, 154

Discontinuance, 17, 156

Effect of change of incumbency, 17, 147

Exclusive authority to sue, 17, 147

PUBLIC OFFICERS, *cont'd.*

- Actions by officers, *cont'd.*
 - General authority to sue, 17, 145
 - In general, 17, 145
 - Joinder of causes of action, 17, 149
 - Name in which action instituted, 17, 150
 - Necessary averments, 17, 154
 - Procurement of leave to sue, 17, 148
 - Set-off and counterclaim, 17, 197
 - Specific designation of officer, 17, 147
 - Verification, 17, 156
 - Want of capacity to sue, how objection taken, 17, 154
- Actions to recover books, papers, and other office property, 17, 156
- Ancillary to quo warranto, 17, 158
- Appeal, 17, 161
 - Criminal proceedings, 17, 161
 - Disobedience of judgment or order, 17, 160
 - In general, 17, 156
 - Injunction to restrain interference, 17, 158
 - Judgment or order, 17, 160
 - Mandamus, 17, 158
 - Nature of proceedings, 17, 157
 - Necessity to show *prima facie* title, 17, 159
 - Plea or answer, 17, 159
 - Remedies, 17, 158
 - Review, 17, 161
 - Title to office in question, 17, 157
- Actions to recover compensation:
 - Against others, 17, 165
 - Form of action, 17, 166
 - In general, 17, 165
 - Recovery in quo warranto, 17, 167
 - Title to office in question, 17, 166
 - Against public authorities, 17, 162
 - Averment of appointment and qualification, 17, 164
 - Conditions precedent, 17, 165
 - In general, 17, 162
 - Plea or answer, 17, 165
 - Prerequisites to recovery, 17, 163
 - Title to office in question, 17, 163
- Affidavits*, see AFFIDAVITS.
- Aider by verdict, 17, 255
- Ambassadors and consuls, 17, 259
 - Actions and suits against, 17, 260
 - Actions and suits by, 17, 259

PUBLIC OFFICERS, *cont'd.*

- Amendments, 17, 181
 - Official character of plaintiff, 17, 153
- Amotion*, see *infra*, Suspension and removal.
- Amount in controversy, 17, 205
- Answer*, see *infra*, Plea or answer.
- Answers in code pleading:
 - Justification, 1, 846
- Appeals, 17, 202
 - Actions to recover books, papers, and other office property, 17, 161
 - Amount in controversy, 17, 205
 - Appealable interest, 17, 204
 - Appeal bond, 17, 208
 - Appeal from official judicial determination, 17, 204
 - Appeal not in officer's behalf, 17, 203
 - Authority of officers to appeal, 17, 202
 - Change in incumbency of office, 17, 206
 - Declaring vacancy and forfeiture, 17, 236
 - Dismissal of appeal from neglect of official, 2, 345
 - Laches, 17, 206
 - Neglect of officer, 2, 246
 - Neglect of officials, 2, 246
 - Neglect to file transcript in time, 2, 280
 - Procedure, 17, 207
 - Refusal of one of several officers to act, 17, 204
 - Suspension and removal, 17, 228
 - Effect of appeal, 17, 231
 - In general, 17, 228
 - Modes of review, 17, 229
 - Procedure, 17, 230
 - Province of reviewing court, 17, 230
 - Supersedeas, 17, 231
 - When removal final, 17, 229
 - Who may appeal, 17, 230
- Appointment, averments of, 17, 153
- Assault and battery, 2, 846
- Assumpsit, 17, 175
- Bills of particulars, 17, 198
 - Title to office, 3, 550
- Bonds*, see OFFICIAL BONDS.
- Books*, see *infra*, Actions to recover books, papers, and other office property.
- Bribery*, see BRIBERY.
- Certiorari, 4, 38
 - Appointment of officers, 4, 78
 - Removal of officer, 4, 79
- Change in incumbency of office, 17, 191
 - Abolition of office, 17, 194

PUBLIC OFFICERS, *cont'd.*

- Change in incumbency of office, *con.*
 - Actions by officers, 17, 147
 - Actions to recover books, papers, and other office property, *see infra*, Actions to recover books, papers, and other office property.
 - Actions touching personal rights and liabilities, 17, 191
 - Appeals, 17, 206
 - Effect of change in incumbency in action by private person, 17, 177
 - In general, 17, 191
 - Mandamus, 17, 192
 - Necessity of substitution, 17, 195
 - Option of adverse party, 17, 196
 - Procedure, 17, 196
 - Proceedings to compel performance of duty, 17, 195
 - Substitution of officers, 17, 194
 - Whether officer's successor can be charged, 17, 194
- Change of venue, 4, 418; 17, 175
- Compensation, *see infra*, Actions to recover compensation.
- Complaint:
 - Suspension and removal, see infra*.
 - Suspension and removal.
- Confession of judgment, 11, 977
- Costs, 5, 152; 17, 201
 - Actions against officer personally, 17, 201
 - Actions against public authorities, 17, 202
 - Suspension and removal, 17, 232
- Creditors' bills:
 - Salary of public officers, 4, 447
- Criminal procedure, 17, 236
 - Election of form of procedure, 17, 237
 - Harmless error, 17, 256
 - Indictment, *see infra*, Indictment or information.
 - Instructions, 17, 256
 - Criminal intent, 17, 258
 - Elements of offense, 17, 257
 - In general, 17, 256
 - Malice, 17, 258
 - Wilfulness, 17, 258
 - Intent or guilty knowledge, 17, 252, 258
 - Judgment, 17, 259
 - Jurisdiction, 17, 236
 - Province of court and jury, 17, 259
 - Refusal to accept office, 17, 144
 - Sentence, 17, 259
 - Surrender or delivery of official property, 17, 161
 - Verdict, 17, 259
- Death, 5, 841

PUBLIC OFFICERS, *cont'd.*

- Debt, 17, 175
- Declaration and complaint (*see infra*, Actions by officers; Actions to recover books, papers, and other office property; Actions to recover compensation):
 - Actions by private individual against officers and ex-officials, 17, 178
 - Alleging prerequisites to recovery, 17, 181
 - Amendment, 17, 181
 - Breach of special duty, 17, 183
 - Defendant's default or delinquency, 17, 182
 - Description of defendant's office, 17, 180
 - In general, 17, 178
 - Legal conclusions, 17, 186
 - Loss or damage generally, 17, 184
 - Meaning of the word "as," 17, 180
 - Special injury, 17, 185
- Actions by public authorities against public officers, 17, 171
- Removal, *see infra*, Suspension and removal.
- Suspension and removal, see infra*, Suspension and removal.
- Definiteness and certainty in pleading:
 - Indictment, 17, 246
 - Suspension and removal, 17, 219
- Dismissal, discontinuance, and nonsuit, 17, 156
 - Omission due to act of official, 6, 926
- Ejectment:
 - Who may be sued, 7, 303
- Election of remedies:
 - Actions by public authorities against public officers, 17, 168
- Embezzlement (*see infra*, Indictment or information), 7, 420
- Averment in indictment for failure to pay over the money to the defendant's successor, 7, 443
- Averments of ownership of money, 7, 436
- Description of money or funds, 7, 430
- Fiduciary relationship, 7, 420
- Officer's election or appointment, 7, 421
- Peculiar averments in indictment against public officers, 7, 442
- Executions, *see* CLERKS.
- Extortion, *see* EXTORTION.

PUBLIC OFFICERS, *cont'd.*

- Findings, 17, 227
- Foreclosure of mortgages, 9, 284
- Parties, 9, 284
- Forfeiture*, see *infra*, Suspension and removal.
- Hearing*, see *infra*, Suspension and removal.
- Impeachment, 17, 209
 - Exclusive or cumulative remedy, 17, 209
 - In general, 17, 209
 - Jury trial, 17, 211
 - Preferment of charges, 17, 210
 - Procedure, 17, 210
 - Right to counsel, 17, 211
 - Suspension, 17, 210
- Indictment or information, 17, 237
 - Abuse of discretion or judicial power, 17, 254
 - Aider by verdict, 17, 255
 - Allegations and proof, 17, 255
 - Averment of facts showing duty to pay over money, 17, 245
 - Averments of official character, 17, 240
 - Averments of violation of duty, 17, 242
 - Corrupt, wilful, or felonious acts, 17, 254
 - Definiteness and certainty, 17, 246
 - Description of funds, 17, 247
 - Following language of statute, 17, 239
 - General rules governing prosecutions for public offenses, 17, 238
 - Guilty knowledge, 17, 252
 - Illegal receipt or exaction of fees, 17, 248
 - Improperly making contracts, 17, 521
 - In general, 17, 237
 - Intent, 17, 252
 - Joinder of offenses, 17, 239
 - Mere words of description added to name of defendant, 17, 241
 - Miscellaneous offenses, 17, 249
 - Ownership of funds, 17, 246
 - Presentation, audit, or receipt of fictitious claims, 17, 248
 - Purchasing claims, 17, 251
 - Receipt and possession of funds, 17, 247
 - Receipt of gratuities, 17, 249
 - Refusal to accept office, 17, 144
 - Suspension and removal*, see *infra*, Suspension and removal.
 - Withholding public funds, 17, 244
- Injunctions, 17, 187
 - Bill or complaint, 17, 188
 - Contemplated illegal action, 17, 189
- Index Pl. & Pr. — 55

PUBLIC OFFICERS, *cont'd.*

- Injunctions, *cont'd.*
 - In general, 17, 187
 - Miscellaneous matters of practice, 17, 190
 - Officer armed with process, 10, 916
 - Parties, 17, 187
 - Special interest or injury, 17, 189
 - Steps to consummate purpose, 17, 189
 - Suits to restrain, 17, 186
 - Title to office, 17, 158
- Instructions, 17, 199
 - Criminal procedure, 17, 256
- Joinder of counts and causes, 17, 149
- Joinder of offenses, 17, 239
- Judgments, 17, 200
 - Declaring vacancy and forfeiture, 17, 236
 - Judgments by administrative officers, 11, 811
 - Suspension and removal, 17, 227
- Jurisdiction, 17, 234
 - Actions against official or private persons, 17, 172
 - Actions against public officers by public authorities, 17, 168
- Jury trial:
 - Suspension and removal, 17, 211, 225
- Laches, 17, 206
- Leave of court:
 - Procurement of leave to sue, 17, 148
- Legal conclusions, 17, 186
 - Suspension and removal, 17, 221
- Mandamus*, see MANDAMUS.
- Names:
 - Indictments, 17, 240, 241
 - In whose name action instituted, 17, 150
 - Addition to name of words descriptive of office, 17, 152
 - Amendments, 17, 153
 - Averments as to official character of plaintiff, 17, 151
 - Averments of appointment and qualification, 17, 153
 - In general, 17, 150
 - Under the code, 17, 150
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- Notice:
 - Declaring vacancy and forfeiture, 17, 235
 - Suspension and removal, 17, 212
 - Contents, 17, 215
 - Necessity of notice, 17, 212
 - Right to be heard, 17, 212
 - Sufficiency of notice, 17, 214
 - Waiver of notice, 17, 215

PUBLIC OFFICERS, *cont'd.*

Nuisances:

Declaration and complaint, 14,

1115

Indictment against officers of
municipal corporation, 14, 1102*Obstructing justice*, see OBSTRUCTING
JUSTICE.*Official bonds*, see *infra*, Election of
remedies; and see OFFICIAL BONDS.

Official character:

Actions against public officers
by private individuals, 17, 179

Averments as to, 17, 151

Indictment, 17, 240

Orders:

Declaring vacancy and forfeiture,
17, 236

Suspension and removal, 17, 227

Parties to actions, 17, 176

Actions by private persons, 17,
176Effect of change of incum-
bency, 17, 177

In general, 17, 176

Joinder of public body, 17,
177

Equity, 15, 600

Penalties and penal actions, 16, 259,
266Refusal to accept office, 17, 143,
145

Plea or answer:

Action against officers and ex-
officials, 17, 186Actions to recover books, papers,
and other office property, 16, 159Actions to recover compensation,
17, 165

Poor and poor laws:

Indictment, 16, 665

Procedure against poor officers,
16, 665*Prohibition*, see PROHIBITION.*Property*, see *infra*, Actions to re-
cover books, papers, and other
office property.Qualifications, averments of, 17, 153,
164*Quo warranto*, see QUO WARRANTO.

Refusal to accept office, 17, 143

Compelling acceptance, 17, 145

Criminal prosecution, 17, 144

Infliction of penalty, 17, 143

Penalty and criminal prosecu-
tion, 17, 145

Punishment for refusal, 17, 143

Reinstatement, 17, 232

Compensation, 17, 233

Damages, 17, 233

In general, 17, 232

Removal, see *infra*, Suspension and
removal.**PUBLIC OFFICERS, *cont'd.****Removal of causes*, see REMOVAL OF
CAUSES.*Resistance to officer*, see OBSTRUCTING
JUSTICE.Review (see *infra*, Appeals):Actions to recover books, papers,
and other office property, 17,
161*Revival*, see *infra*, Abatement and
revival.*Schools*, see SCHOOLS.

Sentence, 17, 259

Service of process (see SERVICE OF
PROCESS), 17, 178Set-off, recoupment, and counter-
claim, 17, 197

Actions against officers, 17, 197

Actions by officers, 17, 197

In general, 17, 197

Sheriffs' sales, see SHERIFFS' SALES.*Streets and highways*, see STREETS AND
HIGHWAYS.

Substitution of parties, 20, 1037

Successors, see *infra*, Change in in-
cumbency of office.

Summary proceedings, 17, 186

Supersedeas and stay of proceedings:

Suspension and removal, 17, 231

Suretyship, see OFFICIAL BONDS.Surplusage, irrelevant or redundant
matter, 21, 295*Surrender or delivery of official prop-
erty*, see *infra*, Actions to recover
books, papers, and other office
property.

Suspension and removal:

Abatement, 17, 226

Appeals, see *infra*, Appeals.Complaint or information, 17,
216

As to prosecutor, 17, 221

Charging acts of commission
and omission, 17, 219

Corrupt motives, 17, 218

Definiteness and certainty,
17, 219

Extreme technicality, 17, 220

In general, 17, 216

Legal conclusions, 17, 221

Misconduct, 17, 218

Requisites and sufficiency of
allegations, 17, 217Sufficiency of averments in
particular cases, 17, 217Various pleadings used, 17,
216

Verification, 17, 221

Declaring vacancy and forfeit-
ure, 17, 234

Appeal, 17, 236

Hearing, 17, 235

In general, 17, 234

PUBLIC OFFICERS, *cont'd.*

- Suspension and removal, *cont'd.*
 - Declaring vacancy and forfeiture, *cont'd.*
 - Judgment, 17, 236
 - Jurisdiction, 17, 234
 - Notice, 17, 235
 - Order, 17, 236
 - Findings, 17, 227
 - Hearing, 17, 222
 - Constitution of trial body, 17, 222
 - Declaring vacancy and forfeiture, 17, 235
 - Nature of proceedings, 17, 223
 - Procedure in general, 17, 223
 - Right to counsel, 17, 225
 - Right to jury trial, 17, 225
 - Swearing witnesses, 17, 225
 - Impeachment, see infra, Impeachment.*
 - Institution of proceedings, 17, 211
 - Against ex-officials, 17, 212
 - Contents of notice, 17, 215
 - Leave of court, 17, 212
 - Necessity of notice, 17, 212
 - Notice, 17, 212
 - Notice unnecessary, 17, 212
 - Right to be heard, 17, 212
 - Service of notice, 17, 215
 - Sufficiency of notice, 17, 214
 - Waiver of notice, 17, 215
 - Who may institute, 17, 211
 - Jury trial, 17, 211, 225
 - Order or judgment, 17, 227
 - Pleading and proof, 17, 226
 - Proceedings other than impeachment, 17, 211
 - Reinstatement, see infra, Reinstatement.*
 - Revival, 17, 226
 - Right to counsel, 17, 211, 225
 - Suspension pending trial, 17, 222
 - Trial, 17, 222
 - Variance, 17, 226
 - Verdict, 17, 227
- Title to office:
 - Actions to recover books, papers, and other office property, 17, 157
 - Actions to recover compensation, 17, 163, 166
 - Injunction to restrain interference, 17, 158
- Trespass, 17, 175; 21, 848
- Trespass on the case, 17, 175
- Trover, 17, 175
- Variance, 17, 199, 226
 - Indictment, 17, 255
- Venue, 22, 793
 - Actions against official or private persons, 17, 173

PUBLIC OFFICERS, *cont'd.*

- Verdict, 17, 227
 - Criminal procedure, 17, 259
- Verification, 22, 1038
 - Complaint or petition for removal, 17, 221
- PUBLIC USE:**
 - Eminent domain, see EMINENT DOMAIN.*
- PUIS DARREIN CONTINUANCE,** 17, 262
 - See ABATEMENT IN PLEADING; PLEAS.
 - Accord and satisfaction, 1, 75; 17, 266
 - Allegations of matter of defense, 17, 269
 - Appeals, 17, 269
 - Arbitration and award, 17, 266
 - Body of plea, 17, 269
 - Change in title to land, 17, 267
 - Commencement, 17, 269
 - Conclusion, 17, 270
 - Costs, 5, 132; 17, 273
 - Definition, 17, 262
 - Demurrers, 6, 371; 17, 271
 - After demurrer, 17, 268
 - Detinue, 6, 655
 - Effect of plea, 17, 263
 - Exceptions and objections, 17, 269
 - Executors and administrators, 8, 685
 - Form, 17, 269
 - Insolvency and bankruptcy, 17, 266
 - Judgments, 17, 267, 272
 - Loss of property, 17, 267
 - Mandate and proceedings thereon, 17, 269
 - Nature of plea, 17, 262
 - Necessity of plea, 17, 264
 - Accord and satisfaction, 17, 266
 - Appointment affecting rights of parties, 17, 266
 - Award, 17, 266
 - Discharge in bankruptcy or insolvency, 17, 266
 - In general, 17, 264
 - Matter arising before plea, 17, 265
 - Notice or brief statement of defense, 14, 1084
 - Payment, 16, 221; 17, 267
 - Release, 17, 267; 18, 90
 - Generally, 18, 90
 - Manner of pleading release after action commenced, 18, 90
 - When unnecessary, 18, 91
 - Replications and replies, 17, 271
 - Requisites, 17, 269
 - Revocation of letters testamentary or of administration, 17, 267
 - Sham and frivolous pleadings, 20, 47
 - Time to plead, 17, 267
 - After default, 17, 269
 - After demurrer, 17, 268

PUIS DARREIN CONTINUANCE,
cont'd.

- Time to plead, *cont'd.*
 - After remand, 17, 269
 - After verdict, 17, 269
- Appeals, 17, 268
- Appellate court, 17, 269
- At a subsequent term, 17, 267
- At term next after matter arose, 17, 267
- Objections to plea, 17, 269
- Plea *nunc pro tunc*, 17, 268
- Verification, 17, 271

QUANTUM MERUIT, 2, 1010

- See ASSUMPSIT; WORK AND LABOR.
- Debt, 5, 899

- Work and labor, 22, 1363

QUANTUM VALEBAT, see ASSUMPSIT; SALES.

QUERELA, see AUDITA QUERELA.

QUESTIONS OF LAW AND FACT
(see INSTRUCTIONS):

- Accord and satisfaction, 1, 82

Appeals:

- Examination of questions of fact, 2, 390

- Action at law, 2, 390
- Appeal in equity, 2, 402
- Bill of exceptions, 2, 399
- Cause of action, 2, 406
- Code procedure, 2, 408
- Construction of written instrument, 2, 407
- Controverted questions of fact, 2, 409
- Credibility of witnesses, 2, 390
- Criminal cases, 2, 400
- Damages, 2, 406
- Equity, 2, 402
- Evidence, 2, 391
- Examining evidence in order to support judgment, 2, 408
- Findings of court, 2, 396
- Findings of court equal to special verdict, 2, 399
- Negligence, 2, 406
- Presumption on appeal from intermediate appellate court, 2, 409
- Questions for the jury, 2, 390
- Questions of law based on facts, 2, 405
- Referee's report, 2, 401
- Refusal to find a fact, 2, 407
- Review of findings of court, 2, 396
- Uncontroverted facts, 2, 405
- Verdict, 2, 391, 408
- When the facts may be examined at law, 2, 404

- Rehearing, 2, 385

QUESTIONS OF LAW AND FACT,
cont'd.

Arguments of counsel:

- Reading or arguing law to the jury.*
see ARGUMENTS OF COUNSEL.

- Bills of exceptions, 3, 383
- Boundaries and fences, 3, 676
- Case made on appeal, 3, 882, 883, 889
- Certiorari, 4, 47
- Construction of pleadings, 4, 741
- Criminal cases:

- As to whether juries are judges of the law*, see INSTRUCTIONS.

- Directing verdict*, see DIRECTING VERDICT.

Eminent domain:

- Functions and powers of officers presiding over jury, 7, 571

- Questions to be considered by jury, 7, 572

- Amount of compensation, 7, 573

- Matters covered by award of commissioners, 7, 572

- Necessity of taking, 7, 575

- Power to condemn, 7, 574

- Question of title, 7, 574
- Questions to be submitted, 7, 573

- Route, 7, 576

- Title, 7, 575

- Whether amount of commissioners' award binding on jury, 7, 574

- Equitable assignments, 7, 786

Error, writ of:

- Mixed questions of law and fact, 7, 849

- Questions of fact, 7, 848

- Questions of law, 7, 847

- Executions against the body and arrest in civil cases:

- Appeal, 8, 620

- False representations and deceit, 8, 914

Fines and costs in criminal cases:

- Assessment of fine, 8, 959

- Forcible entry and detainer, 9, 69

Foreclosure of mortgages:

- Assumption of mortgage, 9, 475

- Former conviction or acquittal, 9, 639

- Guaranty, 16, 950

- Homesteads and exemptions, 10, 108

- Husband and wife, 16, 479

- Examples, 16, 479

- Province of court, 16, 479

- Province of jury, 16, 479

Infants:

- Necessaries, 10, 695

Instructions, see INSTRUCTIONS.

Insurance, 11, 427

- Directing verdict, 11, 431

- Questions for court, 11, 431

QUESTIONS OF LAW AND FACT,
cont'd.

Insurance, *cont'd.*

- Questions for jury, 11, 427
 - Accident or suicide, 11, 430
 - As soon as possible, 11, 429
 - Contents of a lost policy, 11, 430
 - Examples, 11, 427, 431
 - Forthwith, 11, 429
 - Immediately, 11, 429
 - In general, 11, 427
 - Materiality, 11, 427
 - Meaning of terms used in policy, 11, 428
 - Misrepresentations, 11, 427
 - Seaworthiness, 11, 430
 - Temperate habits, 11, 430
 - Truth or falsity of statements, 11, 428
 - Whether a person was totally disabled within the meaning of certificate of benefit of insurance, 11, 431
 - Whether notice of loss sufficient, 11, 429

Issues to the jury, 11, 631

Jury:

- Discharge of jury, 12, 654

Libel and slander, see LIBEL AND SLANDER.

Limitations, 13, 266

Malicious prosecution, 13, 464

- Advice of counsel, 13, 475

Damages, 13, 475

- Instigation by the defendant, 13, 464

- Instructing as to inference of malice, 13, 474

- Instructions as to probable cause, 13, 464

Malice, 13, 473

- Malicious abuse of process, 13, 476

- Probable cause, 13, 464

- Termination in favor of plaintiff, 13, 475

Malpractice:

- Ordinary skill, 16, 532

Mechanics' liens, 13, 1028

Motions, 14, 168

Names, 14, 302

New trial:

- Credibility of witnesses in weight of evidence, 14, 772

Obstructing justice, 15, 23

Partnership, 15, 947

- Existence of partnership, 15, 948

- Firm or individual credit, 15, 948

Questions of fact, 15, 948

Questions of law, 15, 947

QUESTIONS OF LAW AND FACT,
cont'd.

Penalties and penal actions, 16, 296

- In actions for double or treble damages, 16, 297

- In actions for fixed amount, 16, 296

- When court may increase damages, 16, 298

Perjury, 16, 349, 350

Poor and poor laws:

- Violation of poor laws, 16, 664

Premature suits, 16, 886

Probate and contest of wills, 16, 1038

- Fraud, 16, 1038

- Testamentary capacity, 16, 1038

- Undue influence, 16, 1038

- Validity of execution, 16, 1038

Railroads:

- Injuries to animals, 17, 601, 604

Sales, 19, 50

- Invading province of jury, 19, 51

- Time of delivery, 19, 51

- Vendor's action to recover goods, 19, 69

Stipulations, 20, 661

Street railways, 20, 871, 877

- Instructions invading province of jury, 20, 877

Threats and threatening letters, 21, 677

Trespassing, vicious, and diseased animals, 21, 898

Usages and customs, see USAGES AND CUSTOMS.

Usury, 22, 454

Variance, 22, 638

Vendor and purchaser, 22, 760

- Purchaser's action to recover back purchase money, 22, 766

Verdict:

- Function of court as to form, 22, 894

- Correcting merely formal irregularities, 22, 895

- In general, 22, 894

- Preparation of form by counsel, 22, 896

- Requiring jury to correct, 22, 895

- Requisites of form furnished to jury, 22, 895

Special verdicts, 22, 992

Work and labor, 22, 1379

QUIA TIMET, see BILLS QUIA TIMET; EQUITY IN TITLE; QUIETING TITLE.

QUIETING TITLE, 17, 274

Actions, see *infra*, Statutory action.

Admissions in answer, 17, 353

Adverse possession, 17, 301

Amendments, 17, 346

Answers, see *infra*, Plea or answer.

QUIETING TITLE, *cont'd.*

- Appeals, 17, 372
- Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 381
- Averment of title or interest in plaintiff*, see *infra*, Bill, petition, or complaint.
- Bill, petition, or complaint, 17, 326
 - Action under statute, 17, 326
 - Amendments, 17, 346
 - Assertion of claims, 17, 336
 - Averment of conclusion, 17, 342
 - Averment of facts showing cloud, 17, 340
 - Averment of inadequacy of remedy at law, 17, 343
 - Averment of title or interest in plaintiff, 17, 327
 - Averment of ownership not supported by facts stated, 17, 329
 - Claims under common grantor, 17, 330
 - Examples of sufficient averments, 17, 328, 332
 - Facts stated showing title, 17, 330
 - Legal or equitable title, 17, 331
 - Necessity of averment, 17, 327
 - Notice of equities, 17, 331
 - Proof must correspond to title alleged, 17, 332
 - Sufficiency of averment, 17, 328
 - Tax title, 17, 332
 - Where statute makes mere possession sufficient, 17, 328
- Averments as to claims of defendant, 17, 336
- Averments as to possession, 17, 332
 - Allegation of ownership in fee simple, 17, 335
 - Allegation of vacancy, 17, 334
 - Averment that plaintiff is legally in possession, 17, 336
- General rule, 17, 332
- Necessity of averments, 17, 332
- No adequate remedy at law, 17, 335
- Sufficiency of averments, 17, 335
- Waiver of objection, 17, 335
- Where the premises are vacant, 17, 334

QUIETING TITLE, *cont'd.*

- Bill, petition, or complaint, *cont'd.*
 - Averments in particular cases, 17, 346
 - Averments showing apparent validity of defendant's claim, 17, 341
 - Averments showing valid interest in defendant, 17, 340
 - Description of instrument constituting cloud, 17, 342
 - Description of property, 17, 336
 - In general, 17, 326
 - Joinder of demands or causes of action, 17, 344
 - Naming adverse claimants, 17, 340
 - Nature and circumstances of claim, 17, 337
 - Offer to do equity, 17, 343
 - Prayer for relief, 17, 345
 - Technical bill to quiet title, 17, 326
- Bills to quiet title and to remove cloud distinguished, 17, 277
- Bill to quiet title, 17, 277
- Bill to remove cloud, 17, 278
- Distinction is not universally recognized, 17, 279
- Statutory provisions, 17, 279
- Cloud defined, 17, 277
- Complaint*, see *infra*, Bill, petition, or complaint.
- Costs, 17, 373
 - Disclaimer, 17, 347
- Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 371
- Counterclaim*, see *infra*, Cross-complaint or counterclaim.
- Counts, paragraphs, and separate statements:
 - Several counts, 5, 318
- Cross-complaint or counterclaim, 17, 354
 - Affirmative decree for defendant, 17, 355
 - Dismissal by plaintiff, 17, 356
 - Necessity, 17, 354
 - Propriety, 17, 354
 - Retaining cross-bill, 17, 356
 - Sufficiency, 17, 356
 - Where defendant relies on title in himself, 17, 354
 - Where defendant seeks affirmative relief, 17, 355
- Decrees (see *infra*, Judgment or decree):
 - Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 380
- Defaults, 17, 369
- Demurrers, 17, 354

QUIETING TITLE, *cont'd.*

Determination, see infra, Hearing and determination.

Disclaimer, 17, 346

Demurrer, 17, 347

Effect on costs, 17, 347

Effect on decree, 17, 348

In general, 17, 346

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 379

Discretion of court, 17, 360

Equity jurisdiction, 17, 279

Adequacy of legal remedy, 17, 284

Adequate remedy at law, 17, 282

Clouds on personality, 17, 289

Dismissal of suit, 17, 284

In general, 17, 279

Instruments void both at law and in equity, 17, 287

Plaintiff under no disability, 17, 283

Preventing clouds, 17, 288

Quia timet jurisdiction, 17, 281

Exceptions and objections:

Parties, 17, 324

Executors and administrators, 17, 290

Findings, 17, 359

Hearing and determination, 17, 358

Directing issues to jury, 17, 358

Discretion of court, 17, 360

Findings, 17, 359

Instructions, 17, 359

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 380

Recovery based on strength of plaintiff's title, 17, 361

Right to jury trial, 17, 358

Rules of decision, 17, 360

Time of trial, 17, 358

Verdict, 17, 359

Injunctions, 17, 357

In rem or *in personam*, 17, 294

Instructions, 17, 359

Issues to the jury, 16, 635; 17, 358

Joinder of counts and causes, 17, 344

Joinder of parties, 17, 318

Defendants, 17, 323

In general, 17, 318

Personal representatives, heirs, and devisees, 17, 319

Tenants in common, 17, 319

Judgment or decree, 17, 362

Account of rents and profits, 17, 366

Allowance for improvements, 17, 372

Awarding execution, 17, 372

Conformity to pleadings, issues, and proofs, 17, 366

QUIETING TITLE, *cont'd.*

Judgment or decree, *cont'd.*

Construction of decree, 17, 363

Declaration of trust, 17, 366

Defaults, 17, 369

Delivery up or cancellation of instruments, 17, 364

Description of land, 17, 369

Exceptions, 17, 370

Incidental relief to defendant, 17, 370

Judgment on pleadings, 17, 369

Nil dicit, 17, 369

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 380

Reimbursing defendant for taxes, 17, 370

Reimbursing purchaser on execution, 17, 372

Relief awarded, 17, 362

Requiring payment of mortgage debt, 17, 371

Rescission, 17, 372

Reservations, 17, 370

Return of purchase money, 17, 372

Showing reason for dismissal, 17, 369

Jurisdiction, see infra, Equity jurisdiction; Statutory action.

Jury:

Right to jury trial, 17, 358

Maine, see infra, Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes.

Massachusetts, see infra, Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes.

Missouri, see infra, Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes.

Mortgages:

Requiring payment of mortgage debt, 17, 371

Nature, 17, 277

New trial, 17, 374

Nil dicit, 17, 369

Parties to actions, 17, 295

Death of plaintiff *pendente lite*, 17, 320

Defendants, 17, 320

Heirs, devisees, life tenants, and remaindermen, 17, 321

Infants, 17, 322

In general, 17, 320

Joinder of defendants, 17, 323

Landlord and tenant, 17, 322

Possession of defendant, 17, 320

Statutory action, 17, 320

QUIETING TITLE, *cont'd.*

Parties to actions, *cont'd.*

Defendants, *cont'd.*

Unknown and unnamed heirs, 17, 322

Widow claiming dower, 17, 322

Joinder of plaintiffs, 17, 318

Legal or equitable title, 17, 303

Quieting title, 17, 303

Removal of cloud, 17, 304

Necessary and proper parties in general, 17, 295

One suing for many, 17, 320

Plaintiffs, 17, 297

Death of plaintiff *pendente lite*, 17, 320

Joinder of plaintiffs, 17, 318

One suing for many, 17, 320

Possession of plaintiff, 17, 305

Who may maintain suit, 17, 297

Possession of plaintiff, 17, 305

Actual possession, 17, 315

Actual possession by a tenant or agent, 17, 317

Actual possession generally necessary, 17, 306

Actual possession of a part, 17, 315

Constructive possession, 17, 315

Ejectment as test of possession, 17, 316

Land wild and unoccupied, 17, 312, 317

Necessity, 17, 305

Peaceable possession, 17, 317

Plaintiff's equitable title, 17, 310

Possession coupled with title, 17, 314

Removal of cloud, 17, 311

Rightful possession, 17, 317

Statutes dispensing with possession, 17, 313

Sufficiency of possession, 17, 314

Where there is no distinct head of equity jurisdiction, 17, 309

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 375

Proper parties, 17, 296

Raising and waiving objections, 17, 324

Who may maintain:

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 375

QUIETING TITLE, *cont'd.*

Partition, 15, 803

Patents, 16, 157

Pennsylvania, see *infra*, Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes.

Personalty:

Clouds on personalty, 17, 289

Petition, see *infra*, Bill, petition, or complaint.

Plaintiffs:

Who may maintain suit, 17, 297

Examples, 17, 298

Executors and administrators, 17, 299

In general, 17, 297

Legal or equitable title, 17, 303

Mortgagees, assignees, creditors, etc., 17, 298

Real party in interest, 17, 299

Reversioners and remaindermen, 17, 299

Title and interest of plaintiff, 17, 300

Title by adverse possession, 17, 301

Warrantor of title, 17, 302

Where one has sold and conveyed his title, 17, 302

Plea or answer, 17, 349

Admissions in answer, 17, 353

Denial of title or possession without asserting claim, 17, 350

General denial or special plea, 17, 352

Requisites of plea, 17, 353

Setting up defendant's claim, 17, 349

Possession:

Averment as to possession, see *infra*, Bill, petition, or complaint.

Denial of title or possession without asserting claim, 17, 350

Possession of plaintiff, see *infra*, Parties to actions.

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 376

Prayer for relief, 17, 345

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 374

Actual, exclusive, and adverse possession, 17, 376

Against whom maintainable, 17, 377

Appeals, 17, 381

Bringing and conducting action under order, 17, 382

Costs, 17, 381

QUIETING TITLE, *cont'd.*

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, *cont'd.*

Decree, 17, 380

Defendant's pleadings, 17, 379

Disclaimer, 17, 379

Hearing and determination, 17, 380

Judgment, 17, 380

Jury, 17, 380

Nature of statutory remedy, 17, 374

Notice, 17, 378

Order, 17, 380

Owner of easement, 17, 377

Parties, 17, 375

Plaintiff's pleadings, 17, 378

Possession, 17, 376

Process, 17, 378

Venue, 17, 375

Who may maintain, 17, 375

Process, 17, 324

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 378

Publication, 17, 42

Constitutionality of statutes, 17, 31

Quia timet (see **BILLS OF PEACE**):

Definition, 3, 599

When maintainable, 3, 599

Receivers, 17, 357

Reformation and cancellation of instruments, 17, 364

Remedy at law, 17, 282

Absence of record evidence of invalidity, 17, 285

Adequacy of legal remedy, 17, 284

Adequate remedy at law, 17, 282

Averment of inadequacy of remedy at law, 17, 343

Criticism of doctrine, 17, 286

Defendant in possession, 17, 284

Dismissal of suit, 17, 284

Facts all of record, 17, 286

General rule, 17, 282

Instruments void both at law and in equity, 17, 287

Invalidity of defendant's claim necessarily appears, 17, 284

Justice and equity of the rule, 17, 286

Plaintiff under no disability, 17, 283

Tax certificates and assessments, 17, 285

Waiver by failure to object, 17, 284

Rem or personam, 17, 294

Removal of causes, 18, 223

QUIETING TITLE, *cont'd.*

Removal of cloud:

Taxation, see **TAXATION**.

Replications and replies, 17, 357

Scope of remedy, 17, 277

Service of process, 17, 324

Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes, 17, 378

Set-off, recoupment, and counterclaim, see *infra*, Cross-complaint or counterclaim.

Statutes, see *infra*, Proceedings under Massachusetts, Maine, Missouri, and Pennsylvania statutes.

Statutory action, 17, 289

General purpose and effect of statutes, 17, 290

In general, 17, 289

Jurisdiction of federal courts, 17, 293

Petition or complaint, 17, 326

Possessory action, 17, 290

Proceedings under statute, 17, 292

Special proceedings or suit in equity, 17, 291

Summons and process, 17, 324

Taxation, see **TAXATION**.

Taxes:

Reimbursing defendant for taxes, 17, 370

Title (see *infra*, Parties to actions):

Denial of title or possession without asserting claim, 17, 350

Trial, see *infra*, Hearing and determination.

Trusts and trustees:

Parties, 22, 182

United States courts:

Jurisdiction, 17, 293

Venue, 17, 295

Verdict, 17, 359

QUI TAM ACTIONS, see **PENALTIES AND PENAL ACTIONS**.

QUORUM:

Appeals, 2, 12

QUO WARRANTO, 17, 383

Actions:

Not an action, 17, 390

Amendments, 17, 478

Amount in controversy, 17, 422, 466

Answers, see *infra*, Plea or answer.

Appeal bonds, 17, 489

Appeals, 2, 122; 17, 487

Effect of supersedeas bond, 17, 489

Finality of judgment, 17, 487

In general, 17, 487

Jurisdiction, 17, 419, 488

Restoration of respondent to office, 17, 491

QUO WARRANTO, *cont'd.*

- Appeals, *cont'd.*
 - Review, 17, 490
 - Undertaking on appeal, 17, 489
 - Who may appeal, 17, 488
- Appellate courts, 17, 419, 488
- Burden of proof, 17, 481
- Certiorari:
 - Proper remedy, 17, 412
- Chambers and vacation, 4, 363
- Charter, see *infra*, Ouster of corporate franchises and forfeiture of charter.
- Civil or criminal character of action, 17, 390
 - Civil action substituted, 17, 393
 - Constitutional provision requiring indictment, 17, 392
 - Information civil, 17, 391
 - Not an action, 17, 390
 - Original writ of quo warranto strictly a civil remedy, 17, 390
- Collateral attack, 17, 408
- Complaint, see *infra*, Information or complaint.
- Control of proceeding, 17, 456
- Corporations (see *infra*, Ouster of corporate franchises and forfeiture of charter; Parties to actions):
 - Offices in private corporations, 17, 401
 - Parties in proceedings against corporations and individual members, 17, 435
- Costs, 17, 491
- Counts, paragraphs, and separate statements:
 - Separate counts, 5, 313
- Courts, see *infra*, Jurisdiction and venue; Leave of court.
- Declaration and complaint, see *infra*, Information or complaint.
- De facto corporation, 17, 393
- Demurrers, 17, 476
 - Admission, 17, 476
 - Information charging usurpation, 17, 477
 - In general, 17, 476
 - Overruling, 17, 477
 - Searches the record, 17, 476
- Deputies, 17, 435
- Disclaimer, 17, 470
- Dismissal, discontinuance, and nonsuit, 17, 478
- Distringas, 17, 454
- Drainage, 7, 210
- Elections, 17, 423
 - Bodies deciding election of their members, 17, 425
 - Concurrent and exclusive remedies, 17, 423
 - Election contest, 17, 423

QUO WARRANTO, *cont'd.*

- Elections, *cont'd.*
 - Exclusive remedies, 17, 423
 - General rule as to new remedies, 17, 423
 - Specific mode for contesting elections held exclusive, 17, 425
- Equitable jurisdiction*, see *infra*, Jurisdiction and venue.
- Exclusiveness of remedy, 17, 407
 - Certiorari, 17, 412
 - Collateral attack, 17, 408
 - Comparison with other remedies, 17, 409
 - In general, 17, 407
 - Mandamus, 17, 410
 - Prohibition, 17, 409
- Fines, 17, 391, 483
- Foreign corporations, 17, 397
- Forfeiture, see *infra*, Judgments: Ouster of corporate franchises and forfeiture of charter; Right to public office or franchise.
- Franchises, see *infra*, Ouster of corporate franchises and forfeiture of charter; Right to public office or franchise.
- General issue, 17, 472
- Hearing, see *infra*, Trial.
- Indictments, 17, 392
- Information in the nature of quo warranto, 17, 387
 - Ancient writ obsolete, 17, 387
 - Statutory proceedings, 17, 388
 - Synonymous use of terms, 17, 387
- Information or complaint (see *infra*, Parties to actions):
 - Action by claimant of office, 17, 463
 - Certainty, 17, 458
 - Claimant must show title, 17, 463
 - Complaint on relation, 17, 459
 - Conformity between information and relation, 17, 466
 - Demand, 17, 464
 - Eligibility, 17, 464
 - Ex officio* informations without leave, 17, 448
 - Form, 17, 466
 - General allegations, 17, 458
 - Information as to title of relator, 17, 462
 - Information may set up specific objections, 17, 460
 - Information on relation, 17, 461
 - In general, 17, 457
 - Interest of relator, 17, 461
 - Jurisdictional facts, 17, 465
 - Necessary allegation as to office or franchise, 17, 461
 - Plain statement of facts, 17, 459
 - Prayer for relief, 17, 467

QUO WARRANTO, *cont'd.*

- Information or complaint, *cont'd.*
 - Setting forth name of person entitled to office, 17, 462
 - Substituted code complaint, 17, 459
 - Sufficiency of allegation of election, 17, 464
 - Title, 17, 458
 - Where no issue of fact is tendered, 17, 457
- Injunctions, 17, 416
 - Injunction in aid of, 17, 418
 - To protect possession of *de facto* officer, 17, 418
- Institution of proceedings, 17, 444
 - Affidavits in opposition to rule to show cause, 17, 454
 - Application for leave, 17, 450
 - Discretion of court, 17, 444
 - Discretion of prosecuting officer, 17, 449
 - Exhaustion of discretion, 17, 447
 - Ex officio* informations without leave, 17, 448
 - Leave of court, 17, 444
 - Public policy, 17, 446
 - Relator's right must appear, 17, 452
 - Rule to show cause, 17, 450
 - Rule to show cause not indispensable, 17, 453
 - Statutory provisions, 17, 444
- Joinder of parties, 17, 439
 - Corporation only necessary party, 17, 439
 - Dissolution, 17, 439
 - Forfeiture, 17, 439
 - In general, 17, 439
 - Right to several offices, 17, 440
- Judgments, 17, 482
 - Adjudication of relator's right, 17, 484
 - Appointment of receiver, 17, 483
 - Effect of ouster of judgment for relator, 17, 484
 - Fine, 17, 483
 - In general, 17, 482
 - Judgment after expiration of office, 17, 485
 - Judgment of forfeiture, 17, 483
 - Ouster of particular franchises, 17, 483
 - Whether judgment of forfeiture works dissolution, 17, 483
- Jurisdiction and venue, 17, 413
 - Amount in controversy, 17, 422
 - Appellate courts, 17, 419
 - Bodies deciding election of their members, 17, 425
 - Circuit courts, 17, 419
 - Concurrent and exclusive remedies, 17, 423

QUO WARRANTO, *cont'd.*

- Jurisdiction and venue, *cont'd.*
 - Corporation matters, 17, 414
 - Election contest, 17, 423
 - Federal question in state court, 17, 418
 - Impairment of constitutional jurisdiction, 17, 422
 - Inferior courts, 17, 422
 - Information or complaint, 17, 465
 - Injunction, 17, 416
 - Injunction in aid of quo warranto, 17, 418
 - Jurisdiction at law and in equity, 17, 413
 - Jurisdiction of particular courts, 17, 419
 - Objections, 17, 428
 - Original jurisdiction of courts of last resort, 17, 419
 - Proceedings purely legal, 17, 413
 - Supreme courts, 17, 419
 - Title decided incidentally, 17, 415
 - Venue, 17, 427
- Jury:
 - Right to trial by jury, 17, 479
- Leave of court, 17, 444
 - Application for leave, 17, 450
 - Common law, 17, 444
 - Discretion of court, 17, 444
 - Discretion of prosecuting attorney, 17, 449
 - Exhaustion of discretion, 17, 447
 - Ex officio* informations without leave, 17, 448
 - Institution of proceedings, 17, 444
 - Public policy, 17, 446
 - Rule to show cause, see *infra*, Rule to show cause.
 - Statutory provisions, 17, 444
- Mandamus:
 - Concurrent remedies, 13, 501
 - Proper remedy, 17, 410
 - Appropriate remedy for possession, 17, 411
 - To compel proceedings to fill office, 17, 411
 - Motion to dismiss or quash, 17, 478
- Municipal corporations (see *infra*, Ouster of corporate franchises and forfeiture of charter; Right to public office or franchise):
 - Attack upon corporate existence, 14, 227
 - Exercise of jurisdiction beyond territorial limits, 17, 439
 - Legal existence, 17, 438
 - Parties, 17, 437
 - Proceeding against officer, 17, 438
- Nature of quo warranto proceedings, 17, 386

QUO WARRANTO, *cont'd.*

- New trial, 17, 486
- Office, see *infra*, Right to public office or franchise.
- Officers of private corporations, 15, 81, 82; 17, 401
- Ouster of corporate franchises and forfeiture of charter (see *infra*, Judgments), 17, 393
- De facto* corporation, 17, 394
- Exercise of franchise beyond territory, 17, 396
- Foreign corporation, 17, 397
- Illegal organization of public corporations, 17, 395
- In general, 17, 393
- Invalid incorporation, 17, 396
- Legal corporation, 17, 394
- Ouster of particular franchises usurped, 17, 396
- Usurpation of corporate franchises, 17, 395
- Parties to actions, 17, 428
- Deputies, 17, 435
- Information on relation, 17, 429
 - In general, 17, 429
 - Interest of relator, 17, 430
 - Matters concerning public only, 17, 434
 - Personal remedy, 17, 433
 - Proceeding by private person in his own name, 17, 433
 - Relator and state interested, 17, 431
 - Relator not necessary, 17, 434
 - Relator real instigator, 17, 430
 - Relator's title to office, 17, 432
 - Statutory control, 17, 430
- In proceedings against corporations and individual members, 17, 435
- Exercise of jurisdiction beyond territorial limits, 17, 439
- General rule, 17, 435
- Municipal corporations, 17, 437
- Proceeding against officer, 17, 438
- To authorize a judgment of forfeiture or ouster of particular franchises, 17, 436
- Intervention, 17, 441
- Ipsa facto* vacation of office, 17, 435
- Private action, 17, 429
- Proceedings to try the right to a corporate franchise, 17, 429

QUO WARRANTO, *cont'd.*

- Parties to actions, *cont'd.*
 - Proper party to institute proceeding where public right is involved, 17, 428
- Quo warranto to a public officer, 17, 429
- Relator, 17, 429
- Relator not necessary, 17, 434
- Relator's interest, 17, 430
- Rules as to parties in particular cases, 17, 435
- Pleadings, 17, 457
- Demurrers*, see DEMURRERS.
- Information or complaint*, see *infra*, Information or complaint.
- Plea or answer*, see *infra*, Plea or answer.
- Replication and subsequent pleadings*, see *infra*, Replications and replies.
- Rules as in civil cases, 17, 457
- Plea or answer, 17, 467
- Anticipatory matter, 17, 470
- Continued usurpation, 17, 471
- Disclaimer, 17, 470
- Double pleading, 17, 473
- General issue, 17, 472
- General rule requiring defendant to show title or disclaimer, 17, 467
- Language of statute, 17, 471
- Questioning relator's title, 17, 471
- Repugnancy, 17, 470
- Setting up two sources of title, 17, 473
- Several pleas, 17, 473
- Traverse, 17, 472
- Prayer for relief, 16, 467
- Prohibition, 17, 409
- Proper officer to prosecute, 17, 441
- County attorney as relator in supreme court, 17, 443
- In general, 17, 441
- Particular officers, 17, 442
- Proceedings instituted in inferior courts, 17, 442
- Propriety of remedy, 17, 393
- Exclusiveness of remedy*, see *infra*, Exclusiveness of remedy.
- In general, 17, 393
- Ouster of corporate franchises and forfeiture of charter, see *infra*, Ouster of corporate franchises and forfeiture of charter.
- Right to public office or franchise*, see *infra*, Right to public office or franchise.
- Statute of Anne, 17, 393
- Prosecuting attorneys, 17, 7, 9, 441
- Control of proceedings, 17, 457
- County attorney as relator in supreme court, 17, 443

QUO WARRANTO, *cont'd.*

Prosecuting attorneys, *cont'd.*
 Discretion of, 17, 449
 In general, 17, 441
 Particular officers, 17, 442
 Proceedings instituted in inferior courts, 17, 442

Public officers:

Municipal officers, 17, 438
 Recovery of compensation, 17, 167

Quashal, 17, 478

Receivers:

Quo warranto proceedings
 against corporations, 17, 695

Rejoinder, 17, 476

Relator (see *infra*, Parties to actions):

Interest of, 17, 461

Removal of causes, 18, 172

Replications and replies, 17, 474

Conclusion, 17, 476

Duplicity, 17, 475

In general, 17, 474

Replying distinct causes, 17, 475

Sufficiency, 17, 475

Returns, 17, 455

Instant return, 17, 455

Review, see *infra*, Appeals.

Right to public office or franchise,
 17, 397

Character of office, 17, 400

Exercise of office under invalid

incorporation, 17, 403

Forfeiture in general, 17, 399

In general, 17, 397

Interference with officer where
 title not involved, 17, 402

Legally authorized public office,
 17, 403

Offices in private corporations,
 17, 401

Parties, 17, 429

Possession, 17, 407

Prior determination of right or
 forfeiture, 17, 400

Title of relator to office, 17, 405

To try private rights, 17, 404

User, 17, 407

Rule to plead, 17, 454, 455

Rule to show cause, 17, 450

Affidavits in opposition to rule to
 show cause, 17, 454

Determination of merits, 17, 451

Effect of rule to show cause, 17,
 455

In general, 17, 450

Relator's right must appear, 17,
 452

Rule not indispensable, 17, 453

Title to franchises and offices,
 17, 452

Unless cause shown, 17, 451

Statute of Anne, 17, 393

QUO WARRANTO, *cont'd.*

Statutory proceedings, 17, 388

Character of statutory proceed-
 ing, 17, 390

Civil actions, 17, 389

Examples, 17, 388, 390

In general, 17, 388

Institution of proceedings, 17,
 444

Stock and stockholders:

Review of corporate election, 20,
 808

Summons and process, 17, 454

Surrender of public property, 17, 158

Title, see *infra*, Information or com-
 plaint; Plea or answer.

Title to office, see *infra*, Right to
 public office or franchise.

Trial, 17, 479

Affording speedy relief, 17, 479

Burden of proof, 17, 481

Burden of proof as between
 claimants, 17, 482

Jury trial, 17, 479

Turnpikes and tollroads, see TURN-
 PIKES AND TOLLROADS.

Usurpation of corporate franchises, see
infra, Ouster of corporate fran-
 chises and forfeiture of charter.

Venire, 17, 454

Venue, see *infra*, Jurisdiction and
 venue.

Water companies and waterworks,
 22, 1139

Winding up corporations (see WIND-
 ING UP CORPORATIONS):

Injunction in aid of quo war-
 ranto, 22, 1229

RAILROADS, 17, 493

See CORPORATIONS; OFFICERS OF PRI-
 VATE CORPORATIONS; STOCKHOLD-
 ERS; WINDING UP CORPORATIONS.

Abandonment or change of construc-
 tion and operation, 17, 502

Accommodations:

Indictments, 17, 522

Penalties for failure to provide,
 17, 535

Actions (see *infra*, Injuries to ani-
 mals):

Injury to land and property, see
infra, Injury to land and prop-
 erty.

Leases, see *infra*, Leases.

Actions on bonds of railroad com-
 pany, 17, 637

Bonds guaranteed by railroad,
 17, 641

Coupons, 17, 639

Declaration and complaint, 17,
 640

Declaration, petition, or com-
 plaint, 17, 638

RAILROADS, *cont'd.*

- Actions on bonds of railroad company, *cont'd.*
 - Demand of payment, 17, 638
 - Jurisdiction, 17, 639
 - Parties defendant, 17, 638
 - Suit on detached coupons, 17, 640
 - Who may sue, 17, 637
 - Who may sue on coupon, 17, 640

Aid to railroads, see infra, Municipal and local aid to railroads; State aid to railroads.

Amendments:

- Amendment changing foundation of action, 17, 547
- Declaration and complaint for injuries to animals, 17, 587

Amount in controversy:

- Actions for injuries to animals in justices' courts, 17, 615
- Injuries to animals, 17, 552

Animals, see infra, Injuries to animals.

Appeals:

- Grade crossings, 17, 517
- Injuries to animals, 17, 614, 625
- Justices' courts, 17, 622
- One railroad intersecting another, 17, 511
 - Stay of proceedings and operations pending appeal, 17, 512
 - When available and proceedings on, 17, 511

Arguments of counsel:

- Appeals to prejudice against corporations, 2, 744

Attorney's fees:

- Injuries to animals, 17, 614

Bailment:

- Injuries to animals, 17, 554

Bills of peace, 3, 565

Bonds, see infra, Actions on bonds of railroad company; Municipal and local aid to railroads; State aid to railroads.

Carriers, see CARRIERS.

Children:

- Actions for injuries to children, 17, 541

Commissioners, see infra, Crossings; Grade crossings; Location, construction, and operation.

Complaint, see infra, Declaration, petition, or complaint.

Construction, see infra, Location, construction, and operation.

Contributory negligence (see CONTRIBUTORY NEGLIGENCE):

- Injuries to animals, 17, 589
- Instructions as to injuries to animals, 17, 602

RAILROADS, *cont'd.*

Contributory negligence, *cont'd.*

- Negating contributory negligence, 17, 569, 570

Costs:

- Injury to land and property, 17, 628
- One railroad crossing another, 17, 510

Criminal procedure (see *infra*, Penalties and penal actions), 17, 521

Offenses against railroads, 17, 528

- Disturbing or throwing switch, 17, 529

In general, 17, 528

Intent, 17, 531

Name, character, and ownership of road, 17, 530

Names of persons whose lives are endangered, 17, 532

Placing obstructions on track, 17, 530

Removing or displacing rails, 17, 529

Time and place, 17, 530

Offenses by railroads, 17, 521

Failure to erect fences and operate gates, 17, 523

Failure to give signals at crossings, 17, 523

Failure to provide accommodations, 17, 522

Failure to provide facilities, 17, 522

Failure to stop at places and times designated, 17, 523

In general, 17, 521

Injuring and obstructing highways, 17, 525

Nuisances, 17, 524

Obstructing navigable streams, 17, 527

Crops, 17, 628

Actions for injury to crops, 17, 628

Joining and splitting causes of action, 17, 628

Parties, 17, 628

Pleadings, 17, 628

Crossings (see CROSSINGS; and see *infra*, Grade crossings):

Crossing of two railroads, 17, 501, 502

Availing effort to agree, 17, 506

Award of commissioners, 17, 509

Complaint, 17, 503

Costs, 17, 510

Courts of equity, 17, 504

RAILROADS, *cont'd.*Crossings, *cont'd.*Crossing of two railroads, *cont'd.*

Designating place and manner of crossing, 17, 506

Determining damages or compensation, 17, 509

Determining manner of crossing, 17, 508

Equitable interposition and control, 17, 512

Equitable interposition to enforce rights, 17, 513

Grade crossings, 17, 513

In general, 17, 502

Injunctions, 17, 512

Petition, 17, 505

Powers and duties of court and appointment of commissioners, 17, 507

Proceedings and award of commissioners, 17, 508

Proceedings by county or railroad commissioners, 17, 510

Proceedings by court, 17, 503

Proceedings by court and commissioners, 17, 505

Restraining and controlling condemnation proceedings, 17, 513

Review of proceedings, 17, 511

Statement of purpose of condemnation and lands sought therefor, 17, 506

Stay of proceedings and operations pending appeal, 17, 512

Street railways, 17, 513

Verdict and judgment, 17, 504

Farm crossings, 17, 514

Action for damages for failure to construct, 17, 514

Enforcing obligation to construct, 17, 515

Indictment for failure to give signals at crossings, 17, 523

Penalties for obstructing crossings, 17, 536

Damages, see *infra*, Double damages.

Death by wrongful act, see DEATH BY WRONGFUL ACT.

Declaration, petition, or complaint:

Actions on bonds, 17, 638

Averment of negligence, 17, 538

Averment of defendant's knowledge of plaintiff's danger, 17, 540

Averment of particular acts constituting negligence, 17, 539

RAILROADS, *cont'd.*Declaration, petition, or complaint, *cont'd.*Averment of negligence, *cont'd.*

Averment of willful injury, 17, 539

Averments showing due exercise of care, 17, 538

In actions for injuries to children, 17, 541

In actions for injuries to trespassers, 17, 539

In general, 17, 538

Coupons, 17, 640

Injuries to animals, see INJURIES TO ANIMALS.

Injury to land and property, 17, 627

Municipal aid, 17, 635

Personal injuries, 17, 538, 542

Averment of plaintiff's freedom from fault, 17, 542

Pleading and proof, 17, 542

Demurrers:

Injuries to animals, 17, 591

Directing verdict:

Injuries to animals, 17, 601

Dismissal, discontinuance, and nonsuit, 17, 611

Double damages:

Injuries to animals, 17, 613

Parties plaintiff in suit for, 17, 555

Eminent domain (see EMINENT DOMAIN):

Injunctions, 17, 513

Street railways, 17, 513

Evidence (see *infra*, Injuries to animals):Actions in justices' courts, see *infra*, Justices.

Farm crossings, 17, 514

Action for damages for failure to construct, 17, 514

Enforcing obligation to construct, 17, 515

Fences:

Declaration and complaint, 17, 563

Declaration and complaint under statutes relating to fencing, 17, 672

Alleging entry on track at place not fenced, 17, 575

Alleging failure to erect or maintain requisite, secure, or sufficient fence, 17, 580

Alleging failure to fence as proximate cause, 17, 581

Alleging that road might have been fenced at place of entry or injury, 17, 580

RAILROADS, *cont'd.***Fences, *cont'd.***

Declaration and complaint under statutes relating to fencing, *cont'd.*

Averment of negligence, 17, 573

Averment of time during which road has been open, 17, 583

Complaints sufficient after verdict, 17, 583

Duty to fence should be clearly shown, 17, 577

In general, 17, 572

Manner of negating statutory exceptions, 17, 578

Manner of stating entry or injury, 17, 578

Necessity of alleging failure to fence, 17, 574

Necessity of negating statutory exceptions, 17, 578

Negating entry or injury in town or at crossing, 17, 579

Negating statutory exceptions, 17, 576, 578

Pleading framed on or referring to statute, 17, 573

Road not securely or sufficiently fenced, 17, 581

Specifying and itemizing injuries, 17, 584

Stating entry or injury where fence required, 17, 576

Sufficient fence, 17, 580

Evidence as to fences, cattle guards, gates, etc., 17, 597

Evidence concerning fences under allegations of negligence, 17, 593

Evidence of negligence under allegations relating to fences, 17, 594

Recovery of compensation for fencing where railroad neglects duty, 17, 517

Findings:

Injuries to animals, 17, 611

Frightening teams, 17, 626

Grade crossings:

Interposition of equity, 17, 512

Removal or abolition of grade crossings, 17, 516

Appeal from commissioners' decision, 17, 517

Appointment of commissioners and return of report, 17, 516

Enforcement of commissioners' order, 17, 517

RAILROADS, *cont'd.***Highways:**

Indictment for injuring and obstructing highways, 17, 525

Liability to indictment, 17, 525

Requisites and sufficiency of indictments, 17, 525

Penalties for obstructing highways, 17, 536

Indictments, see *infra*, Criminal procedure.

Infants:

Conveyance of land to railroad, 10, 742

Injunctions:

Eminent domain proceedings, 17, 513

Intersection of one railroad by another, 17, 512

Grade crossings, 17, 513

In general, 17, 512

Restraining issuance of bonds, 17, 633

Injuries to animals, 17, 546

Actions in justices' courts, see *infra*, Justices.

Amendment changing foundation of action, 17, 547

Appeals, 17, 614, 625

Justices of the peace, 17, 622

Appraisement, 17, 547

Attorney's fees, 17, 614

Character, 17, 562

Collision with train, 17, 561

Common-law actions, 17, 546

Contributory negligence, 17, 569, 570

Contributory negligence, negating, 17, 569, 570

Declaration, petition, or complaint, 17, 555

Allegations of proximate cause, 17, 569

Alleging injury in county where suit brought, 17, 559

Amendments, 17, 587

Character of defendants as corporation, agents, individuals, etc., 17, 562

Collision with train, 17, 561

Complaint good at common law though not sufficient under statute, 17, 584

Failure to fence, 17, 563

General averments, 17, 558

In actions on common-law grounds, 17, 564

Joinder of causes of action and counts, 17, 555

Joinder of contract and tort, 17, 556

RAILROADS, *cont'd.*

- Injuries to animals, *cont'd.*
 - Declaration, petition, or complaint, *cont'd.*
 - Joinder of injuries at different times, 17, 556
 - Joinder of injuries at same time, 17, 556
 - Jurisdiction and venue, 17, 558
 - Justices' courts, 17, 617
 - Manner of injury, 17, 561
 - Negating contributory negligence, 17, 569
 - Neglect of duties imposed by statute or ordinance, 17, 570
 - Neglect of particular duties, 17, 570
 - Negligence, 17, 563, 565
 - Manner of alleging, 17, 565
 - Necessity of alleging, 17, 565
 - Objections to and cure of defects, 17, 585
 - Operation of road, 17, 562
 - Ownership, 17, 562
 - Pleading ordinance, 17, 572
 - Possession, 17, 562
 - Proximate cause, 17, 569
 - Same cause in one of several counts, 17, 557
 - Several causes in one of several counts, 17, 557
 - Several causes in one suit, 17, 555
 - Statement of damages and prayer for relief, 17, 585
 - Statutes imposing *prima facie* or absolute liability, 17, 572
 - Statutes relating to fencing, see *infra*, Fences.
 - Time and place of injury, 17, 560
 - Willful or intentional injury, 17, 569
- Demand, 17, 547
- Demurrer, 17, 591
- Double damages, 17, 613
- Enforcement of judgment, 17, 623
 - Hearing, decision, and appeal, 17, 625
 - Motion or complaint and objections thereto, 17, 624
 - Nature of proceedings and procedure generally, 17, 623
 - Notice of motion, 17, 624
 - Relief for error or illegality in original action, 17, 625

RAILROADS, *cont'd.*

- Injuries to animals, *cont'd.*
 - Enforcement of judgment, *cont'd.*
 - Statutory provisions, 17, 623
 - Writ of order, 17, 625
- Evidence, 17, 592
 - Actions in justices' courts, 17, 621
 - Allegata et probata* must correspond, 17, 593
 - Evidence as to fences, cattle guards, gates, etc., 17, 597
 - Evidence as to ownership or operation of road, 17, 598
 - Evidence concerning fences under allegations of negligence, 17, 593
 - Evidence of manner of injury, 17, 598
 - Evidence of negligence under allegations relating to fences, 17, 594
 - Evidence of negligence under allegations thereof, 17, 595
 - Evidence of time and place of injury, 17, 598
 - Evidence of value of stock injured, 17, 599
 - Failure to sound bell or whistle, 17, 595
 - General charge of negligence, 17, 595
 - General matters pertaining to evidence, 17, 592
 - Negligent acts particularized, 17, 596
 - Order of proof, 17, 593
 - Under allegations of declaration and complaint, 17, 593
 - Unlawful speed, 17, 595
- Fences, see *infra*, Fences.
- Form of action, 17, 546, 548
- Foundation of action, 17, 546
- Frightening teams, 17, 626
- Instructions, 17, 599
 - Assuming facts and invading province of jury, 17, 604
 - Contributory negligence, 17, 602
 - Directing verdict, 17, 601
 - Disregarding point of entry on track and proximate cause, 17, 603
 - Duty of court to give, 17, 600
 - Error cured by other instructions, 17, 611
 - Error cured by verdict or judgment, 17, 610
 - Errors nonprejudicial or cured, 17, 609

RAILROADS, *cont'd.*Injuries to animals, *cont'd.*Instructions, *cont'd.*

Excluding or omitting essential facts and matters, 17, 602

In general, 17, 599

Instructions not applicable to issue, 17, 609

Matters outside of the issue, 17, 605

Misleading instructions, 17, 607

Negligence, 17, 602

Submitting questions of law, 17, 501

Judgment, 17, 611

Attorney's fees, 17, 614

Double damages, 17, 613

Enforcement of judgment, 17, 623

In general, 17, 611

Special verdict and findings, 17, 612

Jurisdiction and venue, 17, 548

Allegations and proof, 17, 550

Amount involved, 17, 552

Averments in complaint, 17, 558

Alleging injury in county where suit brought, 17, 559

In general, 17, 558

Dependent on county lines, 17, 549

Dependent on state lines, 17, 548

Objections, 17, 551

Particular courts, 17, 551

United States courts, 17, 551

Justices of the peace, see *infra*, Justices.

Manner of injury, 17, 561

Neglect of duties imposed by statute or ordinance, 17, 570

Alleging neglect of particular duties, 17, 570

Pleading ordinance, 17, 572

Negligence:

Actions in justices' courts, see *infra*, Justices.

Averments of negligence in failure to fence, 17, 573

Declaration and complaint, 17, 563, 565

Evidence as to fences, cattle guards, gates, etc., 17, 597

Evidence as to unlawful speed, 17, 595

Evidence concerning fences under allegations of negligence, 17, 593

RAILROADS, *cont'd.*Injuries to animals, *cont'd.*Negligence, *cont'd.*

Evidence of negligence under allegations relating to fences, 17, 594

Evidence of negligence under allegations thereof, 17, 595

Evidence under general charge of negligence, 17, 595

Instructions, 17, 602

Manner of alleging, 17, 565

Necessity of alleging, 17, 565

Neglect of duties imposed by statute or ordinance, 17, 570

Negligence or failure to fence, 17, 563

Negligent acts particularized, 17, 596

Operation, 17, 562, 598

Ownership, 17, 562, 598

Parties, 17, 553

Assignee of cause of action, 17, 554

Bailee, 17, 554

Defendant, 17, 555

Ownership, 17, 553

Plaintiff, 17, 553

Possession, 17, 553

Special ownership, 17, 554

Suit for double damages, 17, 555

Suit in name of one for use of another, 17, 554

Place of injury, 17, 560

Plea or answer, 17, 588

Contributory negligence of plaintiff, 17, 589

Counterclaim, 17, 591

Defendant not required or unable to fence, 17, 589

General issue, 17, 588

Special plea or answer, 17, 588

Possession, 17, 562

Replication, 17, 592

Statutes:

Alleging neglect of particular duties, 17, 670

Neglect of duties imposed by statute, 17, 370

Statutes imposing *prima facie* or absolute liability, 17, 572

Statutes relating to fences, see *infra*, Fences.

Statutory actions, 17, 546

Time and place of injury, 17, 598

Time of injury, 17, 560

Value of stock injured, 17, 599

RAILROADS, *cont'd.***Injuries to animals, *cont'd.*****Verdict, 17, 611**

Attorney's fees, 17, 614

Double damages, 17, 613

In general, 17, 611

Special verdict and findings,
17, 612Willful or intentional injury, 17,
569*Injuries to person, see infra, Personal*
injuries.

Injury to land and property, 17, 626

Costs, 17, 628

Declaration and complaint, 17, 627

In general, 17, 626

Injury to crops, 17, 628

Liability to and form of action,
17, 626

Plea or answer, 17, 627

Instructions (see *infra, Injuries to*
animals):Action for personal injuries, 17,
543Based on pleadings and evi-
dence, 17, 544Directness and certainty, 17,
544Ignoring issues and theories,
17, 546

In general, 17, 543

Invading province of jury,
17, 544Modification of erroneous re-
quest, 17, 546

Singling out evidence, 17, 545

*Intersection, see infra, Crossings.**Interstate commerce, see INTERSTATE*
*COMMERCE.***Joinder of counts and causes:**

Injuries to animals, 17, 555

Contract and tort, 17, 556

Injuries at the same time or
different times, 17, 556Same cause in one or several
counts, 17, 557Several causes in one suit,
17, 555

Injury to crops, 17, 628

Injury to land and property, 17,
627**Negligence:**Allegations of proximate
cause, 17, 569Conclusions and facts, 17,
567

Gross negligence, 17, 567

Negating contributory
negligence, 17, 569Statement of particular facts,
17, 568Willful or intentional injury,
17, 569**RAILROADS, *cont'd.****Judgments, see infra, Injuries to ani-*
*mals.***Jurisdiction and venue of actions**
generally, 17, 518

Actions on coupons, 17, 639

Dependent on county lines, 17, 519

Dependent on state lines, 17, 518

In general, 17, 518

Injuries to animals, see infra, In-
*juries to animals.***Justices of the peace:**Actions for injuries to ani-
mals, 17, 614Penalties and penal actions, 17,
533**Justices:**Actions for injuries to animals
in justices' courts, 17, 614Action based on failure to
fence, 17, 619Action based on negligence,
17, 618Alleging entry or injury at
place not fenced, 17, 619Alleging entry where fence
required, 17, 620Alleging failure to fence as
proximate cause, 17, 620Alleging negligence or fail-
ure to fence, 17, 617

Amount involved, 17, 615

Appeal, 17, 622

Complaint, 17, 617

Evidence under pleadings,
17, 621

Jurisdiction, 17, 614

Jurisdictional averments, 17,
617Jurisdiction dependent on
township lines, 17, 615Negating exceptions, 17,
620

Process, 17, 616

Statement, 17, 617

Land, see infra, Injury to land and
*property.***Leases, 17, 642**

Action for tort, 17, 643

Action or suit against parties to
lease, 17, 642Action or suit between parties to
lease, 17, 643Establishing validity of lease,
17, 644

Recovery of rent, 17, 644

Remedy for forfeiture and spec-
ific performance of lease, 17,
643**Location, construction, and opera-**
tion, 17, 500Abandonment or change of con-
struction and operation, 17, 502

RAILROADS, *cont'd.*

- Location, construction, and operation, *cont'd.*
 - Appointment of commissioners to examine proposed route, 17, 500
 - Commissioners' certificate of convenience and necessity, 17, 500
 - Construction and operation generally, 17, 501
 - Crossing of two railroads, 17, 501
 - Location of route, 17, 500
- Master and servant*, see MASTER AND SERVANT.
- Municipal and local aid to railroads (see *infra*, State aid to railroads), 17, 632
 - Actions to enforce bonds, 17, 634
 - Compelling issuance of bonds, 17, 633
 - Declaration, petition, or complaint in actions to enforce bonds, 17, 635
 - Jurisdiction of actions to enforce bonds, 17, 634
 - Parties to actions to enforce bonds, 17, 634
 - Plea or answer in actions to enforce bonds, 17, 636
 - Proceedings to question regularity of election, 17, 632
 - Restraining issuance of bonds, 17, 633
 - Review of proceedings, 17, 636
- Navigable waters:
 - Indictment for obstructing navigable streams, 17, 527
- Negligence*, see *infra*, Declaration, petition, or complaint; Injuries to animals.
- Nuisances, 17, 524
 - Indictments, 17, 524
- Offenses against railroads*, see *infra*, Criminal procedure.
- Offenses by railroads*, see *infra*, Criminal procedure.
- Officers*, see OFFICERS.
- Operation*, see *infra*, Location, construction, and operation.
- Order of proof, 17, 593
- Ordinances:
 - Injuries to animals, 17, 570
- Ownership:
 - Injuries to animals, 17, 553
- Parties to actions:
 - Actions on bonds, 17, 634, 638
 - Injuries to animals*, see *infra*, Injuries to animals.
 - Injury to crops, 17, 628
 - Leases, 17, 642
 - Municipal aid, 17, 634
 - Penalties and penal actions, 17, 534

RAILROADS, *cont'd.*

- Passengers*, see PASSENGERS.
- Penalties and penal actions, 17, 532
 - Failure to erect fences, cattle guards, gates, etc., 17, 535
 - Failure to give signals, 17, 535
 - Failure to provide accommodations, 17, 535
 - Jurisdiction, 17, 533
 - Nature of remedy and form of action, 17, 532
 - Obstructing highway or crossing, 17, 536
 - Overcharge in fares and rates, 17, 537
 - Parties, 17, 534
 - Pleading, 17, 535
 - Procedure, 17, 535
 - Remedy by action, 17, 532
 - Running trains at prohibited speed, 17, 536
- Personal injuries (see PERSONAL INJURIES), 17, 538
 - Declaration, petition, or complaint*, see *infra*, Declaration, petition, or complaint.
 - Instructions*, see *infra*, Instructions.
 - Introductory, 17, 538
 - Plea, answer, and reply, 17, 543
- Plea or answer:
 - Actions on bonds, 17, 636
 - Actions to enforce bonds in aid of railroads, 17, 636
 - Injuries to animals*, see *infra*, Injuries to animals.
 - Injury to land and property, 17, 627
- Possession:
 - Injuries to animals, 17, 553
- Property*, see *infra*, Injury to land and property.
- Proximate cause:
 - Alleging failure to fence as proximate cause, 17, 581
 - Instructions, 17, 603
- Questions of law and fact:
 - Injuries to animals, 17, 601, 604
- Real property*, see *infra*, Injury to land and property.
- Receivers*, see RECEIVERS.
- Replications and replies:
 - Injuries to animals, 17, 592
- Scope of article, 17, 499
- Service of process*, see SERVICE OF PROCESS.
- Set-off, recoupment, and counterclaim:
 - Injuries to animals, 17, 591
- Speed, 17, 595
 - Penalties, 17, 536
- Splitting causes of action:
 - Injury to crops, 17, 628

RAILROADS, *cont'd.*

- State aid to railroads, 17, 630
- Actions by state against stockholders for fraud or misappropriation, 17, 632
- Bill by holder of bonds indorsed by state to enforce statutory lien, 17, 631
- Suits against state, 17, 630
- Suits by holders of bonds indorsed by state, 17, 630
- Suits by state to enforce paramount lien, 17, 630
- Statutes:
 - Injuries to animals*, see *infra*, *Injuries to animals*.
- Street railways (see **STREET RAILWAYS**):
 - Crossings, 17, 513
- Supersedeas and stay of proceedings:
 - Intersection of railroads, 17, 512
- United States courts:
 - Injuries to animals*, 17, 551
- Venue (see *infra*, *Jurisdiction and venue of actions generally*):
 - Injuries to animals*, see *infra*, *Injuries to animals*.
- Verdict, see *infra*, *Injuries to animals*.

RAPE, 17, 645See **SEDUCTION**.

Actions, 17, 668

Age, 17, 651

Female over age of consent, 17, 651

Female under age of consent, 17, 653

Form of allegation, 17, 653

No particular form of allegation, 17, 653

Varying charge to meet age of female, 17, 661

Where age need not be proved though charged, 17, 652

Allegation of age, see *infra*, *Age*.*Allegation of force*, see *infra*, *Force*.

Assault and battery:

Allegation of assault, 17, 649

Assault with intent to ravish, 2, 848

Conviction of assault under indictment for rape, 17, 665

Verdict, 17, 665

Assault with intent to commit, 17, 649

Joinder, 17, 661

Attempt, 17, 662

Assault with intent to commit and attempt, 17, 661

Conviction of attempt under indictment for rape, 17, 666

Description of female, 17, 663

RAPE, *cont'd.*Attempt, *cont'd.*

Facts constituting the attempt, 17, 663

Indictment for attempt to commit, 17, 662

Whether proof of rape will support an indictment for an attempt, 17, 667

Bastardy:

Joinder, 17, 662

Carnal knowledge, 17, 656

Civil actions, 17, 668

Consent (see *infra*, *Force*):*Age of consent*, see *infra*, *Age*.

Conspiracy, 4, 731

Essential ingredients, 17, 646

Feloniously, 17, 655, 658

Following language of statute, 17, 647

Equivalent terms, 17, 648

In general, 17, 647

Limitation of rule, 17, 648

Force, 17, 656

Feloniously, 17, 658

Female mentally incapable, 17, 657

Female over age of consent, 17, 656

Female under age of consent, 17, 656

Form of allegation, 17, 658

"Ravish," 17, 659

Forcibly, 17, 658

Harmless defects, 17, 647

Husband and wife, 17, 651

Indictment, 17, 646

Age, 17, 651

Assault, 17, 649

Attempt to commit, 17, 662

Following language of statute, 17, 647

Force, 17, 656

In general, 17, 746

Intent, 17, 654

Joinder of counts, 17, 661

Joinder of defendants, 17, 660

Name of person injured, 17, 648

Needless allegations, 17, 650

Place, 17, 648

Suit to set out essential ingredients, 17, 646

Time, 17, 648

Intent, 17, 654

Assault with intent to commit and attempt, 17, 661

Assault with intent to commit rape, 17, 649

Joinder of defendants, 17, 661

Joinder of offenses, 17, 661

Added counts, 17, 661

Assault with intent to commit and attempt, 17, 661

RAPE, *cont'd.*

- Joinder of offenses, *cont'd.*
 - In general, 17, 661
 - Prosecutor not compelled to elect, 17, 661
 - Rape and assault with intent to commit rape, 17, 661
 - Varying charges to meet age of female, 17, 661

Names, 17, 648

Place, allegation of, 17, 648

"Ravish," 17, 659

Relationship, allegations of, 17, 651

Statutes, see *infra*, Following language of statute.

Time, allegation of, 17, 648

Unlawfully, 17, 655

Variance, 17, 664

Verdict, 17, 665

Assault, 17, 665

Conviction of attempt, 17, 666

Conviction of distinct offense, 17, 667

Offenses of different grades, 17, 665

Whether proof of rape will support an indictment for an attempt, 17, 667

Violently, 17, 658

Want of consent, see *infra*, Force.

Witnesses:

Corroboration of witnesses, 10, 331

Prior consistent statements of prosecuting witness, 10, 331

Woman:

Allegations as to, 17, 650

Alleging that the person upon whom the offense was committed was a female, 17, 650

REAL ACTIONS, 17, 669

See ENTRY, WRIT OF.

Amendments, 17, 672.

Right, writ of, 17, 672

Answers in code pleading:

What may be proved under general denials, 1, 825

Assize, writ of, 17, 670

Bills of particulars, 3, 549

Definition, 17, 669

Dower:

Writs of dower and of right of dower, 17, 670

Droitural actions, 17, 670

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

Formedon:

Writ of formedon, 17, 671

Jurisdiction, 17, 670

Nature, 17, 669

• Possessory actions, 17, 670

Quod ei de forceat, 17, 671

REAL ACTIONS, *cont'd.*

Right, writ of, 17, 671

Against whom lies, 17, 671

Amendment, 17, 672

Discontinuance, 17, 673

Effect of recovery on tenant's easement, 17, 673

In general, 17, 671

Issues raised by writ, 17, 672

Scire facias, 17, 673

Venue, 17, 670

Writs in real actions, 17, 670

Writs of dower and of right of dower, 17, 670

REAL ESTATE AGENTS, see AGENCY.**REAL PROPERTY (see JOINDER OF COUNTS AND CAUSES; TITLE, OWNERSHIP, AND POSSESSION; VENDOR AND PURCHASER):**

Accounts and accounting, 1, 173

Amount in controversy, see AMOUNT IN CONTROVERSY.

Appeals:

Question affecting mortgage, 2, 46

Questions affecting titles, 2, 44

Assignment for benefit of creditors, see ASSIGNMENT FOR BENEFIT OF CREDITORS.

Assistance, writ of, see ASSISTANCE, WRIT OF.

Assumpsit, see ASSUMPSIT.

Attachment, see ATTACHMENT.

Bills of exceptions, see BILLS OF EXCEPTIONS.

Costs, see COSTS.

Creditors' bills and fraudulent conveyances, see CREDITORS' BILLS AND FRAUDULENT CONVEYANCES.

Curtesy (see CURTESY), 5, 698

Death, see DEATH.

Distress, see DISTRESS.

Dower, see DOWER.

Easements, see EASEMENTS.

Ejectment, see EJECTMENT.

Eminent domain, see EMINENT DOMAIN.

Entry, writ of, see ENTRY, WRIT OF.

Escheat, see ESCHEAT.

Executions, see EXECUTIONS.

Extent, see EXTENT.

Fixtures, see FIXTURES.

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Frauds, statute of, see FRAUDS, STATUTE OF.

Homesteads and exemptions, see HOMESTEADS AND EXEMPTIONS.

Husband and wife, see HUSBAND AND WIFE.

REAL PROPERTY, *cont'd.**Infants*, see **INFANTS**.*Insane persons*, see **INSANE PERSONS**.*Joint tenants and tenants in common*, see **JOINT TENANTS AND TENANTS IN COMMON**.*Justices of the peace*, see **JUSTICES OF THE PEACE**.*Landlord and tenant*, see **LANDLORD AND TENANT**.*Land patents*, see **LAND PATENTS**.*Limitations*, see **LIMITATIONS**.*Local improvements*, see **LOCAL IMPROVEMENTS**.*Mines and mining*, see **MINES AND MINING**.*Parties to actions*, see **PARTIES TO ACTIONS**.*Partition*, see **PARTITION**.*Patents*, see **LAND PATENTS**.*Possession, writ of*, see **POSSESSION, WRIT OF**.*Probate and contest of wills*, see **PROBATE AND CONTEST OF WILLS**.*Public lands*, see **PUBLIC LANDS**.*Quieting title—removal of cloud*, see **QUIETING TITLE**.*Real actions*, see **REAL ACTIONS**.*Rescission, cancellation, and reformation of contracts*, see **RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS**.*Settlement of decedents' estates*, see **SETTLEMENT OF DECEDENTS' ESTATES**.*Specific performance*, see **SPECIFIC PERFORMANCE**.*Splitting causes of action*, **1, 162***Summons and process*, see **SUMMONS AND PROCESS**.*Trespass*, see **TRESPASS**.*Trespass to try title*, see **TRESPASS TO TRY TITLE**.*Trusts and trustees*, see **TRUSTS AND TRUSTEES**.*Vendor and purchaser*, see **VENDOR AND PURCHASER**.*Venue* (see **VENUE**), **22, 777, 793***Waste*, see **WASTE**.*Writ of possession*, see **POSSESSION, WRIT OF**.**REARGUMENT** (see **REHEARING**):*Motions*, see **MOTIONS**.**REASONABLE DOUBT:***Embezzlement*, **7, 459***Injunctions*, **10, 943***Instructions*, **11, 357***Alibi*, **11, 361***Defining reasonable doubt*, **11, 358***Good character creating reasonable doubt*, **11, 346***In absence of request*, **11, 357****REASONABLE DOUBT, *cont'd.****Instructions, *cont'd.***What instructions are necessary*, **11, 358***When requested*, **11, 357***Penalties and penal actions*, **16, 295****REASONABLE TIME:***Certiorari*, **4, 130***Change of venue*, **4, 423***Chattel mortgages:**Interests*, **4, 529****REBUTTER**, **18, 71****RECAPTURE:***Escape*, **7, 924****RECEIPT** (see **RELEASE**):*Forgery*, **9, 564***Description of instrument*, **9, 569***Larceny*, **12, 994****RECEIVERS**, **17, 675***Abatement of actions*, **17, 762***Actions by or against corporations*, **17, 763***Actions by or against receivers*, **17, 765***Conduct of proceedings by receiver*, **17, 763***General rule*, **17, 762***Making receiver a party where he is a necessary party*, **17, 764***Making receiver a party where he is a proper party only*, **17, 765***Accounts of receivers*, **17, 836***Appeals*, **17, 879***Deceased receivers*, **17, 837***Exceptions to master's report*, **17, 839***Notice of hearing*, **17, 839***Passing the accounts*, **17, 837***Reference to master*, **17, 837***To what court rendered*, **17, 836***Trial of issues by jury*, **17, 838***When rendered*, **17, 837***Actions* (see *infra*, **Pending suit**); *Proceedings against the estate and receiver*; *What constitutes a pending suit*:*Actions by receiver*, **17, 801***Temporary and permanent receivers*, **17, 816***Actions in name of or by owner*, **17, 821***Foreign jurisdictions*, **17, 817***Proceedings against the estate and receiver*, see *infra*, **Proceedings against the estate and receiver**.*Proceedings in name of receiver*, see *infra*, **Proceedings against the estate and receiver**.*Proceedings to obtain and protect possession*, see *infra*, **Proceedings to obtain and protect possession**.

RECEIVERS, *cont'd.*

- Actions, *cont'd.*
 - When receiver entitled to sue, 17, 807, 808
- Actions on receivers' bonds, 17, 852
 - Conditions precedent, 17, 853
 - Remedy, 17, 852
- "Act or transaction," 17, 790
- Adjournment:
 - Notice of application, 17, 721
- Admissions, 17, 803
 - Admissions of owner, 17, 803
- Affidavits, 17, 737
 - Additional affidavits, 17, 738
 - Admissions in answer, 17, 741
 - Affidavits to claims, 17, 795
 - Answer denying equities on bill, 17, 739
 - Denial of property, 17, 739
 - Effect of answer on appointment, 17, 739
 - In general, 17, 737
 - Pleadings as affidavits, 17, 738
 - Receiver for mortgagee in possession, 17, 740
 - Reply affidavits, 17, 738
 - Serving copies of affidavits, 17, 738
 - Setting up defenses in affidavits, 17, 741
- Alimony, 1, 443
- Amendments (see *infra*, Motions to modify or vacate), 17, 737
 - Order granting or refusing, 17, 751
- Ancillary character, 17, 682
- Ancillary jurisdiction:
 - United States courts, 17, 768
- Ancillary receiverships, 17, 685, 769
- Answers (see *infra*, Affidavits), 17, 826, 830
- Appeals, 17, 853
 - Effect of appeal, 2, 326
 - Leave to sue, 17, 883
 - Orders affecting receiverships, 2, 121
 - Orders and decrees in pending suit, 17, 874
 - Adjudicating claims, 17, 879
 - Allowances, 17, 877
 - Approving accounts, 17, 879
 - By receiver, 17, 874
 - Compensation, 17, 877
 - Directing distribution, 17, 879
 - Directions and orders pertaining to management of estate, 17, 881
 - Establishing or denying claims, 17, 875
 - Interested parties, 17, 877
 - Intervening petitioner, 17, 879

RECEIVERS, *cont'd.*

- Appeals, *cont'd.*
 - Orders and decrees in pending suit, *cont'd.*
 - Necessary parties, 17, 882
 - Order of sale, 17, 881
 - Other parties than receiver, 17, 877
 - Personal rights of receiver involved, 17, 875
 - Receiver not interested, 17, 876
 - Receiver's certificates, 17, 880
 - Sale, 17, 881
 - Supersedeas, 17, 882
 - Orders appointing, vacating appointment, discharging, etc., 17, 853
 - Appeal by receiver from order of removal, 17, 870
 - Certiorari, 17, 858
 - Compliance with statute, 17, 861
 - Consideration of pleadings, 17, 867
 - Discretion in general, 17, 863
 - Discretion not arbitrary, 17, 865
 - Effect of appeal, 17, 872
 - Effect of denial in answer, 17, 868
 - Exceptions and objections, 17, 870
 - General rule as to appealability, 17, 853
 - Jurisdictional facts, 17, 870
 - Mandamus, 17, 859
 - Order affecting substantial rights, 17, 856
 - Order appointing receiver or refusing to vacate order, 17, 861
 - Order final in effect, 17, 854
 - Order granting injunction and appointing receiver, 17, 860
 - Prohibition, 17, 859
 - Record, 17, 870
 - Review on appeal from final decree, 17, 857
 - Statutory appealability, 17, 856
 - Supersedeas, 17, 872
 - Supersedeas or bill of review, 17, 858
 - Who may complain in general, 17, 868
- Proceedings by and against receivers, 17, 883
 - Appeal by receiver from final judgment, 17, 885

RECEIVERS, *cont'd.*

Appeals, *cont'd.*

Proceedings by and against receivers, *cont'd.*

Leave to sue receiver, 17, 883

Order allowing or refusing intervention or substitution of receiver, 17, 884

Order permitting receiver to sue, 17, 884

Appearances, 2, 662

Application, 17, 703

Affidavits, see infra, Affidavits.

Against whom application made, see infra, Parties to actions.

Amending application, 17, 737

By whom application made, see infra, Parties to actions.

Demurrers, 17, 737

How application made, 17, 714

For receivers strictly *pendente lite*, 17, 715

For statutory receivers, 17, 714

Issues made by application, 17, 741

Notice of application, see infra, Notice of application.

Order granting or refusing application, see infra, Order granting or refusing application.

Parties, see infra, Parties to actions.

Pleadings of applicant for receiver, 17, 723

Allegation of insolvency, 17, 725

Allegation of title, 17, 726

Averment of facts, 17, 724

Corporations, 17, 729

Definiteness and certainty, 17, 723

Excusing failure to give notice, 17, 735

Foreclosure suits, 17, 731

Inadequacy of other remedies, 17, 728

Information and belief, 17, 724

In general, 17, 723

Legal conclusions, 17, 724

Necessary allegations in foreclosure suits, 17, 731

Partners, 17, 730

Pending suit in probate court, 17, 731

Relating to property involved, 17, 724

Suits against corporations, 17, 729

Suits between partners, 17, 730

Verification, 17, 736

RECEIVERS, *cont'd.*

Application, *cont'd.*

Renewal of application, 17, 714

Special prayer for receiver, 17, 715

Statutory receivers, 17, 714

Subsequent pleadings, 17, 737

Time of application, 17, 709

Appointment before decree, 17, 711

Appointment by decree or subsequently thereto, 17, 712

Delay in applying, 17, 714

In general, 17, 709

Renewal of application, 17, 714

When made in pending suit, 17, 709

Appointment before decree, 17, 711

Appointment by decree or subsequently thereto, 17, 712

Delay in applying, 17, 714

General rule, 17, 709

Renewal of application, 17, 714

Appointment, see infra, Appeals; Application; Collateral and direct attack on order of appointment; Jurisdiction to appoint; Order granting or refusing application; Selection of receiver.

Assignment for benefit of creditors, see ASSIGNMENT FOR BENEFIT OF CREDITOR.

Assistance, see ASSISTANCE, WRIT OF.

Attachment, 17, 694

Analogy, 17, 683

Leave of court, 17, 778

Motion for dissolution, 3, 67

Bankruptcy, 22, 361

Bills in equity (*see infra, Application*), 17, 825

Bonds:

Actions on, 17, 852

Conditions precedent, 17, 853

Remedy, 17, 852

Certificates, 17, 831

Appeals, 17, 880

Certiorari, 17, 858

Chambers and vacation, 17, 684, 700

Ancillary to injunction, 17, 701

Appointment, 17, 697

Appointment and discharge of receiver, 4, 351

Discharge or removal in vacation, 17, 851

English practice, 17, 700

Irregular appointment cured, 17, 700

RECEIVERS, *cont'd.*

- Chambers and vacation, *cont'd.*
 - Judge, 17, 700
 - Statutory provisions, 17, 701
- Character of remedy, 17, 681
- Citizenship:
 - United States courts, 17, 766
- Collateral and direct attack on order of appointment, 17, 752
 - Attack on order made on application of debtor, 17, 753
- Contempt proceedings, 17, 753
- Motions to modify or vacate, see infra.* *Motions to modify or vacate.*
- Order in suit asking for final relief, 17, 752
- Order merely irregular, 17, 753
- Sales by receivers, 17, 834
- Void order, 17, 752
- Compared with other remedies, 17, 682
- Compensation, expenses, and costs, 17, 840
 - Appeal, 17, 877
 - Applicant successful in pending suit, 17, 841
 - Applicant unsuccessful in pending suit, 17, 841
 - Application for a receiver, 17, 844
 - Appointment erroneous or void, 17, 840
 - Appointment valid, 17, 841
 - Compensation of receiver and general expenses, 17, 840
 - Costs and expenses incurred by receiver, 17, 845
 - Costs on application for receiver, 17, 844
 - Discretion of court, 17, 842, 878
 - Evidence *pro* and *con*, 17, 843
 - General rule as to taxation, 17, 840
 - How allowed, 17, 843
 - How and when compensation of receiver allowed, 17, 843
 - Ordinary costs of litigation, 17, 844
 - Security for costs, 17, 846
 - When allowed, 17, 844
- Conditions attached to appointment, 17, 749
- Corporations, 17, 749
 - Conditions by order subsequent to appointment, 17, 750
 - Private corporations, 17, 750
 - Quasi-public corporations, 17, 749
 - Six months' rule, 17, 751
 - Statutory provisions, 17, 751
 - General rule, 17, 749

RECEIVERS, *cont'd.*

- Conflict of law:
 - Nonresident defendants, 17, 702
 - Property in foreign state, 17, 702
- Contempt, 17, 834
 - Attachment without prior order, 17, 835
 - By whom punishable, 17, 834
 - In general, 17, 834
 - Invalidity of appointment of receiver, 17, 753
 - Order of commitment, 17, 835
- Continuing receiverships, see infra.* *Continuing receiverships.*
- Extending and continuing receiverships.
- Control and disposition of estate, 17, 766
 - Assessment calls in corporation receiverships, 17, 831
 - In general, 17, 766
 - Jurisdiction, see infra.* *Jurisdiction; United States courts.*
 - Proceedings against the estate and receiver, see infra.* *Proceedings against the estate and receiver.*
 - Proceedings to obtain and protect possession, see infra.* *Proceedings to obtain and protect possession.*
 - Receiver's certificates, 17, 831
 - Sales by receivers, *see infra.* *Sales by receivers.*
 - Service of process, 17, 770
- Corporations (*see infra.* *Parties to actions*):
 - Allegations in application for receiver, 17, 729
 - Appointment in suits against corporations, 17, 689
 - In what suits receivers may be appointed, 17, 689
 - Statutory provisions, 17, 689
 - Suits for dissolution, 17, 689
 - Assessment calls in corporation receiverships, 17, 831
 - Conditions attached to appointment, *see infra.* *Conditions attached to appointment.*
 - Jurisdiction to appoint, see infra.* *Jurisdiction to appoint.*
 - Notice of application, see infra.* *Notice of application.*
 - Quo warranto proceedings against corporations, 17, 695
 - Supplementary proceedings, 17, 695
- Costs (*see infra.* *Compensation, expenses, and costs*), 5, 156
- Creditors:
 - By whom application made, 17, 703, 705
- Creditors' bills, 5, 593; 17, 695
- Bond, 5, 597

RECEIVERS, *cont'd.*

- Creditors' bills, *cont'd.*
 - Discretion of court, 5, 594
 - Effect of answer, 5, 597
 - In general, 5, 593
 - Notice, 5, 596
 - Property in hands of trustee, 5, 595
 - Suits by creditors of decedents, 5, 595
 - Suits to set aside fraudulent conveyances, 5, 594
 - Time, 5, 596
 - Two or more suits, 5, 598
 - Want of equity, 5, 597
- Declaration and complaint, 4, 598; 17, 825
- Defaults:
 - Notice of application for appointment, 17, 720
- Definiteness and certainty in pleadings:
 - Pleadings of applicant for receiver, 17, 723
- Demurrers, 17, 737, 830
- Discharge, see *infra*, Removal and discharge.
- Discretion of court:
 - Appeal, 17, 863
 - Appeal under statutory practice, 17, 865
 - Conflicting evidence, 17, 866
 - Discharge, 17, 866
 - Discretion in appointing and discharging receivers, 17, 863
 - Discretion not arbitrary, 17, 865
 - In general, 17, 863
 - Order for removal, 17, 865
 - Compensation and allowance, 17, 778
 - Costs and expenses, 17, 842
 - Disposition of estate, see *infra*, Control and disposition of estate.
 - Ejectment, 7, 295, 306; 17, 686
 - Equitable execution, 17, 682
 - Equitable proceedings, 17, 681
- Exceptions and objections:
 - Objections first raised on appeal, 17, 871
 - Order appointing, 17, 870
- Executions:
 - Equitable execution, 17, 682
 - Leave of court, 17, 779
- Expenses, see *infra*, Compensation, expenses, and costs.
- Extending and continuing receiverships, 17, 760
 - Suits pending in different courts, 17, 761
 - Suits pending in same court, 17, 760

RECEIVERS, *cont'd.*

- Foreclosure of mortgages:
 - Allegations necessary in application for receiver, 17, 731
 - Danger of impairment of security, 17, 732, 733
 - In general, 17, 731
 - Necessary allegations, 17, 731
 - Particular statutes, 17, 734
 - Requisite allegations in different states, 17, 732, 733
- Appointment of receiver, 17, 692
- Jurisdiction to appoint receiver, 9, 261
- Parties defendant, 9, 342
- Fraudulent conveyances, 17, 816
- Homesteads and exemptions, 10, 90
- Infants, 17, 684
- Information and belief:
 - Application for receiver, 17, 723, 724
- Injunctions.
 - Analogy, 17, 683
 - Appeal from order granting injunction and appointing receiver, 17, 860
 - Appointment on bill for injunction, 17, 693
 - Injunction to protect possession, 17, 774
 - Interference with receiver, 17, 749
 - Leave of court, 17, 781
- Insane persons, 17, 684
- Insolvency:
 - Allegation of insolvency in application for receiver, 17, 725
 - Suits by, 11, 40
- Intervention, 17, 768
- Issues made by application, 17, 741
 - General view of the scope of pleadings, 17, 742
 - Principal issue, 17, 741
 - Technical defects, 17, 743
- Issues to jury:
 - Accounts, 17, 838
- Joinder of parties:
 - Actions by receivers, 17, 823
- Joint tenants and tenants in common, 11, 770
- Judgments:
 - Judgments against receivers, 17, 804
 - Formal defects, 17, 805
 - Official capacity, 17, 804
- Judicial sales (see *infra*, Sales by receivers), 12, 8
- Jurisdiction (see *infra*, Leave of court), 17, 697
 - Actions by and against receivers, 17, 766

RECEIVERS, *cont'd.*

Jurisdiction, *cont'd.*

- Control and disposition of estate, 17, 766
- Foreign jurisdictions, 17, 817
- In general, 17, 697
- Record, 17, 870

Jurisdiction to appoint, 17, 697

- Appellate courts, 17, 699
- Appointment by judge of another district or circuit, 17, 698
- Chambers and vacation, 17, 700
- Corporation, 17, 698
- Exclusiveness of remedy, 17, 699
- Inferior courts, 17, 699
- In general, 17, 697
- Jurisdictional facts, 17, 702
- Nonresident defendants, 17, 702
- Property in foreign state, 17, 702
- Receivers not appointed by courts, 17, 698

Jury:

- Accounts, 17, 838
- Trial by jury, 17, 792

Leave of court:

- Actions by receivers, 17, 818
 - Common-law receivers, 17, 818
- Necessity to allege that leave has been obtained, 17, 821
- Order granting leave, 17, 821
- Receiver regarded as assignee, 17, 820
- When receiver may sue, 17, 819

Appeal, 17, 883

- Applications in pending suit, 17, 791
 - Affidavits to claims, 17, 795
 - Cross-bill, 17, 793
 - Early practice, 17, 791
 - Employee of receiver as party, 17, 797
 - Form of application, 17, 793
 - Intervention, 17, 793
 - Modern practice, 17, 792
 - Motion, 17, 794
 - Notice of application, 17, 798
 - Parties to application, 17, 796
 - Petition, 17, 793
 - Petition for payment of claims, 17, 796
 - Petition to open order barring claims, 17, 795
 - Receiver and persons represented by him as parties, 17, 796
 - Trial by jury, 17, 792
 - Various methods of procedure, 17, 792
- Discretion of court, 17, 883

RECEIVERS, *cont'd.*

Leave of court, *cont'd.*

- Proceedings against the estate and receiver, 17, 775
- Actions against receivers, 17, 780
- Actions improperly brought without leave, 17, 776
- "Act or transaction," 17, 790
- Acts of receiver *ultra vires*, 17, 783
- Applications not requesting leave, 17, 788
- Attachment, 17, 778
- Comity between courts, 17, 778
- Discretion to refuse leave, 17, 785
- Equitable causes of action, 17, 786
- Exceptions, 17, 783
- Execution, 17, 779
- Garnishment, 17, 778
- Granting or refusing leave, 17, 785
- In general, 17, 775
- Injunction against receiver, 17, 781
- Inspection of books, 17, 787
- Interference with property, 17, 777
- Leave to defend, 17, 778
- Legal and equitable causes of action, 17, 786
- Levy of execution, 17, 779
- Levy on real estate, 17, 780
- Preliminary questions, 17, 785
- Provision in order of appointment, 17, 788
- Receivers not appointed by courts, 17, 784
- Revocation of leave, 17, 788
- Statutes in general, 17, 789
- Statutory provisions, 17, 788
- Suits against receivers in foreign states, 17, 783
- United States statutes, 17, 789
- Various orders permissible, 17, 785
- View that leave is not jurisdictional, 17, 777

Legal conclusions:

- Application for receiver, 17, 723, 724

Management:

- Leave of court, 17, 778

Mandamus, 13, 614

- Appointment or vacation of appointment, 13, 614
- Restoration to office, 13, 614

RECEIVERS, *cont'd.*

- Mandamus, *cont'd.*
 - To compel action by receiver, 13, 615
 - Vacation of order appointing receiver, 17, 859
- Master in chancery:
 - Confirmation of master's report, 17, 759
 - Exceptions to master's report, 17, 759
 - Reference to master, 17, 758
- Mechanics' liens:
 - Receivers as parties defendant, 13, 964
- Motions to modify or vacate, 17, 755
 - By whom made, 17, 757
 - Ex parte* orders, 17, 756
 - In general, 11, 755
 - Motion for rehearing, 17, 755
 - Notice of motion, 17, 756
 - Objections waived, 17, 757
 - Strangers, 17, 757
- Names:
 - Actions in name of or by owner, 17, 821
 - Proceedings in name of receiver*, see *infra*, Proceedings against the estate and receiver.
- Nonresident defendants, 17, 702
- Nonresidents:
 - Notice of application, 17, 719
- Notice:
 - Account of receivers, 17, 839
 - Application for leave to sue, 17, 798
 - Motions to modify or vacate, 17, 756
 - Notice before ordering or confirming, 17, 833
 - Notice of application for discharge, 17, 850
- Notice of application, 17, 717
 - Adequacy of other remedy, 17, 721
 - Adjournment of hearing, 17, 721
 - Appointment after default, 17, 720
 - Appointment on final hearing, 17, 720
 - Exceptions to rule, 17, 719
 - Excusing failure to give notice, 17, 735
 - General rule, 17, 717
 - Notice waived, 17, 721
 - Service of notice, 17, 722
 - Supplementary proceedings, 17, 718, 719
 - Where defendant is nonresident, 17, 719
 - Where loss would result, 17, 719
- Official bonds*, see *infra*, Bonds.

RECEIVERS, *cont'd.*

- Order granting or refusing application, 17, 744
- Amendments, 17, 751
- Conditions attached to appointment, 17, 749
- Conditions by order subsequent to appointment, 17, 750
- Conditions not attached to appointment of receivership to corporations, 17, 749
- Description of property, 17, 745
- Directing conveyance of property, 17, 747
- Findings of fact, 17, 744
- Injunction against interference with receiver, 17, 749
- Instructions as to distribution, 17, 749
- Necessity to designate property, 17, 745
- Requiring security from receiver, 17, 744
- Requisites and sufficiency of description, 17, 746
- Six months' rule, 17, 751
- Statutory provisions, 17, 748
- Orders (see *infra*, Appeals):
 - Collateral and direct attack on order of appointment*, see *infra*.
 - Collateral and direct attack on order of appointment*.
 - Vacation of order*, see *infra*, Motions to modify or vacate.
- Parties to actions, 15, 480; 17, 703
 - Against whom application made, 17, 708
 - Devolution of interest, 17, 708
 - In general, 17, 708
 - In suits against corporations, 17, 709
- By whom application made, 17, 703
 - Defendant in pending suit, 17, 707
 - Judgment creditor, 17, 703
 - Plaintiff in pending suit, 17, 703
 - Simple contract creditors, 17, 705
 - Statutory rules as to creditors, 17, 706
 - Stockholders, 17, 704
 - Various parties, 17, 707
- Claims against the property, 17, 796
- Employee of receiver, 17, 797
- Making receiver a party, 17, 764
 - Where necessary party, 17, 764
 - Where proper party only, 17, 765

RECEIVERS, *cont'd.*

- Parties to actions, *cont'd.*
 - Owner and receiver as defendants in original suits, 17, 798
 - Actions involving title, 17, 803
 - Admissions of owner, 17, 803
 - Claims against owner affecting the estate, 17, 800
 - Railroad receivers, 17, 800
 - Suing owner, 17, 800
 - Suing receiver, 17, 801
 - Their relations generally, 17, 798
 - When not a question of parties, 17, 799
 - When receiver is only a proper party, 17, 802
- Proceedings in name of receiver, see infra, Proceedings against the estate and receiver.*
- Receiver as party defendant (*see infra, Proceedings against the estate and receiver*), 17, 823
- Partition, 15, 811
- Partnership:
 - Appointment in suits between partners, 17, 691
 - Suits for accounting after dissolution, 17, 692
 - Suits for dissolution, 17, 691
- Averment in application for receiver, 17, 730
- Property, 17, 746
- Penalties and penal actions, 16, 263
- Pending suit (*see infra, Application; Proceedings against the estate and receiver*), 17, 684
 - Ancillary receiverships, 17, 685
 - Commencement of suit, 17, 686
 - Ejectment pending in court of law, 17, 686
 - Estates of infants and lunatics, 17, 684
 - Exceptions to rule, 17, 684
 - General rule, 17, 684
 - Infants, 17, 684
 - Insane persons, 17, 684
 - Necessity of, 17, 684
 - Orders and decrees in pending suit, see infra, Appeals.*
 - Pending actions in other courts, 17, 685
 - Pending actions in probate courts, 17, 685
 - Termination of suit, 17, 686
 - Vacation, 17, 684
 - What constitutes a pending suit, see infra, What constitutes a pending suit.*

RECEIVERS, *cont'd.*

- Petitions:
 - Applications in pending suit, 17, 793
 - Applications in receivership suit, 17, 805
 - Plea or answer, 17, 826
 - Possession, see infra, Proceedings to obtain and protect possession.*
 - Prayer for relief, 17, 715
 - Proceedings against the estate and receiver (*see infra, Leave of court*):
 - Applications in pending suit, 17, 791
 - Affidavits to claims, 17, 795
 - Cross-bill, 17, 793
 - Early practice, 17, 791
 - Employee of receiver as parties, 17, 797
 - Form of application, 17, 793
 - Intervention, 17, 793
 - Modern practice, 17, 792
 - Motion, 17, 794
 - Notice of application, 17, 798
 - Parties to application, 17, 796
 - Petition, 17, 793
 - Petition for payment of claims, 17, 796
 - Petition to open order barring claims, 17, 795
 - Receiver and persons represented by him as parties, 17, 796
 - Trial by jury, 17, 792
 - Various methods of procedure, 17, 792
- Judgments against receivers, 17, 804
- Leave of court, see infra, Leave of court.*
- Owner and receiver as defendants in original suits, 17, 798
 - Actions involving title, 17, 803
 - Admissions of owner, 17, 803
 - Claims against owner affecting the estate, 17, 800
 - Railroad receivers, 17, 800
 - Suing owner, 17, 800
 - Suing receiver, 17, 801
 - Their relations generally, 17, 798
 - When not a question of parties, 17, 799
 - When receiver is only a proper party, 17, 802
- Proceedings in name of receiver, 17, 805*
 - Actions against receivers, 17, 828

RECEIVERS, *cont'd.*

Proceedings against the estate and receiver, *cont'd.*

Proceedings in name of receiver, *cont'd.*

Actions in name of or by owner, 17, 821

Alleging capacity to sue, 17, 828

Answer, 17, 830

Applications in receivership suit, 17, 805

Authority to sue contained in order of appointment, 17, 812

Bill, 17, 825

Character of remedy, 17, 824

Declaration and complaint, 17, 825

Defense of receiver, 17, 828

Demurrers, 17, 830

Equitable and legal actions by receivers, 17, 817

Exceptions to rule as to independent actions, 17, 808

Fraudulent conveyances, 17, 816

Independent actions, 17, 807

Joinder of parties, 17, 823

Leave to sue, 17, 818

Plea or answer, 17, 826

Receiver as representative of creditors, 17, 814

Receiver regarded as assignee, 17, 820

Receiver suing in his own name, 17, 823

Remedy, 17, 824

Set-off, 17, 827

Statutes authorizing receiver to sue, 17, 809

Statutory and other changes as to independent actions, 17, 809

Suits in foreign jurisdictions, 17, 817

When receiver is assignee or trustee, 17, 818

Proceedings to obtain and protect possession, 17, 771

Against parties, 17, 771

Against strangers, 17, 772

General rule, 17, 772

Inability to bring in stranger, 17, 774

Injunction to protect possession, 17, 774

Persons contracting with receiver, 17, 773

Receivers and assignees in possession, 17, 773

RECEIVERS, *cont'd.*

Prohibition:

Appointing receiver improperly, 16, 1112

Appointment of receiver, 17, 859

Property, see infra. Control and disposition of estate.

Provisional character, 17, 682

Quieting title, 17, 357

Quo warranto:

Quo warranto proceedings against corporations, 17, 695

Records:

Exceptions and objections, 17, 870

Jurisdictional facts, 17, 870

References, 17, 758

Accounts of receivers, 17, 837

Rehearing, 17, 755

Remedy at law:

Application for receiver, 17, 728

Removal and discharge, 17, 847

Appeals, see infra. Appeals.

Application therefor, 17, 848

By whom application made, 17, 849

Discharge or removal in vacation, 17, 851

How application made, 17, 849

In general, 17, 847

In what court application made, 17, 848

Notice of application, 17, 850

Order void, 17, 849

Removal to federal court, 17, 849

When discharge a matter of right, 17, 747

Removal of causes, see REMOVAL OF CAUSES.

Application for discharge, 17, 849

Sales by receivers, 17, 832

Appeals, 17, 881

Collateral and direct attack on, 17, 834

In general, 17, 832

Notice before ordering or confirming, 17, 833

Scope of article, 17, 681

Security for costs, 17, 846; 19, 351

Selection of receiver, 17, 758

Appointment by court, 17, 758

Confirmation of master's report, 17, 759

Exceptions to master's report, 17, 759

General rules, 17, 758

Recommending persons for receiver, 17, 759

Reference to master, 17, 758

Sequestration (*see* SEQUESTRATION):

Analogy, 17, 683

RECEIVERS, *cont'd.*

- Service of process, 17, 770
 - Actions against federal receivers, 17, 771
 - Actions against receivers generally, 17, 770
 - Corporations, 17, 722
 - Foreign corporations, 19, 675
 - Railroad in hands of receiver, 19, 692
 - Service by notice, 17, 722
- Settlement of decedents' estates:
 - Averments in bill for appointment of receiver, 19, 1015
- Sheriffs' sales:
 - Appointment of receiver, 20, 186
- Specific performance, 20, 475
- Stock and stockholders:
 - Assessment calls in corporation receiverships, 17, 831
 - By whom application for receiver made, 17, 704
 - Enforcement of stockholders' liability, 20, 754
- Substitution of parties, 20, 1036
- Corporations:
 - On appointment of receiver, 20, 1041
 - On discharge of receiver, 20, 1042
- New receiver, 20, 1039
- Suits, see infra*, Pending suit; What constitutes a pending suit.
- Supersedeas and stay of proceedings, 17, 858
 - Decree involving property in hands of receiver, 17, 882
 - Effect of appeal, 17, 872
- Supplementary proceedings (see SUPPLEMENTARY PROCEEDINGS), 17, 695
- Surplusage, irrelevant or redundant matter, 21, 295
- Surrogate, 17, 685
 - Averment in application for receiver, 17, 731
- Time of application, see infra*, Application.
- Title:
 - Allegation of title in application for receiver, 17, 726
- Trusts and trustees, 22, 151
 - Accounting, 22, 106
- United States courts, 17, 766
 - Actions against federal receivers, 17, 771
 - Ancillary jurisdiction, 17, 768
 - Ancillary receiverships, 17, 769
 - Application for discharge, 17, 849
 - Bankruptcy law, 17, 767
 - Citizenship of parties, 17, 766
 - Control and disposition of estate, 17, 766

RECEIVERS, *cont'd.*

- United States courts, *cont'd.*
 - Independent actions, 17, 769
 - Intervention proceedings, 17, 768
 - Receivers for national banks, 17, 767
 - Vacation, see infra*, Chambers and vacation.
 - Vendor's liens:
 - Appointment of receiver, 22, 737
 - Venue, 17, 696
 - Appointment in vacation, 17, 697
 - In general, 17, 696
 - Verification, 17, 736
 - What constitutes a pending suit, 17, 687
 - Application by corporation debtor, 17, 688
 - Application of debtor, 17, 687
 - At law, 17, 694
 - Attachment, 17, 694
 - General rule, 17, 694
 - Quo warranto proceedings against corporations, 17, 695
 - Statutes, 17, 694
 - Supplementary proceedings, 17, 695
 - General requisites, 17, 687
 - In equity, 17, 688
 - Bill for injunction, 17, 693
 - Foreclosure suits, 17, 692
 - Miscellaneous suits, 17, 693
 - Statutory equities, 17, 688
 - Suits against corporations, 17, 689
 - Suits between partners for accounting after dissolution, 17, 692
 - Suits between partners for dissolution, 17, 691
 - Suits for dissolution of corporation, 17, 689
 - Suits in general, 17, 688
 - Wabash railroad cases, 17, 688
 - Winding up corporations:
 - Appointment of receiver for insolvent corporation, 22, 1237
 - Effect of appointment of receiver, 22, 1226
 - Equitable jurisdiction to appoint receiver and wind up corporation after dissolution, 22, 1240
 - Receiver as party defendant, 22, 1259
 - Statutes authorizing appointment of receiver, 22, 1237, 1239
- RECEIVING STOLEN GOODS, 17,**
- 887
 - Burglary:
 - Joinder, 3, 796
 - Conflict of law, 17, 888
 - Definiteness and certainty, 17, 890

RECEIVING STOLEN GOODS, con.

Description of property, 17, 889
Embezzlement:

Charge the facts constituting the embezzlement, 7, 444
Indictment for receiving embezzled property, 7, 422
Venue where indictment is for receiving embezzled property, 7, 446

Guilty knowledge, 17, 895

Indictment, 17, 888

Definiteness and certainty, 17, 890
Description of money, 17, 890
Description of property, 17, 889
Fact of theft, 17, 893
Guilty knowledge, 17, 895
In general, 17, 888
Intent, 17, 895
Joinder of counts and offenses, 17, 896
Name of defendant, 17, 889
Name of thief, 17, 893
Ownership, 17, 891
Prior conviction of thief, 17, 894
Receipt of property, 17, 889
That property has been stolen, 17, 893
Time and place, 17, 896

Instructions, 17, 897

Intent, 17, 895

Joinder of offenses, 17, 896

Judgments, 17, 898

Names:

Name of defendant, 17, 889
Name of thief or person from whom received, 17, 893

Ownership, 17, 891

Ownership laid in possessor, 17, 892

Ownership of the property must be alleged, 17, 891

Ownership unknown, 17, 891

Property belonging to corporation or partnership, 17, 892

Single count charging ownership in different persons, 17, 892

Place, 17, 896

Prior conviction of thief, 17, 894

Property stolen in foreign country, 17, 888

Sentences, 17, 898

Time, 17, 896

Venue, 17, 887

Verdict, 17, 898

RECESS, see ADJOURNMENTS.**RECITALS:**

Bills of exceptions:

Certificate, 3, 425

Contracts, 4, 918

RECOGNIZANCE, see APPEAL BONDS AND UNDERTAKINGS; BAIL AND RECOGNIZANCE.

Index Pl. & Pr. — 57

RECONVENTION, see CROSS-BILLS; CROSS COMPLAINTS; SET-OFF, RECOUPMENT, AND COUNTERCLAIM.**RECORDARI, 17, 899**

Appeals, 17, 904

Substitute for appeal, 17, 900

Bond, 17, 903

Forcible entry and detainer, 9, 74

Forma pauperis, 16, 695

General nature and use of writ, 17, 899

Laches, 17, 901

Notice, 17, 902

Order, 17, 903

Petitions, 17, 902

Proceedings subsequent to writ, 17, 903

RECORDING ACTS (see FILING PLEADINGS AND PAPERS):

Answers in equity pleading, 1, 891

Eminent domain:

Company's certificate of incorporation, 7, 473

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Indorsing papers, see INDORSING PAPERS.

RECORDS, 17, 905

See CERTIORARI; SPECIAL INTERROGATORIES.

Abstract of record, 2, 313

Adoption, 10, 848

Affidavit:

Affidavit as part of record, 1, 336

Affidavit to impeach record, 2, 300

Amendment, correction, and entry *nunc pro tunc*, 17, 914

Appeal, 17, 916

Appeal from determination, 17, 928

Application, 17, 925

Application in original cause, 17, 928

Bill in equity, 17, 916

Conditions, 17, 927

Determination of application, 17, 926

Discretion of court, 17, 926

During term, 17, 915

Effect of amendment, correction, or entry *nunc pro tunc*, 17, 933

Error of form, 17, 915

Formal pleadings, 17, 925

Hearing, 17, 926

Imposition of terms, 17, 927

Intervening rights, 17, 933

Judge's docket or minutes, 17, 931

Judge's personal knowledge, 17, 930

Manner of making amendment or correction, 17, 932

RECORDS, *cont'd.*

- Amendment, correction, and entry
nunc pro tunc, *cont'd.*
 - Manner of making application, 17, 914
 - Matter *dehors* the record, 17, 931
 - Matter of record, 17, 924, 928
 - Matters determinable, 17, 927
 - Motion, 17, 914
 - New entry, 17, 932
 - Notice of application, 17, 923
 - Amendment by matter of record, 17, 924
 - Appearance as waiver of notice, 17, 925
 - During term, 17, 924
 - Form, 17, 924
 - Necessity of notice, 17, 923
 - Requisites of notice, 17, 925
 - To whom notice given, 17, 925
 - Parol evidence, 17, 929
 - Parties to application, 17, 926
 - Petition, 17, 914
 - Relation back of *nunc pro tunc* entry, 17, 934
 - Requisites of application, 17, 925
 - Saving clause in order of amendment, 17, 934
 - Second application, 17, 928
 - Sources of amendment or correction, 17, 928
 - Time of making application, 17, 918
 - After affirmance on appeal, 17, 922
 - After change of venue, 17, 922
 - After issuance of execution, 17, 922
 - At subsequent term, 17, 919
 - Common-law rule, 17, 919
 - Consent, 17, 921
 - During the term, 17, 915, 918
 - Modern rule, 17, 920
 - Pending appeal, 17, 922
 - Statutory rule, 17, 919
 - Vacation, 17, 921
 - To whom application made, 17, 917
- Amendments, 2, 300
 - Appeals, 2, 331
 - Arraignment and plea, 2, 792
 - Criminal cases, 17, 914
 - Lost papers, 2, 303
 - Of original record, 2, 301
 - Of transcript, 2, 304
 - Power to amend or correct, 17, 909
 - Stipulation, 2, 304
 - Time of amendment, 2, 303
 - While appeal is pending, 2, 303

RECORDS, *cont'd.*

- Answers in code pleading:
 - Presumption of knowledge of contents of records, 1, 813
- Appeal bonds and undertakings:
 - Record of appeal, 1, 1020
- Appeals:
 - Abstract of record, 2, 313
 - Affidavit to impeach record, 2, 300
 - Amendment, correction, and entry *nunc pro tunc*, 17, 916
 - Amendment of record, 2, 331
 - Amendment pending appeal, 17, 922
 - As to transcript on appeals*, see APPEALS.
 - Certificate as to fulness, 2, 440
 - Contradiction of record, 2, 299
 - Dismissal of appeal, 2, 337
 - Error, 2, 203
 - Error must appear by the record, 2, 508
 - Error not appearing on record, 2, 424
 - Error not shown, 2, 294
 - Evidence *dehors* the record, 2, 298
 - Impeachment, 2, 296, 299
 - Impeachment of record, 2, 296
 - Judgment by default, 2, 456
 - Jurisdiction, 2, 438
 - Names of party, 2, 203
 - Notice of appeal, 2, 190, 230
 - Omission of evidence, 2, 441
 - Omissions in record, 2, 425
 - Order granting appeal, 2, 205
 - Parties, 2, 151
 - Presence of prisoner, 2, 498
 - Presumption, 2, 425
 - Presumption as to truth of record, 2, 434
 - Presumption of inclusiveness, 2, 436
 - Rehearing, 2, 387
 - Reversible errors, 2, 500
 - Scope of review, 2, 363
 - Service of process, 2, 453
 - Time of taking appeal, 2, 257
 - Transcript on appeals, 2, 266
 - What the records must show, 2, 203
- Appearances:
 - Appearance presumed from recitals in the record, 2, 506
 - Contradicting the record, 2, 600, 684
 - Plural form used in the record, 2, 599
- Apprenticeship, 10, 851
- Arraignment and plea*, see ARRAIGNMENT AND PLEA.

RECORDS, *cont'd.*

- Arrest of judgment:
 - Defects in record, 2, 794
 - Matters *dehors* the record, 2, 812
 - Record showing that defendant should be released, 2, 797
- Assignment of errors, 2, 965
 - Assignment attached to the record, 2, 968
 - Confined to the record, 2, 965
 - Contradicting record, 2, 967
 - Founded on exceptions, 2, 965
 - Relation to the record, 2, 965
 - Statement of facts improper, 2, 967
- Attachment:
 - Affidavit as part of record, 3, 5
- Bills in equity:
 - Amendment and correction, 17, 916
- Bills of exceptions (see **BILLS OF EXCEPTIONS**):
 - Conflict in record, 3, 514
 - Constituting part of the record, 3, 487
 - Facts shown by the record, 3, 416
 - Omissions of bill, 3, 511
 - Reference to documents, 3, 435
 - Time when bill was settled, 3, 474
 - Date of presentation, 3, 476
 - Order extending time, 3, 475
 - Presumption as to signature, 3, 475
 - Showing time, 3, 474
 - Waiver of time, 3, 476
 - Where bill is not required, 3, 404
- Case made on appeal:
 - Becoming part of record 3, 905
 - Conflict with record, 3, 909
 - Incomplete record, 3, 887
- Certified cases:
 - Certifying whole record, 3, 936
 - Sending up whole record, 3, 941
- Certiorari*, see **CERTIORARI**.
- Chambers and vacation:
 - Amendment, 17, 921
 - Correction of the minutes and records, 4, 339
- Change of venue (see **CHANGE OF VENUE**):
 - Amendment, correction, and entry *nunc pro tunc*, 17, 922
- Clerical errors, 17, 915
 - Bill in equity, 17, 916
- Consent:
 - Amendment, 17, 921
- Continuances, 4, 906
- Control of court over record, 17, 909
 - Character of control, 17, 911
 - Clerical errors, 17, 913
 - Courts possessing control, 17, 912

RECORDS, *cont'd.*

- Control of court over record, *cont'd.*
 - Criminal cases, 17, 914
 - Extent of control, 17, 912
 - In general, 17, 909
 - Inherent power, 17, 911
 - Judicial action, 17, 912
 - Power to amend or correct, 17, 909
 - Restoring defaced or lost records, 17, 914
- Correction, see *infra*, **AMENDMENTS**.
- Courts:
 - Control of court over record, see *infra*, **CONTROL OF COURT OVER RECORD**.
- Criminal cases, see **ARRAIGNMENT AND PLEA**.
- Criminal procedure, see **SENTENCE**.
- Decrees:
 - Enrolment, 5, 1035
- Defaults:
 - Pleading of defendant undisposed of, 6, 94
- Definiteness and certainty in pleadings, 6, 265
- Definition, 17, 907
- Demurrers*, see **DEMURRERS**.
- Dismissal, discontinuance, and nonsuit, 6, 1004
- Docket entries, 17, 907
 - Amendment by reference to judge's docket or minutes, 17, 931
 - As basis for record, 17, 907
 - Relation of docket entries to record, 17, 908
- Eminent domain:
 - Appeal, 7, 645
 - Notice, 7, 497
- Error, writ of:
 - Alleging diminution of the record, 7, 893
- Executions:
 - Amendment after issuance of execution, 17, 922
- Falsifying records*, see **FALSIFYING RECORDS**.
- Filing pleadings and papers*, see **FILING PLEADINGS AND PAPERS**.
- Forcible entry and detainer (see **FORCIBLE ENTRY AND DETAINER**):
 - Summary proceedings, 9, 33
- Former adjudication:
 - Setting out the record, 9, 625
- Former conviction or acquittal, 9, 635
- Garnishment*, see **GARNISHMENT**.
- Grand juries*, see **GRAND JURIES**.
- Guardians*, see **GUARDIANS**.
- Indictments:
 - Caption, 10, 420
 - Facts appearing in any part of record, 10, 421

RECORDS, cont'd.

Indorsing papers, see INDORSING PAPERS.

Infants, see INFANTS.

Insane persons:

Notice of proceedings, 10, 1189

Issues to the jury:

Production of record, 11, 685

Judges (see *infra*, Minutes):

Amendment by personal knowledge of judge, 17, 930

Amendment by reference to judge's docket or minutes, 17, 931

Justices of the peace, 12, 749

Adjournments, 12, 752

Amendments, 12, 749

Amount claimed, 12, 750

Bill of exceptions to preserve rulings, 12, 753

Directory nature of statutes, 12, 752

Evidence, 12, 754

Formality, 12, 749

In general, 12, 749

Jurisdiction, 12, 754

Process, 12, 751

Style and nature of action, 12, 750

Time of appearance, 12, 751

What entries should be made, 12, 750

Lost records, see LOST INSTRUMENTS AND RECORDS.

Making up record, 17, 907

Common law, 17, 907

Docket entries, 17, 907

Manner of making, 17, 907

Minutes, 17, 907

Modern practice, 17, 907

Relation of docket entries to record, 17, 908

Use of third person and present tense, 17, 909

Mandamus, see MANDAMUS.

Mills and milldams, see MILLS AND MILLDAMS.

Minutes (see MINUTES):

Amendment by reference to judge's minutes, 17, 931

As basis for record, 17, 907

Judge's minutes, 17, 908

Relation to record, 17, 908

Motions:

Amendment, correction, and entry *nunc pro tunc*, 17, 914

Naturalization, see NATURALIZATION.

New trial, see NEW TRIAL.

Notice of application, see *infra*,

Amendment, correction, and entry *nunc pro tunc*.

RECORDS, cont'd.

Nul tiel record (see *infra*, Plea of *nul tiel record*).

Accord and satisfaction, 1, 81

Actions on judgments, 11, 1149

Conclusion by verification or to the country, 11, 1154

Courts not of record, 11, 1150

Courts of record, 11, 1149

Defenses available under plea, 11, 1150

Defenses not available, 11, 1152

Extrinsic evidence, 11, 1152

Foreign judgment, 11, 1150

Judgments of justices, 11, 1150

Pendency of appeal will not sustain plea, 11, 1151

Trial by inspection by the court, 11, 1153

Want of jurisdiction, 11, 1152

What may be shown under the plea, 11, 1150

When proper plea, 11, 1149

Bonds, 3, 665

Debt, 5, 925

Former conviction or acquittal, 9, 637

Notice or brief statement of defense, 14, 1085

Payment, 16, 172

Plea of payment and *nul tiel record*, 19, 173

Replevin, 18, 634

Scire facias, 19, 285

Statutes, 20, 598

Nunc pro tunc, see *infra*, Amendment, correction, and entry *nunc pro tunc*.

Official bonds:

What record must show, 15, 177

Exception to general rule, 15, 178

Jurisdictional facts, 15, 177

Notice of motion, 15, 177

Notice sets out every necessary fact, 15, 179

Ordinances, 15, 437

Defects of record, 15, 438

Enumeration of matters which must appear, 15, 438

Exceptions, 15, 438

General requisites, 15, 437

What need not appear, 15, 438

Parol evidence, 17, 929

Appeals, 2, 298, 299, 300

Parties to record, 15, 464

Payment (see PAYMENT):

Action on records, 16, 201

RECORDS, *cont'd.*

- Penalties and penal actions, 16, 303
- Actions in inferior courts, 16, 303
- In general, 16, 303
- Reference to statutes, 16, 304
- Where the action is local, 16, 304

Petitions:

- Amendment, correction, and entry *nunc pro tunc*, 17, 914

Pleading a record, 17, 935**Plea of *nul tiel* record, 17, 936**

- Certainty, 17, 937
- Conclusion by verification, 17, 938
- Denial of existence of record, 17, 936
- Evidence admissible under plea, 17, 939
- Evidence contradicting the record, 17, 939
- Issues raised by plea, 17, 938
- Judgment on plea, 17, 941
- Misrecital of record, 17, 936
- Notice of special matter, 17, 938
- Production of record, 17, 940
- Record gist of action or defense, 17, 936
- Replication, 17, 938
- Sufficiency and requisites of plea, 17, 937
- Trial of issues raised by plea, 17, 940
- Verification, 17, 938
- When plea proper, 17, 936

Pleas at law:

- Contradiction of record, 16, 566
- Matter of record, 16, 565

Poor and poor laws:

- Appeals, 16, 671

Poor debtor acts, see POOR DEBTOR ACTS.**Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.****Production of documents, 6, 785****Publication, see PUBLICATION.****References, 17, 1081**

- Order of reference, 17, 1011
- Rehearing (see REHEARING), 2, 387
- Removal of causes (see REMOVAL OF CAUSES), 18, 402

Rendition and entry of judgments, see RENDITION AND ENTRY OF JUDGMENTS.**Replications and replies, 17, 938****Review, 18, 1032**

- Conclusiveness of record, 18, 1034
- Exhibits, 18, 1033
- Presentation of complete record, 18, 1032
- Presentation of partial record, 18, 1033

RECORDS, *cont'd.***Scandal and impertinence, see SCANDAL AND IMPERTINENCE.****Scire facias, see SCIRE FACIAS.****Sentences, see SENTENCES.****Sheriffs and constables, 20, 178****Statement of facts on appeal, 20, 579****Stipulations, 20, 639, 643****Striking from record:**

- Scandal and impertinence, see SCANDAL AND IMPERTINENCE.

Striking out, 20, 995**Substitution of parties, 20, 1060****Summary proceedings, see SUMMARY PROCEEDINGS.****Surplusage, irrelevant or redundant matter, see SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER.****Time of making application for amendment, see *infra*, Amendment, correction, and entry *nunc pro tunc*.****Vagrancy, 22, 514****Variance, 22, 617****Verdict:**

- Recordation of verdict, 22, 938

Verification, 17, 938**RECOUPMENT, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.****RECRIMINATION:**

- Divorce, 7, 90
- Adultery, 7, 91
- Cruelty, 7, 91
- Desertion, 7, 91
- How alleged, 7, 90
- In general, 7, 90

RECUSATION, see JUDGES; PROHIBITION.**REDEMPTION, 17, 944****Accounts and accounting:**

- Bill for redemption and accounting, 17, 964

Amendment, 17, 969**Assignees, 17, 949, 961****Bill, petition, or complaint, 17, 962****Amendment of bill, 17, 969****Cross-bill, 17, 969****In general, 17, 962****Interest, 17, 968****Joinder, 17, 963****Multifariousness, 17, 963****Prayer, 17, 969****Redemption from tax sales, 17, 968****Specific allegations, 17, 965****Tender, 17, 965****Usury, 17, 968****Verification, 17, 969****Complaint, see *infra*, Bill, petition, or complaint.****Costs, 17, 975****Costs discretionary, 17, 977****Defendant at fault, 17, 976**

REDEMPTION, *cont'd.***Costs, *cont'd.***

Exceptions to general rule, 17, 976

General rule, 17, 975

Junior incumbrancers, 17, 977

Cross-bill, 17, 969

Curia, 17, 947

Decree, 17, 971

Alternative order of sale, 17, 973

Conclusiveness of decree, 17, 974

Contents, 17, 971

Dismissal equivalent to foreclosure, 17, 975

Effect of decree, 17, 974

Enlarging time, 17, 972

Fixing time for redemption, 17, 971

Provisions, 17, 971, 974

Provisions as to effect of non-redemption, 17, 972

Demand (see *infra*, Tender), 17, 946

Demurrers, 17, 970

Devisees, 17, 949, 960

Dismissal, discontinuance, and non-suit:

Effect of dismissal, 17, 975

Ejectment, 17, 945

Equitable mortgage, 17, 946

Equitable owner, 17, 956

Equitable proceeding, 17, 944, 947

Estoppel, 17, 955

Execution sales, see *infra*, Judicial sales.

Executors and administrators, 17, 950, 960

Foreclosure of mortgages (see FORECLOSURE OF MORTGAGES; and see *infra*, Parties), 9, 204: 17, 945

Provisions for redemption in decree, 9, 408

Examples, 9, 409, 411

Necessity of redemption clause, 9, 408

Omission rectified without reversal, 9, 410

Time of redemption, 9, 409

Reasonable time, 9, 204

Hearing, 17, 970

Heirs, 17, 949, 960

Husband and wife 17, 953

Interest, see *infra*, Parties.

Interest of complainant, 17, 968

Who may redeem, 17, 968

Joinder and multifariousness, 17, 963

Bill to redeem and for dower, 17, 963

Miscellaneous matters, 17, 964

Redemption and accounting, 17, 964

Redemption and cancellation, 17, 639

REDEMPTION, *cont'd.*

Joinder and multifariousness, *cont'd.*

Redemption and declaration of mortgage, 17, 964

Redemption and foreclosure, 17, 964

Redemption and partition, 17, 963

Joinder of parties:

Joinder of complainants, 17, 957

Junior mortgagees, 17, 957

Who may be joined, 17, 957

Who may not be joined, 17, 958

Joinder of defendants, 17, 962

Necessary and proper defendants, 17, 958

Joint tenants and tenants in common, 17, 954

Judgment creditors, 17, 951

Judicial sales, 17, 955

Purchaser at execution sale, 17, 956

Junior incumbrancers, 17, 950, 959, 977

Jurisdiction, 17, 946

Married women, 17, 953

Multifariousness, see *infra*, Joinder and multifariousness.

Partial redemption, 17, 949

Parties, 17, 947

Defendants, 17, 958

Interest, 17, 947

Joinder of complainants, 17, 957

Joinder of defendants, 17, 962

Miscellaneous parties, 17, 956

Necessary and proper defendants, 17, 958

Assignees of mortgage, 17, 961

Devisees, 17, 960

Heirs, 17, 960

In general, 17, 958

Intermediate owners, 17, 961

Junior incumbrancers, 17, 959

Legal representatives, 17, 960

Mortgagees, 17, 959

Trustees and beneficiaries, 17, 961

Unnecessary defendants, 17, 961

Plaintiffs, 17, 947

Unnecessary defendants, 17, 961

Volunteer, 17, 955

Who may maintain suit in general, 17, 947

Only those interested in premises, 17, 947

Only those who have no legal remedy, 17, 948

REDEMPTION, *cont'd.***Parties, *cont'd.***

Who may maintain suit in redemption from execution sales, 17, 955

Who may maintain suit in redemption from mortgage foreclosure, 17, 948

Assignees, 17, 949

Attaching creditors, 17, 952

Creditors, 17, 950, 953

Devisees, 17, 949

Dowress, 17, 953

Equitable mortgage, 17, 948

General creditors, 17, 953

Grantees, 17, 949

Heirs, 17, 949

Judgment creditors, 17, 951

Junior incumbrancers, 17, 950

Legal representatives, 17, 950

Married women, 17, 953

Mortgagees, 17, 950

Mortgagor, 17, 948

Part owner of equity of redemption, 17, 948

Tenants for life and for years, 17, 955

Tenants in common, 17, 954

Trustees and beneficiaries, 17, 950

Who may maintain suit in redemption from tax sales, 17, 955

Who may not maintain suit, 17, 955

Petition, see *infra*, Bill, petition, or complaint.

Pledges, 16, 645; 17, 946

Prayer for relief, 17, 969

Proceeding or suit, 17, 944

Accrual of right of redemption, 17, 946

Definition, 17, 944

Effect of legislation, 17, 945

Equitable mortgage, 17, 946

Equitable proceeding, 17, 944

Foreclosure of mortgages, 17, 945

Nature, 17, 944

Pledge, 17, 946

Tax and execution sales, 17, 946

To what applicable, 17, 945

References, 17, 970

Remedy at law, 17, 948, 954

Suit, 17, 944

Tax sales, 17, 955

Bill to redeem, 17, 968

Tender, 17, 965

Averments in bill, 17, 965

Denial of right, 17, 967

REDEMPTION, *cont'd.***Tender, *cont'd.***

Exceptions to general rule, 17, 966

General rule, 17, 965

Qualifications, 17, 966

Sufficiency of allegation, 17, 967

Trial, 17, 970

Trusts and trustees, 17, 950, 961

Usury, 17, 968

Venue, 17, 946

Verification, 17, 969

Volunteer, 17, 955

REDUNDANCY, see SCANDAL AND IMPERTINENCE.

RE-EXECUTION, see LOST INSTRUMENTS AND RECORDS.

REFERENCES, 17, 978

See ARBITRATION AND AWARD.

Accounts and accounting (see ACCOUNTS AND ACCOUNTING), 17, 983

Compulsory reference, 17, 996

Account must be immediate object of action, 17, 998

Action for professional services, 17, 1000

After settlement of accounts, 17, 997

Consideration of pleadings, 17, 1002

Counterclaim, 17, 1001

Denial of existence of contract, 17, 1004

Difficult questions of law, 17, 1001

Discretion of court, 17, 1000

Illustrations as to requisite length of account, 17, 999

Items of account must be put in issue, 17, 1003

Long account, 17, 997

Necessity to first settle other issues, 17, 1003

Other issues not involving long account, 17, 1003

Statutory provisions, 17, 996

What are difficult questions of law, 17, 1001

What constitutes account, 17, 997

Consideration of pleadings, 17, 1002

Counterclaim, 17, 1001

Difficult questions of law, 17, 1001

Discretion of court, 17, 1000

Long account, 17, 997

Reporting items of account, 17, 1037

Statutory provisions, 17, 996

What constitutes account, 17, 997

Actions at law, 17, 983

REFERENCES, *cont'd.*

- Actions *ex delicto*, 17, 1004
 - Compulsory reference, 17, 1004
 - Fraud, 17, 1004
- Additional allowances of costs, 1, 218
- Adjournments, 1, 247; 17, 1027
 - Arbitrators, 1, 247
 - Grounds for adjournment, 17, 1027
 - Imposition of terms, 17, 1027
 - In general, 17, 1027
 - Supervision by the court of referee's action, 1, 248
- Admiralty, 1, 275
- Admission of evidence, *see infra*, Evidence.
- Affidavits, 17, 1029
 - Affidavits on application for reference, 17, 1007
- Amendments, 1, 513
 - After report of referee, 1, 603
 - Amendment to conform to proof, 1, 581
 - Code provisions, 1, 513
 - Concurrent power, 1, 514
 - Exceptions, 17, 1053
 - Extent of power, 1, 513
 - In respect to parties, 1, 514
 - New cause of action, 1, 514
 - New defense, 1, 514
 - Order of reference, 17, 1012
 - Powers of referees, 17, 1018
 - Power to impose terms, 1, 515
 - Power wholly statutory, 1, 513
 - Report, 17, 1042
 - Review of referee's ruling, 1, 515
 - To conform to proof, 1, 515
- Appeals, 17, 1076
 - Decisions affecting reference, 2, 139
 - Confirmation, 2, 141
 - Decisions affecting award, 2, 142
 - Recommittal, 2, 141
 - Whether appeal lies, 2, 139
- Discretion of court, 2, 415
- Exceptions to referee's report, 17, 1078
- Exceptions to rulings of lower court, 17, 1078
- Findings, 2, 489
- Findings based on conflicting evidence, 17, 1083
- Findings not supported by evidence, 17, 1085
- In general, 17, 1076
- Interlocutory orders, 17, 1076
- Order confirming report, 17, 1077
- Presumption, 2, 497
- Presumption in favor of ruling, filing, and other acts of referee, 2, 497
- Record on appeal, 17, 1081

REFERENCES, *cont'd.*

- Appeals, *cont'd.*
 - Referee's report, 2, 401
 - Review of chancellor's findings of fact, 17, 1084
 - Review of court's rulings upon exceptions, 17, 1077
 - Review of evidence, 17, 1082
- Appearance, 2, 656
 - Notice, *see infra*, Notice.
 - Right of parties to attend, 17, 1022
- At what stage reference ordered, 17, 1005
 - After plea in bar, 17, 1006
 - Before filing declaration, 17, 1005
 - To master, 17, 1005
 - To referee, 17, 1005
- Bankruptcy, 22, 357, 369
 - Appointment, jurisdiction, and duties of referees, 22, 369
 - Petition for discharge, 22, 385
 - Review of referee's rulings, 22, 369
- Bills of exceptions, 3, 382
 - Signature, 3, 453
- Certiorari, 4, 284
- Chambers and vacation, 17, 1026
- Compensation of masters and referees, 17, 1086
 - Indefinite stipulation, 17, 1088
 - In general, 17, 1086
 - Payment and collection of fees, 17, 1088
 - Reasonable, 17, 1086
 - Statutory provisions, 17, 1086
 - Stenographer's fees, 17, 1087
 - Stipulation as to fees, 17, 1087
- Compulsory reference, *see infra*, When compulsory reference to referee proper.
- Consent, *see infra*, Voluntary reference to referee.
- Constitutionality of statutes, 17, 994
 - Actions at law, 17, 994
 - Actions of equitable nature, 17, 994
 - Reference to take evidence only, 17, 996
- Contempt, 4, 797
- Continuances, 4, 825
- Copyright, 5, 23
- Costs, 5, 238; 17, 1089
 - Discretion of referee, 17, 1090
 - Power of referee, 5, 116
 - Prevailing party, 5, 123
 - Statutory provisions, 17, 1089
- Courts:
 - Application to court for directions, 17, 1031
 - Court's control over masters and referees, 17, 1030

REFERENCES, *cont'd.*

- Death pending reference, 17, 1042
 - Death of master or referee, 17, 1043
 - Death of party, 17, 1042
 - Death of plaintiff, 5, 800
- Decree or judgment after reference, 17, 1068
 - Additional findings, 17, 1069
 - At law, 17, 1071
 - Confirmation in equity, 17, 1068, 1069
 - Confirmation necessary, 17, 1068
 - Conformity of judgment to report, 17, 1075
 - In equity, 17, 1068
 - Judgment upon report as of course, 17, 1074
 - Modification of report, 17, 1074
 - Motion to correct judgment, 17, 1076
 - Overruling exceptions, 17, 1069, 1071
 - Recommittal of report, 17, 1069
 - Sustaining exceptions, 17, 1069
- Definiteness and certainty in pleadings:
 - Objections to and review of referee's proceedings, 17, 1066
- Definitions, 17, 982
- Difficult questions of law, 17, 1001
- Discretion of court to order reference, 17, 986
 - To master, 17, 986
 - To referee, 17, 986
- Discretion of referees, 17, 1018
- Dismissal, discontinuance, and non-suit:
 - After submission to or awarded by referee, 6, 845
 - Before referee, 6, 833
 - Powers of referees, 17, 1018
- Divorce, 7, 115
- Error, writ of, 7, 836
- Evidence, 17, 1028
 - Admission of evidence in general, 17, 1028
 - Affidavits, 17, 1029
 - Appeals*, see *infra*, *Appeals*.
 - Compelling witnesses to attend and testify, 17, 1027
 - Examination of written interrogatories, 17, 1029
 - Incompetent and irrelevant evidence, 17, 1030
 - Necessity to report evidence, 17, 1036
 - Objections to and review of master's proceedings*, see *infra*, *Objections to and review of master's proceedings*.
 - Report, 17, 1036

REFERENCES, *cont'd.*

- Evidence, *cont'd.*
 - Review of evidence (see *infra*, *Objections to and review of referee's proceedings*), 17, 1082
 - Rules of evidence, 17, 1028
- Exceptions and objections, 8, 283
 - Before whom exceptions taken, 8, 286
 - Conclusions of law, 8, 285
 - Exceptions to referee's report, 17, 1078
 - Exceptions to rule, 8, 285
 - Exceptions to rulings of lower court, 17, 1078
 - Exceptions to rulings on exceptions to report, 8, 287
 - Findings of fact, 8, 285
 - For reference, 8, 283
 - Necessity for exceptions, 8, 283
 - Objection for the first time on appeal, 8, 283
 - Objections to and review of referee's proceedings*, see *infra*, *Objections to and review of referee's proceedings*.
 - Overruling exceptions to report, 17, 1069, 1071
 - To report, 8, 283
 - What exceptions must show, 8, 286
- Fees*, see *infra*, *Compensation of masters and referees*.
- Filing report, 17, 1041
- Findings of court*, see *FINDINGS OF COURT*.
- Foreclosure of mortgages, 9, 398
- Fraud, 17, 1004
- Infants:
 - Sale of infant's real estate, 10, 774
- Joinder of counts and causes, 17, 993
- Judgments*, see *infra*, *Decree or judgment after reference*.
- Jurisdiction:
 - Jurisdiction to appoint master, 17, 983
 - United States courts, 17, 984
- Jury:
 - Waiver of right to jury trial, 12, 263, 264
- Limitations, 13, 193
- Long account, 17, 997
- Lost instruments and records, 13, 355
- Mandamus, 13, 553, 804
- Master a ministerial officer, 17, 982
- Master in chancery, 17, 982
 - At what stage reference ordered, 17, 1005
- Compensation*, see *infra*, *Compensation of masters and referees*.

REFERENCES, *cont'd.*

- Master in chancery, *cont'd.*
 - Compliance with order of reference, 17, 1019
 - Court's control over, 17, 1030
 - Death, 17, 1043
 - Discretion of court to order reference, 17, 986
 - Jurisdiction to appoint, 17, 983
 - Limitations imposed by the pleadings, 17, 1021
 - Oath, see *infra*, Oath of master or referee.
 - Objections to and review of master's proceedings, see *infra*, Objections to and review of master's proceedings.
 - Powers of referees, see *infra*, Powers of referees.
 - Purposes for which master may be appointed, 17, 984
 - Qualifications, 17, 1012
 - Attorney of one of the parties, 17, 1013
 - Examples, 17, 1013, 1014
 - In general, 17, 1012
 - Report, see *infra*, Report.
 - Statements of claims filed with master, 17, 1024
- Motions, 14, 169
- Notice, 17, 1022
 - By whom service made, 17, 1024
 - Disregard of notice, 17, 1024
 - Filing report, 17, 1042
 - Notice before ordering reference, 17, 1006
 - Notice where cause is recommit-
ted, 17, 1023
 - Requisites of notice, 17, 1024
 - Right of parties to notice, 17,
1022
 - Waiver of notice, 17, 1024
- Oath of master or referee, 17, 1015
 - In general, 17, 1015
 - Waiver of oath, 17, 1016
 - Whether oath must appear of
record, 17, 1015
- Objections to and review of master's
proceedings, 17, 1043
 - Exceptions after filing report, 17,
1046
 - Amendment of exceptions,
17, 1053
 - Attack upon decree appoint-
ing master, 17, 1050
 - Erroneous legal conclusions,
17, 1048
 - Errors apparent on face of
report, 17, 1048
 - Errors in reception of evi-
dence, 17, 1050
 - Exceptions must point out
errors, 17, 1052

REFERENCES, *cont'd.*

- Objections to and review of master's
proceedings, *cont'd.*
 - Exceptions after filing report,
cont'd.
 - Form and requisites of ex-
ceptions, 17, 1052
 - Grounds of exceptions, 17,
1049
 - In general, 17, 1046
 - Necessity for exceptions, 17,
1047
 - Right to except, 17, 1046
 - Setting down exceptions, 17,
1054
 - Time of filing exceptions, 17,
1051
- Hearing additional evidence, 17,
1057
- Objections before filing report,
17, 1043
 - Duty to reconsider questions
involved in objections, 17,
1044
- Exceptions must correspond
to objections, 17, 1045
- Introduction of new evi-
dence, 17, 1046
- Nature and purpose of ob-
jections, 17, 1043
- Objections waived, 17, 1046
- Overruling objections, 17,
1046
- Sufficiency of objections, 17,
1046
- Time of making objections,
17, 1046
- Review of evidence, 17, 1054
 - Evidence not reported by
master, 17, 1055
 - Findings based on conflict-
ing evidence, 17, 1055
 - Findings not supported by
evidence, 17, 1057
 - Hearing additional evi-
dence, 17, 1057
 - In general, 17, 1054
 - Report treated as verdict of
jury, 17, 1056
 - Right to jury trial, 17, 1055
- Objections to and review of referee's
proceedings, 17, 1057
 - Definiteness and certainty, 17,
1066
 - Extension of time of taking ob-
jections, 17, 1065
 - Misconduct of referee, 17, 1064
 - Necessity to object to report, 17,
1062
 - Objections during trial before
referee, 17, 1057
 - Objections to final conclusions
of law or fact, 17, 1058

REFERENCES, *cont'd.*

- Objections to and review of referee's proceedings, *cont'd.*
 - Objections to findings of fact, 17, 1064
 - Presumptions in favor of report, 17, 1060
 - Proceedings upon filing report of referee, 17, 1059
 - Review of evidence, 17, 1066
 - Findings based on conflicting evidence, 17, 1066
 - Findings not supported by evidence, 17, 1068
 - In general, 17, 1066
 - Voluntary reference, 17, 1068
 - Sufficiency of objections, 17, 1065
 - Time of taking objections, 17, 1065
 - What objections may be taken, 17, 1063
- Order of reference, 17, 1007
 - Actions at law, 17, 1009
 - Amendment of order, 17, 1012
 - By whom made, 17, 1008
 - Compliance with order of reference, 17, 1019
 - Acquiescence in excess of authority, 17, 1021
 - Master in chancery, 17, 1019
 - Presumption as to compliance with order, 17, 1021
 - Referees, 17, 1020
 - Technical exactness not required, 17, 1020
- General essentials of order, 17, 1008
- Necessity for order, 17, 1007
- Preliminary decree or judgment, 17, 1010
- Principles of account, 17, 1010
- Record of order, 17, 1011
- To state an account, 17, 1009
- Partition*, see PARTITION.
- Partnership*, see PARTNERSHIP.
- Patents*, see PATENTS.
- Penalties and penal actions, 16, 236
- Place of hearing, 17, 1025
 - Examples, 17, 1025
 - In general, 17, 1025
- Pleadings.
 - Limitations imposed by the pleadings, 17, 1021
- Pleas in equity:
 - Disposition of plea after reference, 16, 621
 - Pleas referred before argument, 16, 620
- Powers of referees, 17, 1016
 - Amendment of pleadings, 17, 1018
 - Decisions of questions of law and fact, 17, 1017

REFERENCES, *cont'd.*

- Powers of referees, *cont'd.*
 - Discretion of referees, 17, 1018
 - Dismissal and nonsuit, 17, 1018
 - Duty and power to state accounts, 17, 1017
 - In general, 17, 1016
 - Limitations imposed by the pleadings, 17, 1021
 - Number of referees authorized to act, 17, 1018
 - Statutes governing referees, 17, 1017
- Proceedings on the reference, 17, 1016
 - Adjournments*, see *infra*, *Adjournments*.
 - Admission of evidence, 17, 1028
 - Appearance, 17, 1022
 - Application to court for directions, 17, 1031
 - Compliance with order of reference*, see *infra*, *Order of reference*.
 - Court's control over masters and referees, 17, 1030
 - Limitations imposed by the pleadings, 17, 1021
 - Notice to parties, 17, 1022
 - Objections to and review of referee's proceedings*, see *infra*, *Objections to and review of referee's proceedings*.
 - Place of hearing, 17, 1025
 - Powers of referees*, see *infra*, *Powers of referees*.
 - Reopening case for further proof, 17, 1032
 - Statements of claims filed with master, 17, 1024
 - Time of hearing, 17, 1026
- Receivers, 17, 758
 - Accounts of receivers, 17, 837
- Recommittal of report (see *infra*, *Report*):
 - In equity, 17, 1069
 - Failure to state account, 17, 1069
 - In general, 17, 1069
 - New findings of court on evidence reported, 17, 1070
 - Upon filing supplemental bill, 17, 1070
- Records, 17, 1081
 - Order of reference, 17, 1011
- Redemption, 17, 970
- Referee (see *infra*, *Oath of master or referee*; *Voluntary reference to referee*; *When compulsory reference to referee proper*):
 - At what stage reference ordered, 17, 1005
 - Compensation of referees*, see *infra*, *Compensation of masters and referees*.

REFERENCES, *cont'd.*

- Referee, *cont'd.*
 - Compliance with order of reference, 17, 1020
 - Court's control over, 17, 1030
 - Death, 17, 1043
 - Discretion of court to order reference, 17, 986
 - Limitations imposed by the pleadings, 17, 1021
 - Objections to and review of master's proceedings*, see *infra*, *Objections to and review of master's proceedings*.
 - Objections to and review of referee's proceedings*, see *infra*, *Objections to and review of referee's proceedings*.
 - Powers of referees*, see *infra*, *Powers of referees*.
 - Qualifications, 17, 1012
 - Attorney of one of the parties, 17, 1013
 - Examples, 17, 1013, 1014
 - In general, 17, 1012
 - Removal of referees, 17, 1085
 - Report*, see *infra*, *Report*.
 - Removal of referees, 17, 1085
 - Control of court over referees, 17, 1085
 - Grounds for removal, 17, 1085
 - Vacation of order of reference, 17, 1086
 - Reopening case, 17, 1032
 - Further proof, 17, 1032
 - Newly discovered evidence, 17, 1033
 - Report (see *infra*, *Decree or judgment after reference*), 17, 1033
 - Amendment, 17, 1042
 - Arguments and process of reasoning, 17, 1041
 - Conformity of judgment to report, 17, 1075
 - Definitions, 17, 1033
 - Filing report, 17, 1041
 - Findings of fact and law by master, 17, 1038
 - Findings of fact and law by referee, 17, 1038
 - General and separate reports distinguished, 17, 1033
 - General requisites, 17, 1034
 - Items of account, 17, 1037
 - Judgment upon report as of course, 17, 1074
 - Legal conclusions, 17, 1039
 - Modification, 17, 1074
 - Necessity to report evidence upon reference to master, 17, 1036
 - Necessity to report evidence upon reference to referee, 17, 1037

REFERENCES, *cont'd.*

- Report, *cont'd.*
 - Necessity to report evidence when exceptions are filed, 17, 1036
 - Notice of filing report, 17, 1042
 - Objections made before referee, 17, 1041
 - Objections to and review of master's proceedings*, see *infra*, *Objections to and review of master's proceedings*.
 - Objections to and review of referee's proceedings*, see *infra*, *Objections to and review of referee's proceedings*.
 - Recommittal of report:
 - At law, 17, 1071
 - Discretion of court, 17, 1071
 - Hearing additional evidence, 17, 1073
 - Proceedings upon recommitment, 17, 1073
 - Report incomplete, 17, 1071
 - When recommitment proper, 17, 1071
 - Separate and special findings, 17, 1039
 - Separate report proper, 17, 1033
 - Sufficiency to sustain judgment, 17, 1035
 - Supplemental report, 17, 1042
 - Time of filing report, 17, 1041
 - To what matters confined, 17, 1035
- Rescission, cancellation, and reformation of contracts, 18, 853
- Review*, see *infra*, *Appeals*; *Objections to and review of master's proceedings*.
- Satisfaction and discharge of judgments, 19, 135
 - Set-off of judgment against judgment, 19, 169
- Scandal and impertinence*, see *SCANDAL AND IMPERTINENCE*.
- Service of process, 17, 1024
- Set-off, recoupment, and counterclaim, 19, 799; 17, 1001
- Settlement of decedents' estates:
 - Disputed claims, 19, 966
 - Amendment of claim, 19, 970
 - Approval of agreement to refer, 19, 969
 - Bill of particulars, 19, 970
 - Costs, 19, 971
 - In general, 19, 966
 - In New York, 19, 967
 - New trial, 19, 971
 - Offer to refer, 19, 968
 - Order of reference, 19, 969

REFERENCES, *cont'd.*

- Settlement of decedents' estates, *con.*
 - Disputed claims, *cont'd.*
 - Pleadings, 19, 969
 - Proof, 19, 970
 - Set-off or counterclaim, 19, 970
 - Objections to account of representative, 19, 1047
 - Action of court on referee's report, 19, 1049
 - Exceptions to report, 19, 1050
 - Order of decree allowing account, 19, 1051
 - Proceedings before referee, 19, 1048
 - Qualification by taking oath, 19, 1048
 - Weight of referee's report, 19, 1050
 - When authorized, 19, 1047
- Settlements in chancery at suit of personal representatives, creditors, legatees, or distributees, 19, 1016
- Specific performance, 20, 473
- Statement of claims filed with master, 17, 1024
- Statement of facts on appeal:
 - Reports of referees, 20, 565
- Statutes, *see infra*, When compulsory reference to referee proper.
- Street railways, *see* STREET RAILWAYS.
- Supplemental report, 17, 1042
- Supplementary proceedings, *see* SUPPLEMENTARY PROCEEDINGS.
- Time of filing report, 17, 1041
- Time of hearing, 17, 1026
 - In general, 17, 1026
 - Vacation, 17, 1026
- Time when ordered, 17, 1005
- Torts, *see infra*, Actions *ex delicto*.
- Trade-marks and trade names, 21, 768
- Trusts and trustees, *see* TRUSTS AND TRUSTEES.
- United States courts, 17, 981, 987; 22, 302
 - Compulsory reference, 17, 993
 - Vendor's liens, 22, 738
 - Voluntary reference to referee, 17, 987
 - Consent in open court, 17, 988
 - Effect of consent, 17, 990
 - In general, 17, 987
 - Necessity to obtain consent of parties, 17, 987
 - Presumption as to consent, 17, 989
 - Recommittal and additional orders to referee, 17, 991
 - Reference as condition of favor, 17, 988

REFERENCES, *cont'd.*

- Voluntary reference to referee, *cont'd.*
 - Requisites of consent, 17, 988
 - Revocation of consent, 17, 990
 - Right of parties to name referee, 17, 987
 - United States courts, 17, 987
 - Unknown party, 17, 988
 - Waiver of objections, 17, 989
- Waiver of notice, 17, 1024
- Waiver of oath, 17, 1016
- Waiver of objections, 17, 986, 1046, 1054
 - Compulsory reference, 17, 1005
 - Consent to voluntary reference, 17, 989
- When compulsory reference to referee proper, 17, 992
- Actions *ex delicto*, 17, 1004
- Actions involving accounts, *see infra*, Accounts and accounting.
- Constitutionality of statutes, 17, 994
- Objections waived, 17, 1005
- Statutory authority to order reference, 17, 992
- Winding up corporations, 22, 1277
- Witnesses:
 - Compelling witnesses to attend and testify, 17, 1027
 - Work and labor, 22, 1381
- REFORMATION OF INSTRUMENTS, *see* RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.
- REFUSAL TO TESTIFY, 10, 394
- REHEARING, 13, 1
 - See* APPEALS.
 - Absence of party from hearing, 18, 14
 - Admiralty, 1, 274; 18, 68
 - Amendments:
 - Petition, 18, 68
 - Appeals, 2, 382; 18, 28
 - After appeal taken, 2, 384
 - After remittitur, 2, 384
 - Allowance of rehearing, 18, 31
 - Application, 2, 382
 - Application not in time, 18, 60
 - Argument on rehearing, 2, 390
 - Briefs and citations of authorities, 18, 58
 - By whom rehearing may be had, 18, 51
 - Certificate of counsel, 18, 58
 - Conformity to rules, 18, 57
 - Criminal cases, 18, 31
 - Definition, 2, 382
 - Discretion, 2, 388
 - Effect of order granting rehearing on original judgment, 18, 63
 - Effect of petition filed on original judgment, 18, 63

REHEARING, *cont'd.*Appeals, *cont'd.*

- Effect of relief granted on re-argument, 18, 64
- Effect on original judgment, 18, 63
- Falsity of record, 2, 385
- Final decisions, 18, 30
- Form and contents of petition, 18, 57
- Fraud, 18, 31
- Grounds, see *infra*, Grounds for rehearing of appeal.
- Grounds of the motion, 2, 384
- Hearing and determination of the application, 18, 59
- How and by whom made, 2, 382
- How application is made, 18, 56
- How far case is open, 18, 61
- In general, 17, 28
- Modification of original judgment on hearing of petition, 18, 59
- Motion based on record, 2, 387
- New questions, 2, 386
- New questions and amended records, 18, 61
- Notice, 18, 59
- Omissions in opinion, 2, 386
- Petition a mere argument, 18, 57
- Petition dismissed or stricken from files, 18, 60
- Power to grant, 18, 28
- Practice on the hearing, 18, 60
- Questions of fact, 2, 385
- Record, 2, 387
- Relief granted, 18, 61
- Requisites of petition, 2, 382
- Service of copies, 18, 59
- Setting aside judgment, 2, 387
- Strangers to the suit, 18, 51
- Strong case required, 2, 388
- Subsequent rehearings in equity, 18, 64
- Supreme court of the United States, 18, 29
- Time of application, 18, 60
- Time of making application, see *infra*, Time of making application for rehearing of appeal.
- To whom application should be made, 18, 52
- What decisions may be reheard, 18, 30
- When application must be made, 2, 383
- Application (see *infra*, Time of making application in equity):
 - Hearing and determination of the application, 18, 59
 - How application is made, 18, 20
 - Notice of application, 18, 24

REHEARING, *cont'd.*Application, *cont'd.*

- To whom application should be made, 18, 15, 52
- Arguments of counsel:
 - Important point not argued, 18, 43
 - Order of argument, 18, 26
- Assignment of errors, 2, 973
- Attorney and client:
 - Certificate of counsel, 18, 24
 - Misconduct, absence, or negligence of counsel, 18, 45
 - Mistake, negligence, or absence of counsel, 18, 66
 - Negligence, mistake, or misconduct of counsel, 18, 13
 - Point not argued, 18, 43
- Briefs, 18, 58
 - Failure to file brief in time, 3, 731
- Certiorari, 18, 69
- Change in membership of court, 18, 50
- Constitutional law:
 - Cases involving constitutional questions, 18, 48
- Costs:
 - Decree for costs only, 18, 5
- Counsel, see *infra*, Attorney and client.
- Courts, see *infra*, Discretion of court.
- Death:
 - Death of a party to action, 18, 50
 - Judge, 18, 50
- Decrees:
 - Effect on original decree, 18, 27
 - Of order granting rehearing, 18, 27
 - Of petition entertained by court, 18, 27
 - Of petition filed, 18, 27
- Discretion of court:
 - Appeals, 18, 31
 - Equity, 18, 6
- Divided court, 18, 14, 49
- Effect on original judgment, 18, 63
 - Of order granting rehearing, 18, 63
 - Of petition filed, 18, 63
 - Of relief granted on reargument, 18, 64
- Elections, 7, 393
- Equity (see *infra*, Grounds in equity), 18, 4
 - After enrolment, 18, 5
 - Allowance for rehearings, 18, 5
 - Before enrolment, 18, 4
 - By whom rehearing may be had, 18, 15
 - Certificate of counsel, 18, 24
 - Costs, 18, 5

REHEARING, *cont'd.*Equity, *cont'd.*

- Discretion of court, 18, 6
- Effect on original decree of order granting rehearing, 18, 27
- Effect on original decree of petition entertained by court, 18, 27
- Effect on original decree of petition filed, 18, 27
- Form and contents of petition, 18, 21
- Grounds, see *infra*, Grounds in equity.
- How application is made, 18, 20
- How far case is open, 18, 25
- Motion to take petition from files, 18, 25
- Notice of the application, 18, 24
- Order of argument, 18, 26
- Practice on rehearing, 18, 25
- Relief granted, 18, 26
- Security for costs, 18, 25
- Subsequent rehearsings, 18, 27
- Time of making application, see *infra*, Time of making application in equity.
- To whom application should be made, 18, 15
- What decrees may be reheard, 18, 5
- What evidence may be introduced, 18, 26
- When decree may be corrected by rehearing, 18, 4
- Final judgments and decrees, 18, 30
- Fraud, 18, 31
 - Judgment obtained by fraud, 18, 51
 - Petition of fraud, 18, 14
 - What decision may be reheard, 18, 31
- Grounds for rehearing of appeal, 18, 31
 - Accident, 18, 45
 - Adverse decision by higher court, 18, 39
 - All the facts presented not duly considered, 18, 36
 - Change in membership of court, 18, 50
 - Conflict with statute or controlling decision, 18, 35
 - Constitutional questions, 18, 48
 - Court not legally constituted, 18, 50
 - Death of a party to action, 18, 50
 - Death of judge, 18, 50
 - Decision rendered by divided court, 18, 49
 - Enactment of statute after submission of cause, 18, 39

REHEARING, *cont'd.*Grounds for rehearing of appeal, *cont'd.*

- Error in the decision, 18, 31
 - Decision based on points not raised below, 18, 34
 - Determination substantially correct, 18, 33
 - Erroneous reasons for correct decision, 18, 34
 - Error of law, 18, 31
 - In general, 18, 31
 - Misapprehension of facts, 18, 31
- Grounds inconsistent with position assumed on hearing, 18, 42
- Grounds not involved in any issue determined by judgment, 18, 42
- Imperfect presentation of case on hearing, 18, 43
- Importance of question involved, 18, 48
- Important point not argued, 18, 43
- Judgment obtained by fraud, 18, 51
- Material point overlooked, 18, 35
- Matters proper to be raised on hearing or in trial court, 18, 40
- Misconduct, absence, or negligence of counsel, 18, 45
- Mistake, 18, 45
- Newly discovered evidence, 18, 51
- Points in record not called to court's attention, 18, 37
- Points not considered on hearing, 18, 39
- Points not directly referred to in opinion, 18, 38
- Probable alteration of decision on reargument before court differently constituted, 18, 50
- Record before court on appeal was erroneous, 18, 46
- Regularity of appeal, 18, 41
- Stare decisis*, 18, 38
- Surprise, 18, 45
- Grounds in equity, 18, 7
 - Absence of party from hearing, 18, 14
 - Decree obtained by fraud, 18, 14
 - Decree rendered by divided court, 18, 14
 - Error apparent on face of decree, 18, 7
 - Errors of law and fact, 18, 8
 - Failure to present the case fully, 18, 11
 - Immaterial error, 18, 8

REHEARING, *cont'd.*

- Grounds in equity, *cont'd.*
 - Improper exclusion of evidence, 18, 12
 - Laches, 18, 10
 - Material facts overlooked, 18, 9
 - Matters not in issue on hearing, 18, 11
 - Mistakes and omissions in presenting case on hearing, 18, 11
 - Negligence, mistake, or misconduct of counsel, 18, 13
 - Newly discovered evidence, 18, 9
 - Points argued but not noticed in opinion, 18, 9
 - Reversal of judgment on which decree is founded, 18, 14
 - Habeas corpus, 18, 69
 - How far case is open, 18, 25, 61
 - Importance of questions involved, 18, 48
 - Interlocutory decrees, 18, 20
 - Interstate commerce, 11, 488
 - Application by one not a party, 11, 489
 - Consideration of petition, 11, 489
 - In general, 11, 488
 - Petition, 11, 488
 - Reopening case without application, 11, 489
 - Laches, 18, 10
 - Mandamus, 13, 559; 18, 69
 - To compel granting of rehearing, 13, 561
 - To set aside rehearing, 13, 561
 - Mandate, 13, 849, 866
 - Mistake, 18, 45
 - Motions (see **MOTIONS**):
 - Motion to take petition from files, 18, 25
 - Newly discovered evidence, 18, 9, 51
 - Affidavit of due diligence, 18, 23
 - Cumulative, 18, 10
 - Immaterial error, 18, 8
 - Petition, 18, 22
 - New trial, 14, 948
 - Notice, 18, 59
 - Notice of application in equity, 18, 24
 - Parties:
 - By whom rehearing may be had, 18, 15, 51
- Patents, see PATENTS.*
- Petitions:
- Form and contents of petition, 18, 21, 57
 - Mere argument, 18, 57
 - Motion to take petition from files, 18, 25
 - Newly discovered evidence, 18, 22
 - Objections to sufficiency, 18, 67
 - Second petition, 18, 28

REHEARING, *cont'd.*

- Petitions, *cont'd.*
 - Statutory hearings at law in courts of original jurisdiction, 18, 67
 - To whom application should be made, 18, 15
- Practice on rehearing, 18, 25
- Preliminary examination, 16, 870
- Receivers, 17, 755
- Records, 2, 387
 - New questions and amended records, 18, 61
 - Rehearing on grounds of record before court on appeal, 18, 46
 - Exceptions to rule, 18, 47
 - In general, 18, 46
- Relief granted, 18, 26, 61
- Removal of causes, 18, 345
- Second rehearing, 18, 27
- Security for costs, 18, 25
- Service of process, 18, 59
- Stare decisis*, 18, 38
- Statutory hearings at law in courts of original jurisdiction, 18, 65
 - Absence of party or irregular procedure on hearing, 18, 66
 - Amendment, 18, 68
 - Decision of the application, 18, 68
 - Essential averments of petition, 18, 67
 - Grounds, 18, 65
 - How application is made, 18, 67
 - In general, 18, 65
 - Mistake, negligence, or absence of counsel, 18, 66
 - Objections to sufficiency of petition, 18, 67
 - Remedy purely statutory, 18, 65
 - Time of making application, 18, 67
- Stipulations, 20, 644
- Subsequent rehearings, 18, 27, 64
 - Application by adverse party, 18, 65
 - Rehearing of appeal, 18, 64
- Supersedeas and stay of proceedings, 20, 1259
- Surprise, 18, 45
- Time of making application for rehearing of appeal, 18, 52
 - Before case has been remanded, 18, 53
 - Before end of term, 18, 52
 - Common law, 18, 52
 - Right waived by gross laches, 18, 55
 - Subsequent action on petition filed within statutory period, 18, 55
 - Time of application, 18, 60
 - Time prescribed by statute, 18, 54

REHEARING, *cont'd.*

- Time of making application in equity, 18, 15
- Before decree acted upon or time to appeal passed, 18, 18
- Before end of term, 18, 17
- Before enrolment or entry of record, 18, 16
- Nonresident defendants, 18, 19
- Petitions filed after the statutory time has expired, 18, 19
- Petitions to rehear interlocutory decrees, 18, 20
- Subsequent action on petition filed within statutory period, 18, 20
- Time prescribed by statute, 18, 18

Time of making application in statutory rehearings at law, 18, 67

Time of rehearing:

Equity, 18, 4

REINSTATEMENT:

Dismissal, discontinuance, and non-suit, 6, 924

REJOINDERS AND SUBSEQUENT PLEADINGS, 18, 70

Codes, 18, 71

Common law, 18, 71

Completeness, 18, 77

Conclusion, 18, 77

Demurrer for wrong conclusion, 18, 87

Offer to verify, 18, 77

To country, 18, 77

Confession and avoidance of traverse, 18, 78

Consistency, 18, 80

Immaterial departure, 18, 82

In general, 18, 80

Rejoinder must not depart from plea, 18, 80

Covenant, 5, 386

Defaults:

Failure to rejoin, 6, 76

Demurrers, 18, 86

Double pleading, 18, 87

Inconsistency, 18, 86

In general, 18, 86

Wrong conclusion, 18, 87

Departure (see DEPARTURE), 18, 80, 82

Double pleading, 18, 82

Common law, 18, 82

Demurrer, 18, 87

Duplicity in adversary's pleading, 18, 83

Under statutes, 18, 83

Duplicity, 18, 83, 87

Effect of failure to put in, 18, 74

Failure to rejoin:

Surrejoin or surrebut, 18, 75

Form of pleadings, 18, 76

Conclusion, 18, 77

Index Pl. & Pr. — 58

REJOINDERS AND SUBSEQUENT PLEADINGS, *cont'd.*

Form of pleadings, *cont'd.*

In general, 18, 76

Offer to verify, 18, 77

Insurance, 11, 426

Limitations:

New promise, payment, or acknowledgment, 13, 256

Materiality, 18, 90

Nature, 18, 71

Necessity to allege facts, 18, 79

Official bonds, 15, 155

Order to plead, 18, 75

Disobedience of order to plead, 18, 75

Pleading law and evidence, 18, 79

Rebutter, 18, 71

Requisites, 18, 77

Severance of parties, 18, 85

Sham and frivolous pleadings, 20, 47

Sheriffs and constables, 20, 157

Sufficiency, 18, 77

Surrejoinder, 18, 71

Traverses, 18, 84

In general, 18, 84

Quality of traverse, 18, 85

Special traverse, 18, 85

Traverse in affirmative form, 18, 73

Traverse of confession and avoidance, 18, 78

Trespass, 21, 858

Usury, 22, 448

Varieties, 18, 71

Verdict:

Defects not cured by verdict, 18, 74

Verification:

Offer to verify, 18, 77

Waiver of defects in prior pleadings, 18, 85

When necessary and advisable, 18, 72

Terms and sessions of court:

Relation of all proceedings in term to its first day, 21, 601

How described, 21, 603

In general, 21, 601

Legal fiction, 21, 602

RELATIONSHIP:

Grand juries, 10, 357

Incest, see *INCEST*.

RELATORS (see INFORMATIONS IN EQUITY; MANDAMUS; PARTIES TO ACTIONS; QUO WARRANTO):

Mandamus, see *MANDAMUS*.

RELEASE, 18, 88

Accounts and accounting:

Averments of account rendered and payment made, 18, 93

Admiralty:

Stipulation for release, 1, 265

RELEASE, cont'd.**Answers:**

- Amended answer, 18, 92
- Answer in support of plea, 18, 95
- Supplemental answer, 18, 92

Answers in code pleading, 1, 849, 851

- Joinder of general denial and general release, 1, 858

Bastardy, 3, 298

Collusion, 18, 94, 98

- Striking out plea on ground of collusion, 18, 94

Confession and avoidance, 4, 666

Consideration, averment of, 18, 92

Demurrers, 18, 94

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Fraud:

- Collusion, 18, 94, 98
- Procurement of release by fraud, 18, 95
- Questions for jury, 18, 98

Mistake, 18, 97

Non est factum, 18, 95

Official bonds, 15, 152

Payment:

- Averment of account rendered and payment made, 18, 93

Performance:

- Averment of performance of conditions of executory contracts, 18, 93

Pleas, 18, 88; 19, 172

- Allegations of plea, 18, 92

Amended answer, 18, 92

- Averment of account rendered and payment made, 18, 93

Averment of performance of conditions of executory contract, 18, 93

Averment of seal, 18, 92

Demurrer to plea, 18, 94

Manner of pleading release after action commenced, 18, 90

Necessity of special plea at common law, 18, 88

Necessity of special plea under the code, 18, 89

Puis darrein continuance, 18, 90

Release of one joint trespasser, 18, 94

Release of one of several interested parties, 18, 94

Striking out plea on ground of collusion, 18, 94

Supplemental answer, 18, 92

Puis darrein continuance, 17, 267; 18, 90

Generally, 18, 90

Manner of pleading release after action commenced, 18, 90

When unnecessary, 18, 91

RELEASE, cont'd.

Replication, 18, 95

Averment that defendant was party to fraud, 18, 96

By joint plaintiffs limiting release to separate demand of one, 18, 97

Circumstances invalidating release, 18, 97

Mistake of parties, 18, 97

Necessity of, 18, 95

Non est factum, 18, 95

Procurement of release by fraud, 18, 95

What matters may be replied, 18, 95

Satisfaction and discharge of judgments, 19, 172

Set-off of one judgment against another, 19, 170

Seal, averment of, 18, 92

Stock and stockholders, 20, 697

Vendor's liens, 23, 736

RELEASE OF ERROR, see ERROR, WRIT OF.

RELEVANCY, see ORDER OF PROOF.

RELICIONS:

Ejectment, 7, 268

RELIEF:

Prayers for relief, see PRAYERS FOR RELIEF.

RELIGION:

Arguments of counsel:

- Appeals to religious prejudice, 2, 743

RELIGIOUS SOCIETIES, 18, 99

Actions against religious societies, 18, 104

Averment of corporate existence, 18, 105

Denial of corporate existence, 18, 106

Incorporated societies, 18, 104

Averment of corporate existence, 18, 105

Denial of corporate existence, 18, 106

Service of process, 18, 105

Statutory provisions as to use of corporate name, 18, 105

Use of corporate name, 18, 104

Service of process, 18, 105

Statutory provisions as to use of corporate name, 18, 105

Unincorporated societies, 18, 106

Against whom brought, 18, 106

Parties by representative, 18, 106

Use of corporate name, 18, 104

RELIGIOUS SOCIETIES, *cont'd.*

- Actions by religious societies, 18, 100
 - Incorporated societies, 18, 100
 - Admission by pleading over to the merits, 18, 103
 - Averments of incorporation, 18, 102
 - By whom brought, 18, 100
 - Capacity to sue, 18, 100
 - De facto* corporations, 18, 100
 - Denial of plaintiff's corporate existence, 18, 102
 - Effect of denial of corporate existence, 18, 103
 - Misnomer, 18, 102
 - One of several trustees, 18, 101
 - Statutory exceptions as to use of corporate name, 18, 101
 - Use of corporate name, 18, 101
 - Unincorporated societies, 18, 103
 - Complaint, 18, 104
 - Parties by representation, 18, 103
 - Who may maintain, 18, 103
 - Corporate existence, 18, 102, 105, 106
 - Corporations*, see *infra*, Actions against religious societies; Actions by religious societies.
 - Declaration and complaint:
 - Allegations as to parties, 18, 104
 - De facto* corporation, 18, 100
 - Disturbing meetings*, see **DISTURBING MEETINGS**.
 - Injunctions, 18, 106
 - Larceny, 12, 971
 - Names, 18, 104
 - Corporate name, 18, 101
 - Parties to actions, 18, 104, 106
 - Service of process, 18, 105
 - Unincorporated societies*, see *infra*, Actions by religious societies.
- REM** (see **ADMIRALTY**; **JUDGMENTS**):
- Jurisdiction*, see **JURISDICTION**.
 - Publication*, see **PUBLICATION**.
- REMAINDERS**:
- Ejectment:
 - Ejectment by remaindermen, 7, 295
 - Who may be sued, 7, 307
 - Eminent domain:
 - Life tenant and remainderman, 7, 511
 - Trusts and trustees*, see **TRUSTS AND TRUSTEES**.
- REMAND** (see **CHANGE OF VENUE**; **MANDATE**; **MANDATE AND PROCEEDINGS THEREON**; **REHEARING**; **REMOVAL OF CAUSES**):
- Certiorari*, see **CERTIORARI**.

REM AND PERSONAM :

Taxation, see **TAXATION**.

REMEDIES, see **ELECTION OF REMEDIES**.**REMEDY AT LAW**, 18, 108

Advice of counsel:

- Certificate of counsel as to inadequacy of legal remedy, 18, 110

Answer:

- Effect of objection by answer, 18, 118

- When objection taken by answer, 18, 118

Averments in bill as to inadequacy of legal remedy, 18, 109

- Averment in terms, 18, 110

- Necessity of averment, 18, 109

- Requisite allegations, 18, 110

Bills of peace, 3, 562

Certificate of counsel as to inadequacy of legal remedy, 18, 110

Creditors' bills, see **CREDITORS' BILLS**.

Demurrers, 6, 324; 18, 116

- Demurrer *ore tenus* insufficient, 18, 117

- Form of demurrer, 18, 117

- When proper, 18, 116

Demurrers in chancery:

- Waiver of defects, 6, 434

Discretion of court, 18, 113

Dismissal, discontinuance, and non-suit:

- Dismissal of court *sua sponte*, 18, 112

- Effect of dismissal of bill, 18, 122

- Grounds for dismissal, 6, 895

- Application of the rule, 6, 896

- Extent of rule, 6, 896

- In general, 6, 895

- Implied dismissals, 6, 963

- Without prejudice, 6, 995

Equitable assignments, 7, 741

Exceptions and objections, 8, 175

- How objection made, 8, 177

- Not raised on trial, 8, 175

- Reason for rule, 8, 176

- Rule applicable in cases of concurrent jurisdiction only, 8, 177

- Time of objecting, 8, 176

False representations and deceit, 8, 891

Fraud, 9, 678

Injunctions, see **INJUNCTIONS**.

Judgments:

- Equitable relief against judgments, 11, 1190

Jurisdiction:

- General rule as to objection to jurisdiction of equity, 18, 110

- Nature of objection, 18, 111

REMEDY AT LAW, *cont'd.***Jurisdiction, *cont'd.***

Ousting jurisdiction of equity,
18, 109

Manner of raising objection, 18, 116

Answer, 18, 118

By motion to transfer to proper
docket, 18, 119

Demurrer, 18, 116

Nature of objection, 18, 111

Necessity of raising objection, 18, 111

Discretion of court, 18, 113

Dismissal by court *sua sponte*, 18,
112

In general, 18, 111

Nuisances, see NUISANCES.

Ousting jurisdiction of equity, 18,
109

Partnership, see PARTNERSHIP.

Patents, 16, 36

Pledges, 16, 645

Quietting title, 177, 282

Absence of record evidence of
invalidity, 17, 285

Adequacy of legal remedy, 17,
284

Adequate remedy at law, 17, 282

Averment of inadequacy of rem-
edy at law, 17, 343

Criticism of doctrine, 17, 286

Defendant in possession, 17, 284

Dismissal of suit, 17, 284

Facts all of record, 17, 286

General rule, 17, 282

Instruments void both at law
and in equity, 17, 287

Invalidity of defendant's claim
necessarily appears, 17, 284

Justice and equity of the rule,
17, 286

Plaintiff under no disability, 17,
283

Waiver by failure to object, 17,
284

Receivers:

Application for receiver, 17, 728

Redemption, 17, 948, 954

Rescission, cancellation, and refor-
mation of contracts, 18, 806

Examples, 18, 806, 807

Inadequacy of remedy at law,
18, 806

Pendency of action at law, 18,
807

Waiver of objections, 18, 807

Set-off, recoupment, and counter-
claim, 19, 721

Specific performance, see SPECIFIC
PERFORMANCE.

Time of raising objection, 18, 113

Court having law and equity
jurisdiction, 18, 115

Earliest opportunity, 18, 113

REMEDY AT LAW, *cont'd.***Time of raising objection, *cont'd.***

Objection too late after testi-
mony taken, 18, 115

Objection too late at hearing, 18,
113

Objection too late on appeal, 18,
115

Vendor's liens, 22, 704

Waiver of objection, 18, 119

General rule as to waiver, 18, 119

Limitation of rule, 18, 121

Waste, 22, 1118

REMITTITUR, 18, 123

See MANDATE.

Ad damnum:

Verdict in excess of *ad damnum*,
18, 140

Amount in controversy, see AMOUNT
IN CONTROVERSY.

Appeals, 2, 560

Attorney's fees:

Improper or excessive recovery
of attorney's fees, 18, 143

Bonds:

Judgment in excess of penalty
in bond, 18, 141

Conclusiveness of remittitur, 18, 148

Conditions, see *infra*, Imposition of
terms.

Consent (see *infra*, Voluntary remit-
titur):

Necessity of consent of prevail-
ing party, 18, 126

Costs, 5, 204

Costs charged to party entering
remittitur, 5, 204

Improper or excessive recovery
of costs, 18, 143

Remittitur of amount, 5, 204

Remittitur of record, 5, 205

Courts:

Courts in which remittitur
should be entered, 18, 145

Appellate court, 18, 146

Trial court, 18, 145

Damages:

Recovery limited by demand, 5,
715

Definition, 18, 124

Detinue, 6, 660

Discretion of court, 18, 124, 136

Errors curable by remittitur, 18,
138

Excessive recovery of land, 18,
143

Improper admission or exclusion
of evidence, 18, 140

Improper or excessive recovery
of costs or attorney's fees, 18,
143

Improper or excessive recovery
of interest, 18, 142

REMITTITUR, *cont'd.*Errors curable by remittitur, *cont'd.*

Improper recovery of exemplary damages, 18, 143

In general, 18, 138

Judgment in excess of penalty in bond, 18, 141

Judgment in excess of verdict, 18, 142

Misjoinder of counts and causes of action, 18, 139

Verdict in excess of *ad damnum*, 140

Errors not curable by remittitur, 18, 144

Failure of pleading to show jurisdiction, 18, 145

Judgment of justice in excess of jurisdiction, 18, 145

Verdict result of passion or prejudice, 18, 144

Excess apparent or ascertainable, 18, 128

Executions:

After filing remittitur, 8, 347

Filing remittitur after affirmance on appeal, 8, 318

Leave of court, 8, 378

Exemplary damages:

Improper recovery of exemplary damages, 18, 143

Imposition of terms, 18, 146

On losing party, 18, 147

On prevailing party, 18, 146

Refusal of offer of remittitur, 18, 148

Interest, 18, 130

Future interest, 18, 143

Improper or excessive recovery, 18, 142

Joinder of counts and causes:

Misjoinder of counts and causes, 18, 139

Judgment in excess of verdict, 18, 142

Judgment on entry of remittitur, 18, 148

In appellate court, 18, 148

In trial court, 18, 148

Jurisdiction:

Failure of pleading to show jurisdiction, 18, 145

Judgment of justice in excess of jurisdiction, 18, 145

Misjoinder of counts and causes of action, 18, 139

New trial or remittitur, 18, 134

Notice:

Voluntary remittitur, 18, 133

Optional grant of remittitur, 18, 134

Discretion of court, 18, 136

New trial or remittitur, 18, 134

Reversal of remittitur, 18, 136

Time of exercise of option, 18, 137

REMITTITUR, *cont'd.*

Passion, 18, 144

Penalties and penal actions, 16, 301

Penalty in bond:

Judgment in excess of penalty in bond, 18, 141

Power of court to enter remittitur, 18, 124

Actions for unliquidated damages for torts, 18, 125

As against objection of losing party, 18, 130

Data furnished by record, 18, 129

Excess apparent or ascertainable, 18, 128

In general, 18, 124

Invasion of right of trial by jury, 18, 127

Necessity of consent of prevailing party, 18, 126

Necessity of giving option of new trial, 18, 127

Practice disapproved, 18, 125

Remission of interest, 18, 130

To prevent appeal, 18, 129

When power exercised, 18, 128

Prejudice, 18, 144

Prohibition, 16, 1121

Records:

Data furnished by record, 18, 130

Reversal of remittitur, 18, 136

Reward, 18, 1163

Terms, see *infra*. Imposition of terms.

Time of exercise of option of reversal or remittitur, 18, 137

Time of making:

Voluntary remittitur, 18, 133

Torts, 18, 125

Trove and conversion, 21, 1126

Unliquidated damages, 18, 125

Voluntary remittitur, 18, 130

Allowance as matter of course, 18, 130

Appellate court, 18, 131

Curing insufficient offer, 18, 133

Joint defendants, 18, 131

Manner of making, 18, 133

Necessity of order of court, 18, 133

Notice, 18, 133

Offer must state amount, 18, 132

Requisites of offer, 18, 132

Time of making, 18, 133

Whole amount of excess, 18, 132

REMOVAL OF CAUSES, 18, 150

Acquisition of jurisdiction by federal court, 18, 354

Authentication of record, 18, 356

Effect of filing incomplete copy, 18, 356

REMOVAL OF CAUSES, *cont'd.*

Acquisition of jurisdiction by federal courts, *cont'd.*

Filing copy of record, 18, 355
For granting motion to remand or for determination of merits, 18, 354

For granting provisional remedies, 18, 354

Jurisdiction before time for filing record, 18, 354

Laches in filing, 18, 356

Motion to docket cause, 18, 357

Nature, extent, and exercise of jurisdiction, see infra, Nature, extent, and exercise of jurisdiction.

Notice of filing, 18, 356

Time for filing, 18, 355

What constitutes record, 18, 355

Affidavits:

Prejudice or local influence, 18, 257

Counter affidavits, 18, 262

Necessity and sufficiency of affidavit, 18, 257

Time of making affidavit, 18, 261

Who may make affidavit, 18, 260

Agency:

Diverse citizenship, 18, 200

Aliens, 18, 181

Allegations of nonresidence, 18, 311

Records, 18, 298

Suits between citizens and aliens, 18, 238

Who may remove suit, 18, 279

Amendments:

Amount in controversy, 18, 272

Petition for removal, 18, 322

In federal court, 18, 324

In state court, 18, 322

Amount in controversy, 18, 267

Action for specific sum of money, 18, 270

Amendments, 18, 272

Amount prescribed by statute, 18, 267

Claims concerning specific property rights, 18, 270

Counterclaim or set-off, 18, 271

How ascertained, 18, 269

In what cases jurisdictional, 18, 268

Matter in dispute not susceptible of pecuniary estimation, 18, 268

Petition for removal, 18, 311

Petition for removal in connection with pleadings, 18, 271

REMOVAL OF CAUSES, *cont'd.*

Amount in controversy, *cont'd.*

Prejudice or local influence, 18, 244

Rearrangement of parties, 18, 270

Removal from one state court to another, 18, 416

Territorial courts, 18, 410

Time when jurisdictional amount must be in dispute, 18, 268

Unliquidated damages, 18, 269

Answers, see infra, Time for making application.

Appeal or error:

From one state court to another, 18, 426

From territorial to federal courts, 18, 415

Review by United States supreme court on error to state court, 18, 399

Appeal or error in federal courts, 18, 400

Appealability of orders and review of final judgment, 18, 400

Judgment and mandate, 18, 403

Objection, exception, assignment of error, and record, 18, 402

Appeal or error in state courts, 18, 390

Acquiescence in order of removal, 18, 393

After remand of cause, 18, 393

Appealability of orders in removal proceedings, 18, 391

Exceptions, 18, 396

Judgment and order of remand, 18, 398

Jurisdiction to review orders in removal proceedings, 18, 390

Miscellaneous orders, 18, 395

Motion to remand pending or denied, 18, 393

Order denying application, 18, 393

Order of removal, 18, 391

Presumptions on appeal, 18, 398

Proceeding on mandate in court below, 18, 399

Record on appeal, 18, 397

Review after final judgment, 18, 396

Supersedeas and stay of proceedings, 18, 395

Appeals:

Appellate court, 18, 165

Order of remand, 18, 267

Whether orders are reviewable, 2, 84

Appearances:

Effect of petition as appearance, 18, 328

REMOVAL OF CAUSES, *cont'd.***Application:**

Costs on granting or dismissing application, 18, 347

From territorial to federal courts, see infra, From territorial to federal courts.

Notice of application, 18, 319

Petition for removal, see infra, Petition for removal.

Record on application for removal, see infra, Record on application for removal.

Rehearing of application, 18, 345

State courts, see infra, From one state court to another.

Time for making application, see infra, Time for making application.

Assignments:

Suits by assignees on grounds of diverse citizenship, 18, 206

Attachment, 18, 168

Nature, extent, and exercise of jurisdiction, 18, 364

Auxiliary remedies in removal proceedings, 18, 386

Certiorari, 18, 387

Injunction, 18, 388

Mandamus, 18, 386

Prohibition, 18, 386

Banks and banking, 3, 263**Bond for removal, 18, 328**

Amount of bond, 18, 331

Bond without penalty, 18, 330

Clerk, 18, 335

Condition of bond, 18, 330

Defects amended, disregarded, or waived, 18, 335

Determination of validity and sufficiency of bond, 18, 334

Execution of bond, 18, 332

Filing bond, 18, 328

Filing or presentation, 18, 329

Form of bond, 18, 329

Joint or several, 18, 329

Justification of sureties, 18, 333

Necessity of bond, 18, 328

Number of sureties, 18, 333

Province of court, 18, 335

Qualification of sureties, 18, 333

Special bail, 18, 331

Suit on bond, 18, 337

Time for filing bond, 18, 328

Bonds:

From one state court to another, 18, 420

Action on bond, 18, 422

Amount of bond, 18, 420

Approval or disapproval, 18, 421

Defects in bond, 18, 421

REMOVAL OF CAUSES, *cont'd.***Bonds, *cont'd.***

From one state court to another, cont'd.

Necessity, 18, 420

Sufficiency, 18, 420

Nature, extent, and exercise of jurisdiction, 18, 364

Prejudice or local influence, 18, 256

Certiorari, 18, 387

Change in venue:

Prejudice or local influence, 18, 247

Citizenship:

Citizenship as an element of federal jurisdiction, see infra, Citizenship as an element of federal jurisdiction.

Diverse citizenship and separable controversy, see infra, Diverse citizenship and separable controversy.

Diverse citizenship of parties, see infra, Diverse citizenship of parties.

Federal questions, 18, 234

Petition, see infra, Petition for removal.

Prejudice or local influence, see infra, Prejudice or local influence.

Record, 18, 298

Citizenship as an element of federal jurisdiction, 18, 187

Citizenship of corporations, 18, 188

Citizenship of representative parties, 18, 189

Executors and administrators, 18, 189

Guardian, 18, 190

In general, 18, 187

Next friend, 18, 190

Partnership or joint stock company, 18, 190

Receivers, 18, 189

Residence in territory or District of Columbia, 18, 187

Suits by or against Indians, 18, 190

Trustees, 18, 189

Civil nature of suit, 18, 169

Civil rights, see infra, Denial of civil rights.

Collateral attack, 18, 352

Commissioners, 18, 165

Consent:

From one state court to another, 18, 419

Consolidation of actions, 4, 699

Constitutional law:

Constitutionality of removal acts, 18, 159

REMOVAL OF CAUSES, *cont'd.*

- Constitutional law, *cont'd.*
 - From one state court to another, 18, 416
 - Separable controversy, 18, 213
- Construction:
 - Construction of removal acts, 18, 161
- Contempt, 18, 170
- Controversy, see *infra*, Separable character of controversy.
- Coram non judice*, 18, 168
- Corporations:
 - Allegation of nonresidence, 18, 311
 - Averment of citizenship, 18, 308
 - Citizenship, 18, 188
 - Foreign corporation, 18, 280
 - Officers of corporation, 18, 198
 - Prejudice or local influence, 18, 249
 - Residence of corporation, 18, 276
 - Suit by or against federal corporation, 18, 236
- Cpsats:
 - Amount in controversy, 5, 163
 - Before and after removal, 18, 366
 - Costs on granting or dismissing application, 18, 347
 - Costs on remand or dismissal, 18, 380
 - Exercise of discretion, 18, 381
 - Power to award, 18, 380
 - Rule relaxed under equitable circumstances, 18, 383
 - Several clauses heard together, 18, 384
 - Dismissal of application on account of prejudice or local influence, 18, 267
 - From territorial to federal courts, 18, 414
 - Nature, extent, and exercise of jurisdiction, 18, 366
 - Remand to state court, 18, 267
- Courts:
 - From what court suit may be removed, 18, 164
 - To what court removal is made, 18, 166
- Creditors' bills, 18, 221
- Criminal proceedings, 18, 170
- Contempt, 18, 170
- From one state court to another, 18, 416
- Indictment for causing death, 18, 171
- Removal from one federal court to another, 18, 405
- Death by wrongful act:
 - Indictment for causing death by wrongful act, 18, 171

REMOVAL OF CAUSES, *cont'd.*

- Demurrers:
 - Ruling on demurrer, 18, 364
- Denial of civil rights, 18, 184
- Authority for removal, 18, 184
- Exclusion of negroes from juries, 18, 185
- How removal is effected, 18, 186
- What cases are removable, 18, 185
- Dismissal, see *infra*, Remand of cause to state court.
- Dismissal, discontinuance, and nonsuit, 18, 169
- Want of jurisdiction, 6, 886
- Diverse citizenship, see *infra*, Diverse citizenship and separable controversy.
- Remand of cause to state court, 18, 368
- Diverse citizenship and separable controversy, 18, 207
- Citizenship of parties to separable controversy, 18, 209
- History and remedial purpose of separable controversy clause, 18, 207
- Petition for removal, 18, 313
- Prayer for removal, 18, 317
- Rearrangement of parties, 18, 209
- Remand of cause to state court, 18, 368
- Removal carries entire suit, 18, 232
- Separable character of controversy, see *infra*, Separable character of controversy.
- Who may remove suit, 18, 281
 - Citizen, 18, 282
 - Defendant actually interested, 18, 282
 - Nonresident, 18, 281
 - Only nonresident citizen defendant actually interested, 18, 281
 - Removal by intervenor, 18, 282
- Diverse citizenship of parties, 18, 190
- Agents, 18, 200
- Change of citizenship after removal, 18, 193
- Citizenship in state where suit is brought, 18, 206
- Citizenship of defendant in state where suit is brought, 18, 206
- Citizenship of plaintiff in state where suit is brought, 18, 206
- Class suits, 18, 201
- Defendants fraudulently joined to prevent removal, 18, 202
- Defendants not amenable to decree, 18, 198
- Formal parties, 18, 195

REMOVAL OF CAUSES, *cont'd.*

- Diverse citizenship of parties, *cont'd.*
 - Garnishees, 18, 200
 - Joint personal representatives, 18, 195
 - Nominal parties, 18, 195
 - Officers of corporations, 18, 198
 - Parties made indispensable by statute, 18, 201
 - Rearrangement of parties, 18, 205
 - Sham defendants, 18, 202
 - Statutory provision, 18, 190
 - Suits by assignees, 18, 206
 - Suits relating to administration of trusts, 18, 199
 - Time of diverse citizenship, 18, 192
 - Trustees, 18, 200
 - Unnecessary parties, 18, 195
 - Where state is a party, 18, 190
 - Where there are several plaintiffs or defendants, 18, 193
 - Who are and who are not formal or unnecessary parties, 18, 197
 - Who may remove suit, 18, 273
 - Cross-bill or counterclaim against plaintiff, 18, 274
 - Defendant, 18, 273
 - Defendants not all nonresidents, 18, 275
 - Garnishee, 18, 273
 - Infant, 18, 274
 - Intervening parties, 18, 277
 - Joinder of all defendants, 18, 278
 - Landowner in eminent domain proceedings, 18, 273
 - Nonresident defendant, 18, 274
 - Residence of corporation, 18, 276
 - Substituted parties, 18, 277
 - Time of nonresidence, 18, 276
 - Who is deemed defendant, 18, 273
- Divestiture of jurisdiction of state court, 18, 347
- Inhibition of further proceedings, 18, 349
- Petitioner for removal participating in further proceedings, 18, 353
- Removal for prejudice or local influence, 18, 349
- Simultaneous with filing of petition and bond, 18, 347
- Validity of further proceedings on collateral attack, 18, 352
- Validity of further proceedings on direct attack, 18, 350

REMOVAL OF CAUSES, *cont'd.*

- Eminent domain, 18, 173
- Separable controversy, 18, 221
- Who may remove suit, 18, 273
- Exceptions and objections, 18, 396, 402
- Executors and administrators, 18, 224
- Citizenship, 18, 189
- Proceedings relating to wills and administration, 18, 174
- Federal jurisdiction:
 - Citizenship as an element of federal jurisdiction, see infra, Citizenship as an element of federal jurisdiction.*
- Federal questions, 18, 234
- Ancillary suits, 18, 237
- Cases involving federal questions, 18, 234
- Citizenship of parties immaterial, 18, 235
- National banks, 18, 237
- Petition for removal, 18, 314
- Receiver appointed by federal court, 18, 237
- Receiver of national bank, 18, 238
- Records, 18, 299
- Remand of cause to state court, 18, 369
- Suit by or against federal corporation, 18, 236
- What constitutes federal question, 18, 234
- Who may remove suit, 18, 280
- Foreclosure of mortgages, 18, 225
- Foreign corporation, 18, 238, 280
- From one federal court to another, 18, 403
- Certification from district to circuit court, 18, 403
- Removal of criminal proceeding from one district to another, 18, 405
- Transfer from one circuit court to another, 18, 403
- Transfer of indictments, 18, 407
- From one state court to another, 18, 415
- Action on bond, 18, 422
- Amount in dispute, 18, 418
- Amount of bond, 18, 420
- Appeal and error, 18, 426
- Application for removal, 18, 420
- Approval or disapproval of bond, 18, 421
- Authority for removal, 18, 415
- Bond or undertaking, 18, 420
- Civil causes, 18, 415
- Constitutionality of statutes, 18, 416
- Consummating removal by entering cause, 18, 423

REMOVAL OF CAUSES, *cont'd.*

- From one state court to another, *con.*
 - Criminal causes, 18, 426
 - Defect in bond, 18, 421
 - Effect of removal by attachment or bail, 18, 424
 - Extent of jurisdiction, acquired by removal, 18, 424
 - Grounds for removal, 18, 416
 - Order of removal, 18, 422
 - Remand of cause, 18, 424
 - Removal by consent or stipulation, 18, 419
 - Time for application, 18, 318
 - Validity of proceedings after divestiture of jurisdiction by removal, 18, 423
 - Waiver of right of removal, 18, 417
 - Who may make application, 18, 419
- From territorial to federal courts, 18, 408
 - Amount in controversy, 18, 410
 - Appeal and error, 18, 415
 - Authority and grounds for removal, 18, 408
 - Bond for removal, 18, 413
 - Construction of enabling acts, 18, 409
 - Costs, 18, 414
 - Diverse citizenship, 18, 409
 - Extent of jurisdiction acquired by federal court, 18, 414
 - Filing papers in federal court, 18, 414
 - Form and contents of application, 18, 412
 - Hearing and order for removal, 18, 413
 - Necessity of congressional authority, 18, 409
 - Notice of application, 18, 413
 - On whose application may be made, 18, 411
 - Remand, 18, 414
 - Time for application, 18, 411
 - To what court application is made, 18, 412
 - Waiver of right of removal, 18, 410
- From what court suit may be removed, 18, 164
- Garnishment, 18, 177
 - Diverse citizenship, 18, 200
 - Who may remove suit, 18, 273
- Grounds for removal under act of 1887-1888, 18, 190
 - Cases involving federal questions, see infra, Federal questions.*
 - Diverse citizenship and separable controversy, see infra, Diverse citizenship and separable controversy.*

REMOVAL OF CAUSES, *cont'd.*

- Grounds for removal under act of 1887-1888, *cont'd.*
 - Diverse citizenship of parties, see infra, Diverse citizenship of parties.*
 - Suits between citizens and aliens, 18, 238
 - Suits by the United States, 18, 238
- Guardians:
 - Citizenship, 18, 190
- Habeas corpus, 9, 1013; 18, 172
- Indians, 18, 190
- Injunctions, 18, 172
 - Injunction to restrain further proceedings after removal, 18, 388
 - Exercise of discretion, 18, 388
 - Injunction improvidently granted, 18, 390
 - Power of federal court, 18, 388
 - Nature, extent, and exercise of jurisdiction, 18, 365
 - United States courts, 10, 884
- Interpleader, 11, 478
- Intervention, 18, 167, 282
 - Application by intervening or substituted parties, 18, 294
- Joinder of parties:
 - Defendants fraudulently joined to prevent removal, 18, 202
 - Joinder of all defendants, 18, 278
- Joinder of several grounds, 18, 315
- Judges:
 - Change of judges, 18, 248
 - Prejudice of judges, 18, 245
- Judgments:
 - Proceedings connected with judgments, 18, 177
 - For relief against judgment, 18, 178
 - In aid of judgment, 18, 177
 - In general, 18, 177
- Jurisdiction (*see infra, Appeal or error in state courts*):
 - Acquisition of jurisdiction by federal court, see infra, Acquisition of jurisdiction by federal court.*
 - Amount in controversy, see infra, Amount in controversy.*
 - Divestiture of jurisdiction of state court, see infra, Divestiture of jurisdiction of state court.*
 - Federal jurisdiction must appear affirmatively, 18, 297
 - From one state court to another, see infra, From one state court to another.*

REMOVAL OF CAUSES, *cont'd.*Jurisdiction, *cont'd.*

Nature, extent, and exercise of jurisdiction, see infra, Nature, extent, and exercise of jurisdiction.

Resumption of jurisdiction by state court, see infra, Resumption of jurisdiction by state court.

Jurisdiction of federal court:

Only suits within original jurisdiction of federal court, 18, 179

As to subject-matter, 18, 179

Federal equity jurisdiction, 18, 180

Residence in particular federal district, 18, 180

Suits by and against aliens, 18, 181

Justices of the peace, 18, 164

Liens:

Suits involving priority of liens, 18, 221

Local improvements, 18, 221

Local influence, see infra, Prejudice or local influence.

Mandamus, 13, 546; 18, 171

From federal to state or federal court, 18, 387

From superior to inferior state court, 18, 386

Remand of cause improperly removed, 13, 547

Vacating orders improperly remanding causes, 13, 548

Writ out of federal court, 13, 546

Writ out of state court, 13, 547

Mandate and proceedings thereon, 18, 399, 400, 403

Misjoinder, 18, 218

Motions:

Remand of cause to state court, see infra, Remand of cause to state court.

Multifariousness, 18, 219

National banks, 18, 237, 238

Nature, extent, and exercise of jurisdiction, 18, 357

Attachments, 18, 364

Bonds, 18, 364

Costs before and after removal, 18, 366

Demurrer, 18, 364

Filing new pleadings, 18, 362

Following state practice, 18, 361

Inchoate proceedings, 18, 365

In general, 18, 357

Injunctions, 18, 365

Motion to quash service of process, 18, 358

Preservation of proceedings had in state court, 18, 363

REMOVAL OF CAUSES, *cont'd.*

Nature, extent, and exercise of jurisdiction, cont'd.

Recasting pleadings, 18, 362

Receiverships, 18, 365

Repleader by order of court, 18, 363

Status of prior rulings in state court, 18, 363

Time to plead, 18, 360

Negroes, see infra, Denial of civil rights.

Next friend:

Citizenship, 18, 190

Nonresidence:

Nonresident defendant, 18, 274

Petition for removal, see infra, Petition for removal.

Notice:

Motion to remand, 18, 376

Territorial courts, 18, 413

Notice of application, 18, 319

Prejudice or local influence, 18, 261

Better practice, 18, 261

Order of removal, notification, and effect thereof, 18, 262

Whether necessary, 18, 261

Nunc pro tunc, 18, 344

Officers of private corporations, 18, 198

Order denying petition for removal, 18, 344

Order usually made, 18, 344

Stating ground of order, 18, 345

Order granting petition for removal, 18, 342

Form of order, 18, 343

Nunc pro tunc order, 18, 344

Order usually made, 18, 342

Separate order accepting bond, 18, 344

Orders (see *infra, Prejudice or local influence*):

Appeals, see infra, Appeal or error in federal courts; Appeal or error in state courts.

From one state court to another, 18, 422

Remand of cause to state court, see infra, Remand of cause to state court.

Vacating order of removal, 18, 345

Partition, 18, 222

Partnership, 18, 224

Citizenship, 18, 305

Part of suit, 18, 169

Removal carries entire suit, 18, 232

Petition for removal, 18, 302

Address, 18, 303

REMOVAL OF CAUSES, *cont'd.*

Petition for removal, *cont'd.*
 Alienage, 18, 309
 Allegations of petition, 18, 303
Amendment of petition, see infra,
 Amendments.
 Amount in controversy, 18, 311
 Appearance, effect of petition as,
 18, 328
 Citizenship of parties, 18, 304
 Averment of residence of
 parties, 18, 307
 Citizenship of corporation,
 18, 308
 Citizenship of plaintiff's as-
 signor, 18, 305
 Necessity of averment, 18,
 304
 Partnership or joint stock
 company, 18, 305
 Personal, not official, citizen-
 ship, 18, 304
 Removal for federal ques-
 tion, 18, 304
 Removal for separable con-
 troversy, 18, 304
 Sufficiency of averment, 18,
 306
 Time of alleged citizenship,
 18, 305
 Federal question, 18, 314
 Filing and presentation to state
 court, 18, 320
 Necessity and sufficiency,
 18, 320
 On appeal or error in state
 court, 18, 322
 Filing bond, 18, 315
 General requisites as a pleading,
 18, 303
 Joinder of several grounds, 18,
 315
 Nature of suit, 18, 304
 Necessity of application by peti-
 tion, 18, 302
 Nonresidence in state where suit
 is brought, 18, 310
 In general, 18, 310
 Nonresidence of alien, 18,
 311
 Nonresidence of corpora-
 tion, 18, 311
 Order granting petition for re-
 moval, 18, 343
 Prayer for removal, 18, 315
 Prejudice or local influence, 18,
 255
 Averments of petition, 18, 257
 Necessity of petition, 18, 255
 Verification, 18, 256
*Proceedings on petition for re-
 moval, see infra, Proceedings
 on petition for removal.*

REMOVAL OF CAUSES, *cont'd.*

Petition for removal, *cont'd.*
 Separable controversy, 18, 313
 Showing relative interests of
 other parties, 18, 312
 Signature, 18, 317
 Time of filing petition, 18, 315
 Title, 18, 303
 Venue, 18, 303
 Verification, 18, 318
 Who may file petition, 18, 320
 Withdrawal of petition, 18, 328
*Pleas, see infra, Time for making
 application.*
 Prayer for removal, 18, 315
 Prejudice or local influence, 18, 239
Affidavits for removal, see infra,
 Affidavits.
 Amount in dispute, 18, 244
 Appellate review of order of re-
 mand, 18, 267
 Application to be made to federal
 court, 18, 254
 Application to remand and hear-
 ing thereon, 18, 265
 Averments of petition, 18, 256
 Between whom prejudice must
 exist, 18, 248
 Bond for removal, 18, 256
 Change of judge, 18, 248
 Change of venue, 18, 247
 Citizenship of defendants, 18, 241
 Citizenship of plaintiffs, 18, 240
 Corporation defendant, 18, 249
 Costs on dismissal of application,
 18, 267
 Costs upon remand to state
 court, 18, 267
 Divestiture of jurisdiction of
 state court, 18, 349
 Filing transcript in federal
 court, 18, 265
 Hearing of application, 18, 262
 In respect of citizenship of par-
 ties, 18, 240
 In respect of subject-matter, 18,
 239
 Nature of prejudice, 18, 244
 Notice of application, 18, 261
 Order of removal, notification,
 and effect thereof, 18, 262
 Duty and practice of state
 court in premises, 18, 264
 Entry and form of order, 18,
 262
 Filing copy of order in state
 court, 18, 264
 Orders dismissing application,
 18, 262
 Petition for removal, 18, 255
 Prejudice avoidable by change
 of venue or judge, 18, 247
 Prejudice of judges, 18, 245

REMOVAL OF CAUSES, *cont'd.*

- Prejudice or local influence, *cont'd.*
 - Time for making application, 18, 250
 - What causes are removable for prejudice, etc., 18, 239
 - Who may remove suit, 18, 248
- Proceedings on petition for removal, 18, 337
 - Determination of questions of fact, 18, 340
 - Determination of sufficiency of petition, 18, 338
 - Hearing on petition, 18, 338
 - Pleadings in answer to petition, 18, 337
- Prohibition, 16, 1118; 18, 386
 - Removal from state to federal court, 16, 1118
 - When court has lost jurisdiction, 16, 1118
- Public lands:
 - Parties claiming land under grants from different states, 18, 186
- Public officers*, see *infra*, Suits and prosecutions against federal revenue officers.
- Quieting title, 18, 223
- Quo warranto, 18, 172
- Receivers:
 - Application for discharge, 17, 849
 - Citizenship, 18, 189
 - Nature, extent, and exercise of jurisdiction, 18, 365
 - Receiver of national bank, 18, 328
 - Suit by or against receiver appointed by federal court, 18, 237
- Recordari*, see *RECORDARI*.
- Record on application for removal, 18, 297
 - As to federal question, 18, 299
 - Citizenship or alienage of parties, 18, 298
 - Federal jurisdiction must appear affirmatively, 18, 297
 - Petition for removal, paramount to pleadings, 18, 301
- Records (see *infra*, Acquisition of jurisdiction by federal court), 18, 402
 - Appeals, 18, 397
- Rehearing, 18, 345
- Remand:
 - Appeal from order to remand, 18, 267
 - Application to remand and hearing thereon, 18, 265
 - Costs upon remand to state court, 18, 267

REMOVAL OF CAUSES, *cont'd.*

- Remand, *cont'd.*
 - From one state court to another, 18, 424
 - Order of remand not reviewable, 18, 385
 - Resumption of jurisdiction by state court*, see *infra*, Resumption of jurisdiction by state court.
 - Second application for removal after remand, 18, 384
 - Territorial courts, 18, 414
- Remand of cause to state court, 18, 366
 - Affidavits, 18, 374
 - After elimination of grounds of removal, 18, 368
 - Burden of proof, 18, 374
 - Cause remanded where jurisdiction doubtful, 18, 378
 - Controverting allegations of fact, 18, 372
 - Costs on remand or dismissal, 18, 380
 - Determination of motion by face of record, 18, 377
 - Diverse citizenship, 18, 368
 - Estoppel to resist remand, 18, 371
 - Federal questions, 18, 369
 - Form and contents of motion, 18, 376
 - Hearing and determination of motion to remand, 18, 377
 - Irregularities in removal proceedings, 18, 368
 - Motion to remand, 18, 375
 - Necessity of motion, 18, 375
 - Notice of motion, 18, 376
 - Order granting or denying motion to remand, 18, 379
 - Petition to remand, 18, 374
 - Plea in abatement, 18, 372
 - Prior decisions in same circuit, 18, 378
 - Remand on stipulation, 18, 372
 - Rule of decision, 18, 378
 - Separable controversy, 18, 368
 - Time, 18, 367
 - Time for motion, 18, 375
 - Vacating order granting or denying motion to remand, 18, 379
 - Waiver of right of remand, 18, 369
 - Waiver of right of remand for delay in filing petition for removal, 18, 370
 - Waiver of right of remand for formal irregularities, 18, 370
 - Waiver of right of remand for want of jurisdiction, 18, 369
 - Who may make motion, 18, 375

REMOVAL OF CAUSES, *cont'd.*

Removable suits or controversies, 18, 166
 Administration proceedings, 18, 175
 Administrative proceedings, 18, 167
 Aliens, 18, 181
Amount in dispute, see infra, Amount in controversy.
 Ancillary proceedings in general, 18, 176
 Attachment, 18, 168
Citizenship as element of federal jurisdiction, see infra, Citizenship as an element of federal jurisdiction.
 Civil nature, 18, 169
 Common law, 18, 171
 Contempt, 18, 170
Coram non judge, 18, 168
 Decision of the highest court of state, 18, 167
 Definition and general characteristics, 18, 166
Denial of civil rights, see infra, Denial of civil rights.
 Dismissal, 18, 169
 Eminent domain, 18, 173
 Equity, 18, 171
 Equity jurisdiction of federal court, 18, 180
Federal revenue officers, see infra, Suits and prosecutions against federal revenue officers.
 Garnishment, 18, 176
Grounds for removal, see infra, Diverse citizenship and separable controversy; Diverse citizenship of parties; Federal questions.
 Habeas corpus, 18, 172
 How nature of suit determined, 18, 169
 Indictment for causing death by wrongful act, 18, 171
 Injunctions, 18, 172
 Mandamus, 18, 171
 Of a civil nature, 18, 169
 Only suits within original jurisdiction of federal court, 18, 179
 Original jurisdiction of federal court as to subject-matter, 18, 179
 Parties claiming land under grants from different states, 18, 186
 Part of suit, 18, 169
 Petition of intervention, 18, 167
 Probate proceedings, 18, 174
 Proceedings connected with judgments, 18, 177

REMOVAL OF CAUSES, *cont'd.*

Removable suits or controversies, *con.*
 Proceedings for relief against judgment, 18, 178
 Proceedings in aid of judgment, 18, 177
 Prohibition, 18, 173
 Quo warranto proceedings, 18, 172
Removal for prejudice or local influence, see infra, Prejudice or local influence.
 Residence in particular federal district, 18, 180
 Subject-matter of controversy, 18, 168
 Suits, 18, 166
 Suits by and against aliens, 18, 181
 Suits for acts done during the rebellion, 18, 187
 Taxation proceedings, 18, 174
Time for making application, see infra, Time for making application.
Who may remove suit, see infra, Who may remove suit.
 Wills, 18, 174
 Residence (see *infra*, Citizenship as an element of federal jurisdiction):
 Averment of residence not equivalent to averment of citizenship, 18, 307
 Resumption of jurisdiction by state court, 18, 384
 Duty of court to proceed, 18, 385
 Effect of proceedings had in federal court, 18, 386
 How restoration of jurisdiction affected, 18, 384
 Order of remand not reviewable, 18, 385
Revenue officers, see infra, Suits and prosecutions against federal revenue officers.
 Review (see *infra*, Appeal or error; Appeal or error in state courts):
 Order of remand not reviewable, 18, 385
 Review by United States supreme court on error to state court, 18, 399
 Right of property, trial of, 18, 1180
 Separable character of controversy, 18, 209
 Actions in tort, 18, 216
 Actions on contracts, 18, 214
 Bills for partition, 18, 222
 Bills to quiet title, 18, 223
 Case must be in separate parts, 18, 210
 Codefendant not served, 18, 217

REMOVAL OF CAUSES, *cont'd.*

- Separable character of controversy, *cont'd.*
 - Constitutional questions, 18, 213
 - Controversy not properly in suit, 18, 213
 - Counterclaim, 18, 216
 - Creditors' bills, 18, 221
 - Cross-bill, 18, 216
 - Defenses inuring to benefit of all, 18, 214
 - Disclaimer or default of codefendant, 18, 217
 - Eminent domain, 18, 221
 - Equitable suits, 18, 227
 - Event of suit not test, 18, 218
 - Foreclosure suits, 18, 225
 - General tests, 18, 209
 - Instances, 18, 210
 - Local assessment proceedings, 18, 221
 - Main and incidental controversies, 18, 219
 - Misjoinder, 18, 218
 - More proof required, 18, 214
 - Multifariousness, 18, 219
 - Must afford complete relief, 18, 211
 - Partnership affairs, 18, 224
 - Right of action created by statute, 18, 213
 - Separability, how determined, 18, 229
 - Amendment after petition filed, 18, 229
 - By state of record at time of filing petition, 18, 229
 - Exception to rule that plaintiff's pleading is considered true, 18, 230
 - Plaintiff's pleading considered as true, 18, 229
 - Separable controversy with one of several plaintiffs, 18, 220
 - Separate defenses immaterial, 18, 214
 - Separate suits distinguished from separable controversies, 18, 220
 - Severance by election of plaintiff, 18, 220
 - Stockholders' suits, 18, 227
 - Suits in equity, 18, 215
 - Suits involving priority of liens, 18, 221
 - Supreme test, 18, 211
 - Susceptible of separate trials, 18, 209
 - Taxpayers' and stockholders' suits, 18, 226
 - Tests applied to various classes of suits, 18, 221
 - Wills, 18, 224

REMOVAL OF CAUSES, *cont'd.*

- Separable controversy, see infra*, Diverse citizenship and separable controversy.
- Set-off, recoupment, and counterclaim:
 - Amount in controversy, 18, 271
 - Plaintiff's right to remove who has counterclaim against defendant, 18, 274
- Sham defendants, 18, 202
- Signature:
 - Petition for removal, 18, 317
- Special proceedings, 18, 287
- State courts, see infra*, From one state court to another.
- States:
 - Diverse citizenship where state is a party, 18, 190
 - Right of removal not impaired by state legislation, 18, 162
- Statutes:
 - Construction of removal acts, 18, 161
- Statutory requirements to be strictly complied with, 18, 161
- Statutory right, 18, 159
 - Acts of congress set out, 18, 159, 161
 - Enumeration of various removal acts, 18, 159
 - Judiciary act of 1789, 18, 159
 - Right of removal entirely statutory, 18, 159
 - Separable controversy act, 18, 160
- Stipulations:
 - Extension of time, 18, 295
 - From one state court to another, 18, 419
 - Removal by stipulation of parties, 18, 302
- Stockholders' suits, 18, 227
- Suits, see infra*, Removable suits or controversies.
- Suits and prosecutions against federal revenue officers, 18, 181
 - Amount in controversy, 18, 183
 - Authority for removal, 18, 181
 - From what court removable, 18, 183
 - How removal is effected, 18, 184
 - Time for application for removal, 18, 183
 - Trial in federal court, 18, 184
 - What cases are removable, 18, 182
- Supersedeas and stay of proceedings, 18, 395
- Suretyship, see infra*, Bond for removal.
- Surrogates, 18, 165, 324
 - Proceedings relating to wills and administration, 18, 174

REMOVAL OF CAUSES, *cont'd.*

Survival of actions, 21, 342

Taxation:

Proceedings relating to taxation, 18, 174

Taxpayers' suits, 18, 226

Territorial courts, see *infra*, From territorial to federal courts.**Territories:**

Transfer of causes to United States court on abolition of tribal courts, 21, 644

Time for making application, 18, 284

"Answer or plead," 18, 288

Application after answer or plea, 18, 293

Application before answer or plea, 18, 293

Application by intervening or substituted parties, 18, 294

Application with answer or plea, 18, 293

Case becoming removable after expiration of time, 18, 290

Computation of time, 18, 287

Demurter, 18, 289

Extension of time, 18, 295

Act of God, illness, or ignorance of counsel, 18, 297

Amended pleadings, 18, 297

By implication, 18, 297

By order of court or stipulation of parties, 18, 295

Failure of plaintiff to fix default, 18, 297

Filing demurrer or dilatory plea, 18, 297

Filing petition without presentation to court, 18, 290

Motions, 18, 289

Prejudice or local influence, 18, 250

Before trial, 18, 250

Before trial has begun, 18, 252

No duty to delay trial, 18, 254

What constitutes trial, 18, 253

Premature application, 18, 289

Several defendants having different times to plead, 18, 293

Special proceedings, 18, 287

Successive applications by different defendants, 18, 294

Terms and general purpose and policy of removal acts, 18, 284

Time for removal, 18, 292

Time to answer original pleading, 18, 289

When time begins to run, 18, 290

Trespass, 21, 796

REMOVAL OF CAUSES, *cont'd.***Trusts and trustees:**

Citizenship, 18, 189

Diverse citizenship, 18, 199, 200

United States:

Suits by the United States, 18, 238

United States courts (see *infra*, Acquisition of jurisdiction by federal court; Jurisdiction of federal court):*Appeal or error in federal courts*, see *infra*, Appeal or error in federal courts.*From one federal court to another*, see *infra*, From one federal court to another.*From territorial to federal courts*, see *infra*, From territorial to federal courts.*Nature, extent, and exercise of jurisdiction*, see *infra*, Nature, extent, and exercise of jurisdiction.**United States supreme court:**

Review by United States supreme court on error to state court, 18, 399

Vacating order of removal, 18, 345

After remand from federal court, 18, 346

Power to vacate, 18, 345

Vacating order ineffectual if cause properly removed, 18, 346

Verification:

Petition for removal, 18, 318

Waiver of right of removal, 18, 163

Who may remove suit (see *infra*, Diverse citizenship of parties), 18, 273

Aliens, 18, 279

Diverse citizenship and separable controversy, see *infra*, Diverse citizenship and separable controversy.

Federal question, 18, 280

Prejudice or local influence, 18, 279

Wills:

Proceedings relating to wills, 18, 174

Suits relating to wills and administration, 18, 224

REMOVAL OF CLOUD, see **QUIETING TITLE AND REMOVAL OF CLOUD****RENDITION AND ENTRY OF JUDGMENTS**, 18, 427

Adjournment, 18, 433

Amendment of judgment roll, 18, 480

Appeals, judgments on appeal, 11, 1061

- RENDITION AND ENTRY OF JUDGMENTS, *cont'd.***
 Application for order directing entry, 18, 454
 Blanks left for insertion of costs, 18, 441
 Certiorari:
 Errors in rendition of judgment, 4, 99
 Errors subsequent to rendition of judgment, 4, 105
 Chambers and vacation, 4, 343; 18, 433
 Entry in vacation, 18, 446
 In general, 18, 446
 Necessity of memoranda for guidance of clerk, 18, 447
 Clerk, 18, 448
 Clerk's liability for neglect in entering, 18, 452
 Decision of court only guide for entry, 18, 450
 Docketing, 18, 485
 Enlarging or abridging scope of judgment, 18, 451
 Entry by clerk of judgment on award, 11, 1054
 Entry in accordance with direction of court, 18, 448
 Entry of judgment upon non-compliance with conditional order, 18, 451
 Filing of decision sufficient warrant, 18, 449
 Judgment by confession, 11, 1016
 Judgment roll, 18, 473
 Limitation of clerk's powers, 18, 450
 Ministerial act, 18, 448
 Payment of fees, 18, 452
 Powers and duties of clerk, 18, 448
 Courts (see *infra*, Rendition by duly constituted court):
 Rendition by duly constituted court, 11, 810
 Administrative officers, 11, 811
 After expiration of time, 11, 813
 Allowance of claim by assignee, 11, 811
 Clerk, 11, 810
 Conflicting terms, 11, 814
 Disqualification of judge, 11, 816
 In general, 11, 810
 In vacation, 11, 814
 Premature term, 11, 816
 Summary judgments, 11, 812
 Unauthorized time or place, 11, 812
 Date of judgment, 18, 435
 Index Pl. & Pr. — 59
- RENDITION AND ENTRY OF JUDGMENTS, *cont'd.***
 Death, 18, 448
 Nunc pro tunc, 18, 461
 Decrees, see DECREES.
 Defaults, see DEFAULTS.
 Docketing (see *infra*, Judgment docket), 18, 439
 Entry, 18, 437
 Application for order directing entry:
 Application for unsuccessful party, 18, 455
 Entry of default judgments, 18, 456
 Ex parte application, 18, 454
 In general, 18, 454
 Blanks left for insertion of costs, 18, 441
 Book of entry, 18, 441
 Clerical errors, 18, 452
 Clerks, see *infra*, Clerk.
 Dismissal for failure to enter, 18, 453
 Effect of entry in other than judgment book, 18, 442
 Effect of failure to enter, 18, 453
 Entry essential to docketing, 18, 439
 Entry in judgment book, 18, 441
 Entry prerequisite to making up judgment roll, 18, 439
 Entry without written decision, 18, 454
 Essential to admission of judgment as evidence, 18, 439
 Form of entry, 18, 448
 Irregularities, 18, 452
 Memorandum not sufficient, 18, 440
 Necessity of, 18, 437
 Omissions, 18, 452
 Powers and duties of clerk, 18, 448
 Clerk's liability for neglect in entering, 18, 452
 Entry in accordance with direction of court, 18, 448
 Payment of fees, 18, 452
 Reading of entry in court, 18, 456
 Rendition distinguished from, 18, 430
 Signature, 18, 456
 General rule as to time and place, 18, 456
 On *dies non juridicus*, 18, 458
 Premature signature, 18, 458
 Subsequent term, 18, 458
 Vacation, 18, 457
 Time of entry, 18, 443
 Effect of noncompliance, 18, 443

RENDITION AND ENTRY OF JUDGMENTS, *cont'd.*

Entry, *cont'd.*

Time of entry, *cont'd.*

Entry after death of party,
18, 448

Entry after expiration of
judge's term, 18, 447

Entry in vacation, 18, 446

Entry on filing referee's re-
port or decision of court,
18, 443

Entry pending motion for
new trial, 18, 444

Entry pending stay of pro-
ceedings, 18, 445

Entry within certain time,
18, 443

Statutory provisions as to
time, 18, 443

Vacation, 18, 446

What constitutes, 18, 440

Evidence, see infra, Nunc pro tunc.

Executions, see EXECUTIONS.

Final judgments and decrees, 2, 61

Holidays, 18, 433

Infants, 10, 704

In personam, 11, 969

In rem, 11, 969

Judgment book, 18, 441, 442

Judgment docket, 18, 481

Book of entry, 18, 484

By whom entry made, 18, 485

Cancellation of docket, 18, 487

Correction of docket, 18, 487

Definition, 18, 481

Docketing essential to constitute
lien, 18, 482

Docketing out of office hours, 18,
486

Docketing unnecessary to issu-
ance of execution, 18, 483

Failure to docket, 18, 484

Index of judgments, 18, 488

Judgments affirmed on appeal,
18, 483

Justices' judgments, 18, 483

Nature, 18, 481

Necessity, 18, 482

Necessity of docketing in county
where rendered, 18, 487

Place of docketing, 18, 486

Purpose, 18, 482

Requisites of docket entry, 18,
487

Time of docketing, 18, 485

Transcript, 18, 487

Judgment roll, 18, 471

Amended answer, 18, 477

Amendments, 18, 480

Bill of particulars, 18, 479

By whom made up and filed, 18,
473

JUDGMENTS, *cont'd.*

Judgment roll, *cont'd.*

Case or exceptions, 18, 479

Contents, 18, 473

Decision or report, 18, 478

Definition, 18, 471

Disposition of issue, 18, 475

Evidence of jurisdiction, 18, 474

Final and interlocutory judg-
ments, 18, 478

Findings, 18, 477

Improper papers, 18, 480

Items of costs, 18, 480

Lost roll, 18, 481

Necessity of, 18, 471

Papers materially affecting judg-
ment, 18, 479

Pleadings, 18, 476

Requisites, 18, 473

Signature, 18, 481

Substitution of amended answer,
18, 477

Summons, 18, 475

Time of making and filing, 18,
472

Variance, 18, 481

Verdict, 18, 477

Judgments:

Rendition before disposal of de-
murrers, 11, 867

Judgments *in personam*, 11, 969

Judgments *in rem*, 11, 969

Judgments on awards:

Entry by clerk, 11, 1054

Manner of entering judgment,
11, 1053

Time of entry of judgment, 11,
1051

Justices of the peace, 12, 729

Distinction between rendition
and entry of judgment, 12,
730

Entry of ministerial act, 12, 730

Holidays, 12, 734

In general, 12, 729

Sundays, 12, 734

Trials by court, 12, 730

Trials by jury, 12, 732

Lost roll, 18, 481

Mandamus, 13, 562

Before refusal to enter judg-
ment, 13, 563

In general, 13, 562

Mandamus to compel rendition,
18, 436

On verdict, 13, 564

Order must be authorized, 13,
563

Sufficiency of verdict, 13, 564

To enter particular judgment,
13, 563

Memorandum not sufficient, 18, 440

RENDITION AND ENTRY OF JUDGMENTS, *cont'd.*

Notice of application for *nunc pro tunc* entry, 18, 470

Nunc pro tunc, 18, 458

Definition and use of term, 18, 458

Entry of judgment previously rendered, 18, 464

Amendment of clerical errors or omissions, 18, 465

Application, 18, 470

Basis of entry, 18, 467

Conditional entry, 18, 466

Court's own motion, 18, 469

Effect of *nunc pro tunc* entry, 18, 471

Entry as affected by rights of third persons, 18, 465

Evidence of rendition, 18, 467

Evidence of rendition should be in writing, 18, 467

Form of application, 18, 470

In general, 18, 464

Judgments by confession, 18, 465

Nature of proceedings, 18, 469

Necessity for evidence of rendition, 18, 467

Notice of application, 18, 470

Parol evidence, 18, 469

Prejudice to rights of innocent parties, 18, 465

Presumption as to evidence, 18, 469

Previous act of court essential, 18, 465

Proceedings to obtain entry *nunc pro tunc*, 18, 469

Termination of jurisdiction, 18, 466

When proper, 18, 464

Who may apply, 18, 470

Written evidence, 18, 467, 468

Exercise of power not limited as to time, 18, 459

Inherent power, 18, 459

Power of court, 18, 458

Rendition *nunc pro tunc*, 18, 459

Case must be ripe for judgment, 18, 460

Death of party, 18, 461

Decision to be governed by circumstances of each case, 18, 462

Delay by act of adversary, 18, 462

Delay by act of court, 18, 460

General rule, 18, 459

RENDITION AND ENTRY OF JUDGMENT, *cont'd.*

Nunc pro tunc, cont'd.

Rendition *nunc pro tunc, cont'd.*

Motion in arrest or for new trial, 18, 462

Occasion other than death, 18, 462

When not proper, 18, 464

When proper, 18, 459

Orders (see ORDERS):

Application for order directing entry, 18, 454

Personam, 11, 969

Place of docketing, 18, 486

Place of rendition, see *infra*, Rendition.

Place of signature, 18, 456

Presumption as to date of judgment, 18, 435

Probate and contest of wills, 16, 1043

Rem, 11, 969

Rendition, 18, 429

Distinguished from entry, 18, 430

Duty of court to render, 18, 431

Form, 18, 430

Judgment as evidence of rendition, 18, 437

Judgment on verdict, 18, 431

Mandamus to compel, 18, 436

Nunc pro tunc, see *infra*, *Nunc pro tunc*.

Rendition before determination of all issues, 18, 436

Rendition without issue joined, 18, 436

What constitutes, 18, 429

Rendition before disposal of demurrers, 11, 867

Rendition by duly constituted court, 11, 810

Administrative officers, 11, 811

After expiration of time, 11, 813

Allowance of claim by assignee, 11, 811

Clerk, 11, 810

Conflicting terms, 11, 814

Disqualification of judge, 11, 816

In general, 11, 810

In vacation, 11, 814

Premature term, 11, 816

Summary judgments, 11, 812

Unauthorized time or place, 11, 812

Review, 18, 996

Rolls, see *infra*, Judgment roll.

Satisfaction of judgments, see SATISFACTION AND DISCHARGE OF JUDGMENTS.

Scire facias, 19, 287

Sentence, see SENTENCE.

Signature, see *infra*, Entry.

RENDITION AND ENTRY OF JUDGMENT, *cont'd.*

Specific performance, 20, 514

Stipulations, 20, 632, 648

Sundays and holidays, 18, 433; 20, 1192, 1193

Supersedeas and stay of proceedings, 18, 445

Taxation, 21, 414

Time and place of rendition (see *infra*, Rendition), 18, 432

Adjourned term, 18, 433

Before proper term, 18, 432

Holiday, 18, 433

Presumption as to date of judgment, 18, 435

Sunday, 18, 433

Vacation, 18, 433

Time and place of signature, 18, 456

Time of application for *nunc pro tunc* entry, 18, 470Time of entry, see *infra*, Entry.

Time of making and filing judgment roll, 18, 472

United States courts, 22, 306

Vacation, see *infra*, Chambers and vacation.

Vendor and purchaser, 22, 699

What entry must show, 11, 926

Adjudication of issues, 11, 928

Judicial determination, 11, 929

Relief granted and parties, 11, 929

Strict formality is not essential, 11, 926

Sufficient in itself, 11, 928

Summary statement of rule, 11, 930

Unnecessary recitals, 11, 929

RENT (see LANDLORD AND TENANT):

Debt, 5, 900

Distress, see DISTRESS.

Petitions, 16, 510

Splitting causes of action, 1, 155

RENT CHARGE:

Ejectment:

Grantee or holder of rent charge, 7, 285

REOPENING THE CASE, see OPENING, AMENDING, AND VACATING JUDGMENTS; ORDER OF PROOF.**REPLEADER, 18, 489**

Award of repleader, 18, 490

Costs, 5, 133; 18, 493

Definition, 18, 489

Demurrers, 18, 492

First fault in pleading, 18, 492

In what cases awarded, 18, 490

In what cases not awarded, 18, 491

Judgments, 18, 492

Judgment *non obstante veredicto* distinguished, 11, 918

Motion for, 18, 490

REPLEADER, *cont'd.**Non obstante veredicto* distinguished, 11, 918

Revision of court's action, 18, 490

Sham and frivolous pleadings, 20, 103, 109

REPLEVIN, 18, 494

Abating and quashing writ, 18, 524

Action on bond, 18, 626

Allegation as to title of property, 18, 632

Alleging judgment, 18, 630

Assignment of breaches, 18, 630

Condition distinct and separate, 18, 630

Declaration and complaint, 18, 628

Demand, 18, 632

Description of bond, 18, 629

Form of action, 18, 627

Judgment, 18, 635

Jurisdiction, 18, 626

Negating exceptions, 18, 635

Notice, 18, 632

Nul tiel record, 18, 634

Parties, 18, 627

Plea or answer, 18, 633

Procedure against officer where bond is insufficient, 18, 636

Replication, 18, 635

Return of property, 18, 634

Affidavits, 18, 511

Actions to recover exempt property, 18, 516

Allegations of accrual of action, 18, 514

Amended affidavit, 18, 532

Amendments, 18, 518

Averment of territorial jurisdiction, 18, 512

Averment of value of property, 18, 515

Compliance with statute, 18, 513

Condition precedent, 18, 511

Correspondence between complaint and affidavit, 18, 532

Description of property, 18, 514

Entitling affidavit, 18, 512

Execution of affidavit, 18, 517

General allegation of ownership and detention, 18, 515

Incorporating affidavit in complaint, 18, 532

Information and belief, 18, 514

Necessity, 18, 511

Negating seizure under process, 18, 516

No part of pleadings, 18, 532

Objections, 18, 517

Office of affidavit in justice's court, 18, 511

Requisites, 18, 512

Signature, 18, 517

REPLEVIN, *cont'd.*

- Affidavits, *cont'd.***
 - Sufficiency, 18, 512
 - Surplusage, 18, 513
 - Variance between affidavit and writ, 18, 515
 - Void or voidable proceedings, 18, 512
- Alias* and *pluries* writs, 18, 523
- Alias* summons, 18, 521
- Alternative judgment, 18, 591
 - By whom election exercised, 18, 595
 - Election, 18, 595
 - Election must appear of record, 18, 596
 - Exceptions, 18, 592
 - General rule, 18, 591
 - Time of election, 18, 596
- Amendments:**
 - Affidavits, 18, 518
 - Bond, 18, 625
 - Declaration and complaint, 18, 544
 - Amendment refused, 18, 545
 - In general, 18, 544
 - Parties, 18, 510
 - Plea or answer, 18, 560
 - Return, 18, 531
 - Writ, 18, 525
- Amount in controversy, 18, 499
 - Appeal from justice's court, 18, 501
 - Courts other than justices' courts, 18, 500
 - Excess of jurisdictional amount, 18, 501
 - How amount in controversy ascertained, 18, 501
 - In justices' courts, 18, 500
 - Statutory provisions, 18, 499
- Answer*, see *infra*, Plea or answer.
- Answers in code pleading:**
 - General denials, 1, 822
 - Fraud, 1, 823
 - General denial put in issue, 1, 822
 - Replevin by mortgagees, 1, 823
- Appeals, 18, 612**
 - Costs, 18, 612
 - Errors not assignable, 18, 613
 - General rule, 18, 612
- Appraisement, 18, 528
- Assignment for benefit of creditors:
 - Action against assignee, 2, 912
 - Assignee, 2, 871
- Attorney's fees, 18, 611
- Avowry, 18, 554**
 - General issue to avowry, 18, 562
 - Judgment for debt in avowry, 18, 602
 - Pleas to avowry, 18, 561

REPLEVIN, *cont'd.*

- Bill of particulars, 18, 533
- Bonds, 18, 614**
 - Action on bond*, see *infra*, Action on bond.
 - Amendment, 18, 625
 - Amount not definite, 18, 622
 - Amount of the bond, 18, 622
 - Approval of bond, 18, 618, 623
 - Circumstances dispensing with bond, 18, 617
 - Common-law bond, 18, 619
 - Condition precedent, 18, 615
 - Conditions, 18, 620
 - Delivery, 18, 623
 - Deposit in lieu of bond, 18, 615
 - Description of property, court, and action, 18, 621
 - Execution, 18, 618
 - Filing bond, 18, 617
 - Filing new bond, 18, 626
 - Issuance of writ, 18, 616
 - Justification, 18, 624
 - Nature and sufficiency of bond, 18, 614
 - Necessity for, 18, 614
 - Number of sureties, 18, 622
 - Objections to bond, 18, 524, 624
 - Redelivery bond, 18, 637
 - Requisites, 18, 618
 - Seal, 18, 623
 - Statutes requiring bond, 18, 615
 - Substantially conforming to statutory requirements, 18, 619
 - Summary judgment on bond, 18, 626
 - Terms, 18, 620
 - To whom payable, 18, 621
- Carriers, 3, 862
- Cattle damage-feasant, 18, 556
- Change of nature of action, 18, 499
- Change of venue, 18, 505
- Chattel mortgages, 4, 513
- Civil action, 18, 498
- Common-law and statutory origin, 18, 498
- Comparison with other actions, 18, 497
- Constables*, see **SHERIFFS AND CONSTABLES.**
- Costs, 18, 609**
 - Amount in controversy, 5, 171
 - Appeal, 18, 612
 - Attorney's fees, 18, 611
 - Costs in action on bond, 18, 612
 - Costs on dismissal, 18, 611
 - Division of costs, 18, 611
 - Double and treble costs, 5, 182
 - Expenses as costs, 18, 610
 - Security for costs, 18, 609
 - Taxation of costs, 18, 609

REPLEVIN, *cont'd.*

Damages:

- Awarding damages, 18, 603
 - In general, 18, 603
 - Judgment for interest, 18, 603

Declaration and complaint, 18, 543

Verdict, 18, 583

- Failure to assess damages not fatal, 18, 585
- In general, 18, 583
- Nominal damages, 18, 585
- Separate finding for value and damages, 18, 585
- Specifying ground of assessment, 18, 584
- Statutory provisions, 18, 584

Death:

- Death of defendant, 5, 826
- Death of plaintiff, 5, 804

Declaration and complaint, 18, 531

Action on bond, 18, 628

Actions to recover exempt property, 18, 542

Adding a count in trover, 18, 534

Affidavit incorporated in complaint, 18, 532

Affidavit no part of pleadings, 18, 532

Amended affidavit, 18, 532

Amendment, 18, 544

Bill of particulars, 18, 533

Code, 18, 531

Commencement of the action, 18, 531

Correspondence between complaint and affidavit, 18, 532

Correspondence between declaration and writ, 18, 533

Damages, 18, 543

Demand, 18, 541

Description of property, 18, 534

Detention, 18, 539

Essential allegations, 18, 534

Exempt property, 18, 542

Fraud, 18, 543

In general, 18, 531

Instances of sufficient and insufficient description, 18, 535

Joinder of counts and causes, 18, 534

Negating seizure under process, 18, 543

Objections, 18, 544

Place of detention, 18, 540

Place of taking, 18, 539

Prayer for relief, 18, 544

Presumption in favor of declaration, 18, 533

Right to possession, 18, 536

Special ownership, 18, 537

Sufficiency of description, 18, 534

REPLEVIN, *cont'd.*

Declaration and complaint, *cont'd.*

Surplusage, 18, 533

Taking, 18, 538

Value of property, 18, 541

Venue, 18, 540

Verification, 18, 544

Writ, 18, 533

Definition, 18, 497

Demand, 18, 541

Action on bond, 18, 632

Failure to allege demand cured, 18, 542

When possession was originally rightful, 18, 541

When there was a wrongful taking, 18, 542

Description of property:

Affidavits, 18, 514

Bond, 18, 621

Declaration and complaint, 18, 534

Examples of sufficient and insufficient description, 18, 535

Requisites, 18, 534

What may be included, 18, 534

Judgment, 18, 591

Verdict, 18, 577

Writ, 18, 521

In general, 18, 521

Insufficient description, 18, 522

Seizure of property not described, 18, 523

Detention, 18, 539

Directing verdict, 18, 567

Dismissal, discontinuance, and nonsuit, 18, 604

Effect of termination of the suit, 6, 983

Inquiry into defendant's right of property, 18, 605

Nonsuit, 18, 605

Return of property, 18, 605

Voluntary dismissal, 18, 604

When return of property improper, 18, 606

Distress, 7, 31

Election of remedies, see **ELECTION OF REMEDIES**.

Elections (see *infra*, **Alternative judgment**):

Alternative verdict, 18, 586

Exceptions and objections, 18, 524, 544

Bond, 18, 621

Executions, 18, 607

Executions against the body and arrest in civil cases, 8, 588

Moving papers, 8, 602

Exempt property, 18, 542

REPLEVIN, *cont'd.*

- Fiat*, 18, 520
- Fixtures, 9, 16
- Form of action, 18, 498
- Fraud, 18, 543, 566
- General issue, 18, 547
- Information and belief, 18, 514
- Instructions, 18, 564
 - Circumstances warranting verdict for plaintiff, 18, 566
 - Directing verdict, 18, 567
 - Fraud, 18, 566
 - In general, 18, 564
 - Possession and ownership, 18, 565
- Intervention, 18, 510
- Joinder of counts and causes, 18, 534
 - Under codes, 1, 205
- Joinder of parties, 18, 509
- Joinder of pleas, 18, 559
- Joint tenants and tenants in common:
 - Between joint tenants and tenants in common, 11, 762
 - Joinder of parties, 11, 774
- Judgment, 18, 587
 - Action on bond, 18, 635
 - Adjudication as to what time, 18, 587
 - Admitting property in plaintiff, 18, 599
 - Alternative judgment, 18, 591
 - Alternative judgments unnecessary, 18, 592
 - Amendments, 18, 589
 - Awarding damages, 18, 603
 - Confirmation of party's possession, 18, 599
 - Description of property, 18, 591
 - Dismissal, discontinuance, and nonsuit, 18, 604
 - Election, 18, 595
 - Execution, 18, 607
 - In general, 18, 587
 - Joint judgment, 18, 590
 - Judgment for debt in avowry, 18, 602
 - Judgment for interest, 18, 603
 - Judgment for value, 18, 600
 - Judgment for value improper, 18, 601
 - Parties affected, 18, 589
 - Party in representative capacity, 18, 589
 - Prayer for return, 18, 599
 - Rendition and entry, 18, 588
 - Return of property, 18, 597
 - Satisfaction of judgment, 18, 608
 - Separate judgment, 18, 590
 - Time of election, 18, 596
 - Valuation of separate articles, 18, 602

REPLEVIN, *cont'd.*

- Judgment, *cont'd.*
 - Valuation of special interests, 18, 601
 - What property affected, 18, 591
- Jurisdiction, 18, 499
 - Amount in controversy, 18, 499
 - Extends to what property, 18, 499
 - In general, 18, 499
 - Jurisdictional amount, 18, 499
 - United States courts, 18, 502
- Jury:
 - Right to jury trial, 18, 563
- Justices of the peace:
 - Amount in controversy, 18, 500
- Landlord and tenant, 12, 902
- Legal conclusions, 18, 547
- Liens, 13, 140
- Lost instruments and records, 13, 350
- Mandamus, 13, 614
- Nature of action, 18, 497
- Nil debet*, 18, 634
- Non cepit*, 18, 547
- Non detinet*, 18, 549
- Not guilty, 18, 549
- Notice:
 - Action on bond, 18, 632
- Nul tiel record*, 18, 634
- Objections to writ, 18, 524
 - Abating and quashing writ, 18, 524
 - Must be made seasonably, 18, 524
 - Waiver, 18, 524
- Object of replevin, 18, 497
- Open and close, 15, 196
- Parties, 18, 505:
 - Action for use of another, 18, 507
 - Action on bond, 18, 636
 - Agents, 18, 507
 - Amendment, 18, 510
 - Enumeration of parties plaintiff, 18, 507
 - In general, 18, 505
 - Intervention, 18, 510
 - Joinder of defendants, 18, 510
 - Joinder of parties, 18, 509
 - Joinder of plaintiffs, 18, 509
 - Joint tenants and tenants in common, 18, 508
 - Mortgages, 18, 507
 - Officers, 18, 509
 - Partners, 18, 508
 - Personal representatives, 18, 507
 - Pledgee or bailee, 18, 507
 - Property in third person, 18, 506
 - Test of parties, 18, 505
- Partnership:
 - In favor of one partner against another, 15, 1020

REPLEVIN, *cont'd.*

Partnership, *cont'd.*

- Rule that no action lies on firm transaction, 15, 1020
- Place of detention, 18, 540
- Place of taking, 18, 539
- Plaintiff's bond, see infra*, Bonds.
- Plea or answer, 18, 546
 - Action on bond, 18, 633
 - Affirmative relief, 18, 547
 - Alleging property or right of possession in defendant, 18, 551
- Amendments, 18, 560
- Avowry for property distrained, 18, 554
- Avowry for rent in arrear, 18, 555
- Cepit in alio loco*, 18, 548
- Codes, 18, 547
- Denying property in plaintiff, 18, 550
- Denying value, 18, 558
- General avowry, 18, 556
- General denial, 18, 549
- General issue, 18, 547
- Implied denial of plaintiff's right, 18, 558
- In general, 18, 546
- Joinder of pleas, 18, 559
- Justification by officer, 18, 553
- Legal conclusions, 18, 547
- Non cepit*, 18, 547
- Non detinet*, 18, 549
- Not guilty, 18, 549
- Plea in abatement, 18, 559
- Prayer for return, 18, 558
- Set-off, 18, 547
- Special damages, 18, 557
- Special defenses, 18, 557
- Taking cattle damage-feasant, 18, 556
- Pledges, 16, 641, 649
- Possession, right to, 18, 536
- Prayer for relief, 18, 544
- Process, see infra*, Writ.
- Question in issue, 18, 498
- Redelivery bond, 18, 637
- Replications and replies, 18, 560
 - Action on bond, 18, 635
 - Denying matters of inducement, 18, 561
- General issue to avowry, 18, 562
- In general, 18, 560
- Necessary, 18, 561
- Number of pleas, 18, 562
- Pleas to avowry, 18, 561
- Questions of title, 18, 562
- Replication must conform to avowry, 18, 563
- Special property, 18, 561
- Time of claim, 18, 563

REPLEVIN, *cont'd.*

- Return of writ, 18, 529
- Appointment of appraisers, 18, 530
- Before whom returnable, 18, 529
- Inventory, 18, 530
- Requisites of return, 18, 529
- Service of copy, 18, 530
- Time of return, 18, 529
- Riparian rights, 18, 1214
- Sales, see SALES.*
- Satisfaction of judgment, 18, 608
- Seal:
 - Bond, 18, 623
- Security for costs, 18, 609; 19, 358, 360
- Service of process, 18, 526
 - Appraisalment, 18, 528
 - Assistance in service, 18, 526
 - By whom made, 18, 526
 - Manner of service, 18, 526
 - Place of service, 18, 526
 - Property taken from whom, 18, 528
 - Reasonable retention of property by officer, 18, 528
 - Time of service, 18, 528
- Sheriffs, see SHERIFFS AND CONSTABLES.*
- Signature:
 - Affidavits, 18, 517
- Special ownership, 18, 537
- Splitting causes of action, 1, 161
- Summons and process (*see infra*, Writ), 18, 520
 - Alias* summons, 18, 521
 - Failure to serve, 18, 521
 - Necessary to summon, 18, 520
- Surplusage, 18, 533
- Survival of actions, 21, 331
- Taking, 18, 538
 - Allegation, 18, 538
 - In general, 18, 538
 - Place of taking, 18, 539
- The writ, see infra*, Writ.
- Torts, 18, 498
- Trover and conversion, 18, 434; 21, 1013
 - Description of property, 21, 1069
 - Election of remedies, 21, 1025
 - Joinder of counts and causes, 21, 1032
- United States courts, 18, 502
- Value of property, 18, 541
 - Denying value, 18, 558
 - Judgment for value, 18, 600
- Verdict, 18, 578
 - Exceptions to the rule of finding full valuation, 18, 583
 - Exceptions to the rule of finding value of separate articles, 18, 580

REPLEVIN, *cont'd.*

Value of property, *cont'd.*

Verdict, *cont'd.*

Failure to find value, 18, 580

Finding value of separate articles, 18, 580

Finding value of special interest, 18, 580

In general, 18, 578

Limit of value, 18, 579

Valuation as of what time, 18, 580

Verdict on avowry, 18, 580

Variance, 18, 563

Venue, 18, 502, 540; 22, 779

Allegation of venue, 18, 504

Change of venue, 18, 505

Close upon which distress was levied, 18, 504

Whether action is local or transitory, 18, 502

Verdict, 18, 567

Alternative verdict, 18, 585

Avowry, 18, 580

Compliance with statute, 18, 568

Damages, 18, 583

Definiteness and certainty, 18, 571, 578

Description of property, 18, 577

Election, 18, 586

Exceptions to the rule of finding full valuation, 18, 583

Failure to find right of possession, 18, 574

Finding for defendant, 18, 573

Finding for different interests, 18, 576

Finding in favor of officer, 18, 575

Finding, title, ownership, or right of possession, 18, 572

Finding unlawful taking and detention, 18, 577

Finding value of separate articles, 18, 580

Form of verdict, 18, 567

General verdict, 18, 569

In general, 18, 567

Limit of value, 18, 579

Partial verdict, 18, 576

Plurality of defendants, 18, 576

Responsiveness to issues, 18, 568

Special verdict, 18, 575

Valuation as of what time, 18, 580

Value of property, 18, 578

Verdict affects what property, 18, 587

Verdict for return of property, 18, 586

What parties and property affected, 18, 586

Verification, 18, 544

REPLEVIN, *cont'd.*

Writ, 18, 519

Abating or quashing the writ, 18, 524

Alleging value, 18, 523

Alias and *pluries* writs, 18, 523

Amendment of writ, 18, 525

Correspondence between declaration and writ, 18, 533

Date of institution, 18, 519

Description of property, 18, 521

Fiat, 18, 520

In general, 18, 519

In whose name writ runs, 18, 520

Objections to writ, 18, 524

Provisional writ, 18, 519

Requisites, 18, 519, 520

Return of writ, see *infra*, *Return of writ*.

Service, see *infra*, *Service of process*.

Statutory requirements, 18, 520

Summons, 18, 520

Void writ, 18, 520

REPLICATIONS AND REPLIES,

18, 639

Abatement in pleading, see **ABATEMENT IN PLEADING.**

Absence of replication, 18, 650

Accord and satisfaction, 1, 79

Actions at law, 18, 642

Ambiguity, 18, 710

Amendments, 18, 680

Equity, 1, 495

Another suit pending, 1, 772

Answers, see *infra*, *Code replies*; *Equity*.

Answers in equity pleading:

Evidence, 1, 925

Argumentativeness, 18, 656, 678, 711

Carriers, 3, 859

Code replies, 18, 690

Absence of reply, 18, 698

Affirmative allegations in effect denials, 18, 696

Aider by reply, 18, 724

Ambiguity, 18, 710

Argumentativeness, 18, 711

Criminal practice, 18, 698

Denial of knowledge, 18, 714

Denials, 18, 710

Departure, 18, 705

Directing reply to be made, 18, 692

Faulty denials, 18, 723

General denials, 18, 712

General denials and other denials and allegations, 18, 713

Grounds for granting motion, 18, 693

Implied denials, 18, 715

Inconsistency, 18, 721

Inconsistent replies, 18, 709

REPLICATIONS AND REPLIES,

cont'd.

- Code replies, *cont'd.*
 - Judgment for failure to reply, 18, 700
 - Justices' courts, 18, 697
 - Legal conclusions, 18, 704
 - Making further reply, 18, 697
 - Matters of evidence, 18, 704
 - Necessity and advisability of reply, 18, 690
 - New assignment, 18, 708
 - Noncompliance with order, 18, 694
 - Obedience to order, 18, 694
 - Office and nature of reply, 18, 690
 - Omission to file reply in time, 18, 699
 - Peculiar code provisions, 18, 691
 - Pending demurrer to answer, 18, 697
 - Proof under general denial, 18, 717
 - Provisions of codes, 18, 690
 - Reference to extraneous matter, 18, 703
 - Remedies for insufficiency, 18, 721
 - Repetition of allegations of complaint, 18, 703
 - Reply and demurrer to same answer, 18, 702
 - Reply must respond to answer, 18, 702
 - Sham and frivolous replies, 18, 705
 - Specific denial, 18, 714
 - Sufficiency and defects, 18, 702
 - Sufficiency of new matter to require reply, 18, 694
 - Unnecessary replies, 18, 723
 - Verification (see *infra*, Verification), 18, 723
 - Waiver of reply, 18, 701
- Commencement, 18, 653
- Common traverse, 18, 666
- Conciseness, 18, 658
- Conclusion, 18, 671
 - Denial of substance of plea, 18, 673
 - Difficulty in selecting proper conclusion, 18, 672
 - Either form allowable, 18, 676
 - In general, 18, 671
 - Negative nature of new matter, 18, 675
 - New affirmative matter in replication, 18, 674
 - Offer to verify, 18, 674
 - Prayer for judgment, 18, 672
 - To the country, 18, 673

REPLICATIONS AND REPLIES,

cont'd.

- Confession and avoidance, 4, 672; 18, 646, 669
 - Traverse and confession and avoidance not allowable, 18, 654
- Consistency (see *infra*, Departure), 18, 689, 709, 740
- Contributory negligence, 5, 13
- Covenant, 5, 386
- Creditors' bills, 5, 581
- Criminal procedure, 18, 698
- Debt, 5, 928
- Defaults, 6, 51
 - Failure to file replication, 6, 76
- Definiteness and certainty in pleading, 6, 253; 18, 657, 668, 710
 - Ambiguity, 18, 658
 - In general, 18, 657
 - Setting out particulars, 18, 658
 - Time and place, 18, 658
- Definitions, 18, 642
- De injuria*, see *infra*, Traverse *de injuria*.
- Demurrers, 18, 652, 677
 - Argumentativeness, 18, 678
 - Demurrer and reply to answer, 6, 383
 - Duplicity, 18, 677
 - Effect of demurrer, 18, 678
 - For wrong conclusion, 18, 677
 - Motions to strike out, 18, 678
 - Noncompliance with rule to reply, 18, 679
 - Replication and demurrer to same plea, 18, 652
 - Reply and demurrer to same answer, 18, 702
 - Wrong use of *de injuria*, 18, 677
- Demurrers in chancery, 6, 395
- Departure (see DEPARTURE), 18, 659
 - 705
 - Code replies, 18, 705
 - Inconsistent replies, 18, 706
 - Introduction of new cause of action, 18, 707
 - Matter in estoppel, 18, 706
 - Reply cannot remedy defects in complaint, 18, 707
 - Reply must be consistent with complaint, 18, 705
- Dismissal for want of replication, 18, 686
- Divorce, 7, 101
- Dower, 7, 166
- Duplicity, 7, 241; 18, 660, 677
 - Cumulative denial, 7, 242
 - Immaterial facts, 7, 242
 - In general, 7, 241
 - Pleadings subsequent to replication, 7, 243
 - Several facts for one point, 7, 242

REPLICATIONS AND REPLIES,

cont'd.

- Elections, 7, 388
- Equitable defenses, 7, 805
- Equity, 18, 642, 681
 - Consistency, 18, 689
 - Dismissal for want of replication, 18, 686
 - Effect of replication to answer, 18, 683
 - Effect of replication to plea, 18, 685
 - Essentials of replication, 18, 688
 - General replication, 18, 681
 - General requisites, 18, 688
 - Necessity and advisability of replication, 18, 682
 - Omitting to file replication, 18, 683
 - Special replication, 18, 681
 - Sufficiency of answer waived by replication, 18, 684
 - To answer, 18, 682
 - To plea, 18, 683
 - To plea and answer, 18, 683
 - Waiver of replication, 18, 687
 - Withdrawal of replication, 18, 689
- Estoppel:
 - Matter of estoppel, 18, 647
- Exceptions and objections, 8, 205; 18, 677
 - First taking on appeal, 18, 651
 - Waiver of objection, 18, 679
- False imprisonment, 8, 853
- Former adjudication:
 - Reply to the plea, 9, 627
 - Conclusion, 9, 629
 - In general, 9, 627
 - Sufficiency of reply, 9, 627
 - Where special replications are not allowed, 9, 618
- Former conviction or acquittal, 9, 636
- General denial, *see infra*, Code replies.
- Heirs and devisees:
 - Actions at law against heirs and devisees on statutory liabilities, 10, 42
- Homesteads and exemptions, 10, 105
- Inducement, 18, 667
- Insolvency:
 - Defendant's plea of discharge, 11, 39
- Insurance, 11, 425
 - Departure, 11, 425
 - Duplicity, 11, 426
 - In general, 11, 425
 - In respect of authority of defendant's agent, 11, 425
- Interstate commerce, 11, 487

REPLICATIONS AND REPLIES,

cont'd.

- Judgments:
 - Judgment for failure to answer or reply, 11, 1034
- Justices of the peace, 12, 725; 18, 697
- Legal conclusions, 18, 662, 704
 - Alleging and denying legal conclusions, 18, 662
- Traversing matter of law, 18, 663
- Libel and slander, 13, 91
- Limitations (*see* LIMITATIONS):
 - Absence, 13, 260
 - Agreement not to plead statute, 13, 264
 - Avoiding plea of the statute, 13, 238
 - Codes, 13, 238
 - Demurrer, 13, 242
 - Distinctness, 13, 240
 - Issue to be made, 13, 239
 - Materiality, 13, 240
 - Necessity and propriety, 13, 238
 - Negating exceptions, 13, 241
 - Particularity, 13, 240
 - Rejoinder, 13, 241
 - Requisites, 13, 239
 - Responsiveness, 13, 240
 - Sufficiency, 13, 240
 - Coverture, 13, 259
 - Former action, 13, 262
 - Infancy, 13, 259
 - Merchants' accounts, 13, 264
 - New promise, payment, or acknowledgment, 13, 254
 - Nonresidence, 13, 260
 - Repealed provision, 13, 265
- Limited partnerships, 15, 1118
- Lost instruments and records:
 - Recovery of lost instruments, 13, 371
- Malicious prosecution, 13, 463
- Mandamus, 13, 745
 - Action for false return, 13, 749
- Admissions, 13, 747
 - Effect of denial by relator, 13, 748
 - Effect of failure to reply, 13, 747
 - Reply admits legal sufficiency of answer, 13, 748
 - Where a case is submitted on petition and answer, 13, 748
- Form and contents of reply, 13, 748
 - Departure, 13, 749
 - Equitable defenses, 13, 749
 - Traverse or confession and avoidance, 13, 748

REPLICATIONS AND REPLIES,

cont'd.

Mandamus, *cont'd.*

Judicial officers, 13, 747

Propriety of reply, 13, 745

Right to reply lost by demurrer, 13, 747

States in which no replies are permitted, 13, 746

States in which replies are permitted, 13, 745

Statute of Anne, 13, 745

Master and servant:

Actions against master for injuries to servant, 13, 915

Mechanics' liens, 13, 999

Multiplicity, 18, 669

Negative pregnant, 18, 664

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

New assignment, 18, 648, 670

Certainty required, 18, 670

Codes, 18, 708

De injuria not proper, 18, 650

In general, 18, 648, 670

Necessary allegation, 18, 671

Pleas to new assignment, 18, 671

Unauthorized acts, 18, 649

Uncertainty of place or time, 18, 649

When there is but a single grievance, 18, 648

Notice or brief statement of defense, 10, 1081, 1082

Number of replications allowable, 18, 651

Compelling plaintiff to elect, 18, 652

In general, 18, 651

Official bonds, 15, 155

Partnership, see PARTNERSHIP.

Patents, 16, 92

Suit in equity for infringement, 16, 121

Payment, see PAYMENT.

Plea (see *infra*, Equity):

Defects in plea waived by replication, 18, 680

Replication to any essential allegation of plea, 18, 656

Where the plea is applicable to the whole declaration, 18, 654

Plea applicable to whole declaration, 18, 654

Plea of payment, see PAYMENT.

Pleas in equity, 16, 618, 628

Probate and contest of wills, 16, 1026

Production of documents, 6, 791

Protestation, 18, 665

Puis darrein continuance, 17, 271

Quieting title, 17, 357

Quo warranto, 17, 474

Conclusion, 17, 476

REPLICATIONS AND REPLIES,

cont'd.

Quo warranto, *cont'd.*

Duplicity, 17, 475

In general, 17, 474

Replying distinct causes, 17, 475

Sufficiency, 17, 475

Railroads.

Injuries to animals, 17, 592

Records, 17, 938

Replevin, see REPLEVIN.

Replications at law, 18, 642

Absence of replication, 18, 650

Amendments, 18, 680

Argumentativeness, 18, 656

Body, 18, 653

Commencement, 18, 653

Common traverse, 18, 643

Conciseness, 18, 658

Conclusions, see *infra*, Conclusion.

Confession and avoidance, 18, 646

Defects in plea waived by replication, 18, 680

Definiteness and certainty, 18, 657

Definitions, 18, 642

Demurrers, see *infra*, Demurrers.

Departure, 18, 659

Duplicity, 18, 660

Matter of estoppel, 18, 647

Necessity and uses of replications, 18, 612

New assignment, see *infra*, New assignment.

Number of replications allowable, 18, 651

Objections waived, 18, 679

Replication and demurrer to same plea, 18, 652

Requisites and sufficiency of replications, 18, 653

Special kinds, 18, 643

Special traverse, 18, 643

Title, 18, 653

Traverse, see *infra*, Traverse.

Traverse *de injuria*, 18, 644

Waiver of replication, 18, 650

Withdrawal of replication, 18, 679

Replies, 18, 642

Repugnancy, 18, 740

Revivor of suits and actions, 18, 1113

Sales:

Action for price, 19, 50

Scire facias, 19, 287

After demurrer withdrawn, 19, 287

General replication, 19, 287

Should traverse or avoid plea, 19, 287

REPLICATIONS AND REPLIES,
cont'd.

- Scope of article, 18, 641
- Set-off, recoupment, and counterclaim,*
see SET-OFF, RECOUPMENT, AND
COUNTERCLAIM.
- Sham and frivolous pleadings (see
SHAM AND FRIVOLOUS PLEADINGS),
18, 705; 20, 47
- Sheriffs and constables, 20, 156
- Special traverse, 18, 667
- Stock and stockholders:
 Actions on subscriptions or calls,
 20, 698
- Enforcement of stockholders'
 liability to creditors, 20, 752
- Supplemental pleadings, 21, 50
- Replication to supplemental an-
 swer, 21, 82
- Surplusage, 18, 662
- Tender, 21, 567
- Title, ownership, and possession, 21,
 717; 18, 653
- Traverse, 18, 643
- Certainty, 18, 668
- Common traverse, 18, 643, 666
- Immaterial allegations, 18, 665
- Inducement, 18, 667
- In general, 18, 664
- Multiplicity, 18, 669
- Negative pregnant, 18, 664
- Protestation, 18, 665
- Special traverse, 18, 643, 667
- Tender of issue, 18, 666
- Traversable allegations not de-
 nied, 18, 665
- Traverse and confession and
 avoidance not allowable, 18,
 654
- Traverse *de injuria* (see *infra*,
 Traverse *de injuria*), 18, 668
- Traverse *de injuria*, 18, 644, 668
- Demurrers, 18, 677
- Ex contractu*, 18, 644
- In general, 18, 644, 668
- Interest in or title to land or per-
 sonal property, 18, 646
- Multiplicity, 18, 669
- Torts, 18, 644
- What is put in issue, 18, 668
- When *de injuria* not good reply,
 18, 645
- When not proper, 18, 650
- Trespass*, see TRESPASS.
- Trespass to try title, 21, 942
- Trover and conversion, 21, 1109
- Usury*, see USURY.
- Vendor and purchaser:
 Purchaser's action to recover
 back purchase money, 22, 766
- Vendor's liens, 22, 737
- Verification:
 Absence of verification, 18, 723

REPLICATIONS AND REPLIES,
cont'd.

- Verification, *cont'd.*
- Codes, 18, 718
- By whom made, 18, 719
- Effect of unverified reply, 18,
 720
- Form of verification, 18, 719
- In general, 18, 718
- Offer to verify, 18, 674
- Matter of record in issue,
 18, 676
- Negative nature of new mat-
 ter, 18, 675
- New affirmative matter in
 replication, 18, 674
- Special traverses in replica-
 tion, 18, 674
- Waiver of objections, 18, 679
- Waiver of replication, 18, 650, 687
- Express waiver, 18, 651
- Implied waiver, 18, 650
- Objection on appeal, 18, 651
- Waiver of reply, 18, 701
- Waters and watercourses, 22, 1162
- Withdrawal of replication, 18, 679,
 689
- Work and labor, 22, 1374
- REPORT AND CASE MADE, 18,**
 725
- See AGREED CASE; CASE MADE ON
 APPEAL; CERTIFIED CASES.
- Amendment of pleadings, 18, 735
- Connecticut, 18, 725
- Criminal procedure, 18, 736
- Determination of report, 18, 733, 735
- Exceptions and objections:
 Objections waived in trial court,
 18, 734
- Form of report, 18, 732
- Hearing, 18, 733
- In general, 18, 725
- Insufficient reports, 18, 732
- Maine, 18, 728
- Massachusetts, 18, 725
- New Hampshire, 18, 728
- Practice after report is determined,
 18, 736
- Questions of fact, 18, 726
- Sufficiency of evidence to support
 verdict, 18, 734
- Sufficient report, 18, 732
- Vermont, 18, 725
- What questions are determined on
 hearing, 18, 733
- What questions may be reported, 18,
 728
- Allowance of costs, 18, 731
- Granting nonsuits, 18, 731
- Questions actually arising on
 trial, 18, 728
- Questions arising on pleadings,
 18, 730

REPORT AND CASE MADE, con.What questions may be reported, *con.*

Questions not determined below,

18, 729

Wills, 22, 1212

REPRESENTATIONS (see FALSE**REPRESENTATIONS AND DECEIT):***False pretenses*, see **FALSE PRETENSES.****REPRESENTATIVES, see EXECUTORS AND ADMINISTRATORS.****REPUGNANCY, 18, 738**See **SCANDAL AND IMPERTINENCE.**

Amendments, 18, 740

Answers in code pleading, 18, 741

Codes, 18, 741

Construction of pleadings, 18, 738

Criminal procedure, 18, 742

Declaration and complaint, 18, 739

Definition, 18, 738

Equity, 18, 740

Exceptions and objections, 18, 743

Indictments, 18, 742

Intoxicating liquors, 11, 550

Names, 14, 284

Pleas, 18, 739

Pleas at law, 16, 564

Replications and replies, 18, 740

Surplusage, 18, 740

REPUTATION:*Impeachment of witnesses*, see **IMPEACHMENT OF WITNESSES.****REQUESTS, see DEMAND.****REQUESTS TO FIND, see FINDINGS OF COURT.****RES ADJUDICATA, see FORMER ADJUDICATION; FORMER CONVICTION OR ACQUITTAL.****RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS, 18, 744**

Accident, averments as to, 18, 819

Admissions:

Admissions in answer, 18, 850

Amendments, 18, 842

Answer or plea, 18, 847

Admissions in answer, 18, 850

Burden of proof, 18, 849

Defense of innocent purchaser, 18, 848

Dissolution of injunction, 18, 850

Effect of denial, 18, 849

In general, 18, 847

Parol evidence of mistake, 18, 849

Responsiveness, 18, 847

Answers in code pleading, 1, 849

Bill or complaint, 18, 802

Amendments, 18, 842

Averment of failure or want of consideration, 18, 821

Averment of fraud, 18, 808

Averments as to accident, 18, 819

Averments as to damages, 18, 825

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*Bill or complaint, *cont'd.*

Averments as to mistake, 18, 815

Coming into equity with clean hands, 18, 807

Consideration for contract, 18, 821, 824

Defendant's knowledge of falsity of representations, 18, 812

Definiteness and certainty, 18, 802

Definiteness and certainty as to mistake, 18, 816

Demand, 18, 839

Description of contract, 18, 823

Duress, 18, 819

Falsity of representations, 18, 812

Grounds for equitable relief, 18, 804

Grounds not alleged, 18, 805

Inadequacy of remedy at law, 18, 806

In general, 18, 802

Injunction, 18, 822

Laches, 18, 825

Legal conclusions, 18, 803

Materiality of and reliance upon misrepresentations, 18, 813

Materiality of mistake, 18, 818

Mental incapacity, 18, 820

Mistake, 18, 815

Mistake of law, 18, 819

Multifariousness, 18, 804

Mutuality of mistake, 18, 818

Necessity to allege facts, 18, 810, 817

Offer to do equity, see *infra*, *Offer to do equity.*

Prayer, 18, 841

Sufficient averments of fraud, 18, 811

Title of plaintiff, 18, 839

Title of plaintiff to relief, 18, 804

Undue influence, 18, 819

Bona fide purchaser, 18, 848

Breach of contract, 18, 767

Breach of warranty of title, 18, 770

Contract by railroad company for right of way, 18, 768

Deed given in consideration of care and maintenance of grantor, 18, 769

Inadequacy of remedy at law, 18, 768

In general, 18, 767

Burden of proof, 18, 849

Cancellation distinguished from reformation, 18, 750

Cancellation or rescission, 18, 748

Caveat emptor, 18, 761

Chattel mortgages, 4, 510

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

- Coming into equity with clean hands, 18, 807
- Complaint*, see *infra*, Bill or complaint.
- Consideration (see *infra*, Inadequacy or want of consideration):
 - Averment of failure or want of consideration in bill or complaint, 18, 821
 - In suits for reformation, 18, 822
 - In suits for rescission, 18, 821
- Inadequacy of consideration, 18, 770
- Contracts:
 - Description of contract in bill or complaint, 18, 823
 - Consideration for contract, 18, 824
 - In suits for reformation, 18, 823
 - In suits for rescission, 18, 823
 - Intended instrument, 18, 824
 - Pointing out mistake, 18, 824
- Counts, paragraphs, and separate statements:
 - Separate counts, 5, 316
- Cross-bills, 18, 843
- Cross-complaints, 18, 843
- Damages, averments as to, 18, 825
- Decrees*, see *infra*, Findings of court and decree.
- Deed absolute declared to be mortgage, 18, 787
- Deed given in consideration of care and maintenance of grantor, 18, 769
- Definiteness and certainty in pleading, 18, 802
 - Allegations on subject of mistake, 18, 816
 - Bill or complaint, 18, 802
 - Statement of general rule, 18, 802
- Definitions, 18, 748
- Demand:
 - Alleging demand and disaffirmance before filing bill, 18, 839
- Demurrers, 18, 846
- Description of contract*, see *infra*, Contracts.
- Diligence, 18, 826
- Discretion of chancellor, 18, 753, 774
- Discretion of court, 18, 863
- Duress, 18, 763
 - Averment of, 18, 819
- Equitable defenses, 7, 804

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

- Equitable jurisdiction to rescind or cancel contracts, 18, 750
- Bill for recovery of damages, 18, 751
- Breach of contract*, see *infra*, Breach of contract.
- Consideration, 18, 770
- Discretion of chancellor, 18, 753
- Duress, 18, 763
- Exclusive jurisdiction of equity, 18, 752
- Exercise of jurisdiction to avoid multiplicity of suits, 18, 750
- For fraud*, see *infra*, Fraud.
- For mistake*, see *infra*, Mistake.
- Inability to place parties *in statu quo*, 18, 772
- Inadequacy or want of consideration, 18, 770
- Infant contracts, 18, 765
- In general, 18, 750
- Mental incapacity, 18, 765
- Negotiable instruments, 18, 751
- Payment of debt evidenced by instrument, 18, 752
- Property involved, 18, 772
- Rescission in part, 18, 773
- Statutory provisions, 18, 753
- Undue influence, 18, 763
- False representations and deceit (see *infra*, Fraud), 8, 884
- Equitable remedies, 8, 892
- Findings of court and decree, 18, 855
- Dismissal without prejudice, 18, 855
- In general, 18, 855
- Injunction, 18, 866
- In suits for reformation, 18, 863
 - Discretion of court, 18, 863
 - Enforcement of instrument as reformed, 18, 865
 - Expression of true intent of parties, 18, 864
 - Findings, 18, 863
 - Giving complete relief to plaintiff and defendant, 18, 863
 - Provisions of decree as to reformation, 18, 863
 - Requiring execution of new instrument, 18, 864
- In suits for rescission and cancellation, 18, 855
 - Awarding damages to plaintiff, 18, 862
 - Findings, 18, 855
 - Findings as to fraud, 18, 856
 - General requisites of decree, 18, 857
 - General requisites of findings, 18, 855

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

Findings of court and decree, *cont'd.*

In suits for rescission and cancellation, *cont'd.*

Giving complete relief to plaintiff and defendant, 18, 857

Modes of affording relief to plaintiff, 18, 860

Placing parties *in statu quo*, 18, 858

Rescission *in toto*, 18, 858

Protection of strangers, 18, 867

Relief under general prayer, 18, 867

Fraud, 18, 754

Averment of fraud in bill or complaint, 18, 808

By whom fraud was committed, 18, 815

Defendant's knowledge of falsity of representations, 18, 812

Examples, 18, 808, 810

Falsity of representations, 18, 812

In general, 18, 808

Mala fides of subsequent holder, 18, 815

Materiality of and reliance upon misrepresentations, 18, 813

Necessity to allege facts, 18, 810

Sufficient averments, 18, 811

Cancellation of deed given under judgment of court, 18, 758

Caveat emptor, 18, 761

Confederation to perpetrate fraud, 18, 758

Date of discovery of fraud, 18, 828

Defective deed, 18, 759

Examples of fraud, 18, 757

False representation as to solvency, 18, 757

False representation of value, 18, 757

Fraudulent advantage taken of party's ignorance, 18, 783

Fraudulent misuse of instrument, 18, 758

In general, 18, 754

Joinder of all participants in fraud, 18, 801

Jurisdiction of equity, 18, 754

Knowledge of falsity of representations, 18, 760

Laches, 18, 828

Materiality of misrepresentations, 18, 760

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

Fraud, *cont'd.*

Mistake accompanied by fraud, 18, 782

Nature of fraud, 18, 755

Nature of fraud for which relief will be granted, 18, 755

Reformation of written contracts, 18, 789

Restoration or re-establishment of contracts, 18, 761

Void instruments, 18, 759

Grounds for equitable relief:

Averments in bill, 18, 804

Grounds not alleged, 18, 805

In general, 18, 804

Special ground, 18, 804

Title of plaintiff, 18, 804

Inadequacy or want of consideration (see *infra*, Consideration), 18, 770

Grossly inadequate consideration, 18, 771

Inadequacy of consideration and other circumstances, 18, 771

In general, 18, 770

Infants:

Contracts made by infants, 18, 765

Injunctions:

Bill or complaint, 18, 822

Dissolution of injunction, 18, 850

Findings, 18, 866

Grounds for injunction, 18, 822

Insane persons, 18, 765

Averment of mental incapacity 18, 820

In suits for reformation, 18, 821

In suits for rescission, 18, 820

Instructions, 18, 852

Instructions, 18, 851

Insurance, 11, 378

In general, 11, 378

Reformation as a prerequisite, 11, 379

Where reformation is required, 11, 379

Insurance policy, 18, 787

Interrogatories, 18, 853

Issues to the jury, 11, 634

Joinder of causes of action, 18, 791

Consistent causes of action, 18, 791

Fraudulent acts of several defendants in combination, 18, 793

Inconsistent causes of action, 18, 791

In general, 18, 791

Multifariousness, 18, 794

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

- Joinder of causes of action, *cont'd.*
 - Prayer for accounting for rents and profits, 18, 792
 - Reformation and damages for breach of contract, 18, 794
 - Reformation and foreclosure of mortgage, 18, 794
 - Reformation of contract and enforcement as reformed, 18, 793
 - Rescission and damages for breach, 18, 791
- Joinder of parties:
 - Defendant, 18, 798
 - Parties plaintiff, 18, 796
- Judicial sales, 12, 111
- Jurisdiction to particular courts, 18, 789
- Jury, see infra*, Trial by jury.
- Laches:
 - Denying or excusing laches in bill or complaint, 18, 825
 - Date of discovery of fraud, 18, 828
 - In general, 18, 825
 - In suits for reformation, 18, 829
 - In suits for rescission or cancellation, 18, 827
 - Statute of limitations, 18, 827
 - What is reasonable diligence, 18, 826
- Legal conclusions, 18, 803
 - Bill or complaint, 18, 803
 - Sufficiency of averment of facts, 18, 803
- Limitation of actions, 18, 827
- Married women:
 - Reformation of deeds of married women, 18, 788
- Mental incapacity, 18, 765
- Misrepresentation, see infra*, Fraud.
- Mistake, 18, 761
 - Averments as to, in bill or complaint, 18, 815
 - Definiteness and certainty, 18, 816
 - Materiality of mistake, 18, 818
 - Mistake at law, 18, 819
 - Mutuality of mistake, 18, 818
 - Necessity to allege facts, 18, 817
 - Negating negligence of plaintiff, 18, 815
 - Averments in bill or complaint pointing out mistake, 18, 824
 - Description, 18, 789
 - In general, 18, 761
 - Mistake of law, 18, 762, 783
- Index Pl. & Pr. — 60

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

- Mistake, *cont'd.*
 - Reformation of written contract, 18, 774
 - Deed set up by way of defense, 18, 778
 - Description of property, 18, 780
 - Fraudulent advantage taken of party's ignorance, 18, 783
 - In general, 18, 774
 - Kinds of mistake, 18, 779
 - Making new contract for parties, 18, 779
 - Mistake accompanied by fraud, 18, 782
 - Mistake as to legal effect or import of instrument, 18, 784
 - Mistake of law, 18, 782
 - Mutuality of mistake, 18, 781
 - Mutuality of mistake of law, 18, 783
 - Office of bill for the reformation of an instrument, 18, 776
 - Quantity of land, 18, 780
 - Rights of innocent purchasers, 18, 778
 - Seal, 18, 779
 - Setting aside release of mortgage, 18, 762
- Mistake of law, 18, 762, 783
- Mortgages:
 - Declaring deed absolute to be mortgage, 18, 787
- Multifariousness, 18, 794, 804
- Municipal securities, 14, 269
- Negotiable instruments, see* NEGOTIABLE INSTRUMENTS.
- Offer to do equity, 18, 829
 - Alleging excuses for failure to restore, 18, 835
 - Averment of tender before filing bill, 18, 836
 - General rule as to necessity of offer to restore, 18, 829
 - In suits for reformation, 18, 834
 - In suits for rescission and cancellation, 18, 829
 - General rule, 18, 829
 - Instrument violating provisions of statute, 18, 832
 - Poverty of plaintiff, 18, 832
 - Reason of rule, 18, 830
 - Same rule as to real and personal property, 18, 831
 - Where plaintiff has parted with property received, 18, 833
- Objections waived, 18, 839

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

- Offer to do equity, *cont'd.*
 - Offer to account for rents and profits, 18, 838
 - Tender, 18, 836
 - Tender of deed, 18, 838
 - Tender of deed to be signed by defendant, 18, 838
 - Terms of offer to restore, 18, 835
 - When offer to restore unnecessary, 18, 834
- Partial rescission, 18, 773
- Parties, 18, 795
 - In general, 18, 795
 - Joinder of all participants in fraud, 18, 801
 - Parties defendant, 18, 798
 - Beneficiaries in trust deed, 18, 799
 - In general, 18, 798
 - Joinder of all participants in fraud, 18, 801
 - Original parties to contract, 18, 799
 - Privies in suits for reformation, 18, 801
 - Privies in suits for rescission or cancellation, 18, 800
 - Purchaser or assignee claiming under plaintiff's grantee, 18, 800
- Parties plaintiff, 18, 795
 - Agent, 18, 795
 - Heirs, 18, 797
 - In general, 18, 795
 - Joinder of parties plaintiff, 18, 796
 - Privies, 18, 797
 - Privies in suits for cancellation, 18, 797
 - Privies in suits for reformation, 18, 797
 - Strangers to contract, 18, 796
 - Subsequent grantee or grantor, 18, 795
 - Subsequent grantees, 18, 797
- Partition, 15, 804
- Patents, 16, 53, 157
- Plea*, see *infra*, Answer or plea.
- Possession:
 - Averments as to possession and title of plaintiff, 18, 839
- Prayer, 18, 841
 - Amendments, 18, 842
 - Examples, 18, 841
 - Necessity for prayer, 18, 841
- Quieting title, 17, 364
- References, 18, 853
- Reformation, 18, 749
- Reformation distinguished from cancellation, 18, 750

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.*

- Reformation of written contracts, 18, 773
 - Discretion of chancellor, 18, 774
 - Exclusive jurisdiction of equity, 18, 774
 - Fraud, 18, 789
 - In general, 18, 773
 - Kinds of contracts reformation, 18, 785
 - Contracts void for uncertainty, 18, 786
 - Controversy to which grantor is not a party, 18, 787
 - Declaring deed absolute to be mortgage, 18, 787
 - Deeds of married women, 18, 788
 - In general, 18, 785
 - Mistake in will, 18, 787
 - Ratification of insurance policy, 18, 787
 - Void contracts, 18, 785
 - Voluntary contracts, 18, 786, 787
 - Kinds of mistake, 18, 779
 - Mistake, 18, 774
 - Mistake of law, 18, 782
 - Mutuality of mistake, 18, 781
 - Statute of frauds, 18, 773
 - Statutory provisions, 18, 774
- Remedy at law, 18, 806
 - Examples, 18, 806, 807
 - Inadequacy of remedy at law, 18, 806
 - Pendency of action at law, 18, 807
 - Waiver of objections, 18, 807
- Rents and profits, offer to account for, 18, 838
- Restitution*, see *infra*, Offer to do equity.
- Restoration*, see *infra*, Offer to do equity.
- Sales, 19, 47
- Scope of article, 18, 748
- Seal, 18, 779
- Specific performance (see SPECIFIC PERFORMANCE), 18, 749; 20, 396
 - Converse of specific performance, 20, 396
- Statu quo*, inability to place parties in, 18, 772
- Statute of frauds, 18, 773
- Stock*, see STOCK AND STOCKHOLDERS.
- Survival of actions, 21, 320
- Tender:
 - Averment of tender before filing bill, 18, 836
 - Tender of deed to be signed by defendant, 18, 838

RESCISSION, CANCELLATION, ETC., OF CONTRACTS, *cont'd.***Title:**

Averments as to possession and title of plaintiff, 18, 839

Trial by jury, 18, 850

Instructions, 18, 851

Instructions as to mental incapacity, 18, 852

Instructions as to mistake, 18, 853

Instructions as to undue influence, 18, 852

Interrogatories to jury, 18, 853

Joinder of equitable and legal causes of action, 18, 850

Right to jury trial, 18, 850

Verdict by jury advisory merely, 18, 851

Trusts and trustees:

Parties, 22, 182

Undue influence, 18, 763

Averment of, 18, 819

Instructions, 18, 852

Variance, 18, 853

Vendor and purchaser, 22, 662

Purchaser's remedies, 22, 668

Vendor's action for price, 22, 689

Venue, 18, 790

Void contracts, 18, 785

Voluntary contracts, 18, 786

Warranty of title, 18, 770

Wills, 22, 1221

RESCRIPT, see DECISIONS; MANDATE; OPINIONS OF COURTS.

RESCUE, 7, 920

See ESCAPE; PRISON BREAKING.

Amendments, 7, 922

Indictment, 7, 920

Parties, 7, 933

Place of rescue, 7, 921

Statutes, 7, 921

Time of arrest and rescue, 7, 921

Vi et armis, 7, 920

RESERVED CASE, see CERTIFIED CASES; REPORT AND CASE MADE.

RESIDENCE:

Abatement in pleading:

Plea to the jurisdiction, 1, 7

Appeals:

Defendants, 2, 157

Attachment, see ATTACHMENT.

Publication, see PUBLICATION.

RESISTING OFFICER, see OBSTRUCTING JUSTICE.

RESTITUTION, 18, 869

See POSSESSION, WRIT OF.

Appeals, see *infra*, Right to restitution.

Appeals from orders and motions to quash writs, 18, 896

Appeals from orders, 18, 896

Motions to quash writs, 18, 897

RESTITUTION, *cont'd.*

Assumpsit, 18, 893

Actually received, 18, 895

Demand for restitution, 18, 895

In general, 18, 893

Money equitably due the plaintiff, 18, 894

Attachment:

Return of property, 3, 94

Bills of review, 3, 596; 18, 893

Bona fide purchasers, 18, 881

Bonds:

Restitution bonds, 18, 897

Certiorari, see CERTIORARI.

Costs, 18, 874

Cross-bills, 18, 893

Decrees:

Bond for restitution, 5, 1000

Discretion of court, 18, 875

Dismissal, discontinuance, and nonsuit, 18, 872

Ejectment:

Writ of restitution, 7, 354

Eminent domain, 7, 658

Enforcement of restitution, 18, 896

Extent of restitution, 8, 700; 18, 882

Recovery in money, 18, 884

Specific property, 18, 882

Forcible entry and detainer, see FORCIBLE ENTRY AND DETAINER.

From whom restitution compelled, 18, 880

Parties to action, 18, 880

Third persons, 18, 881

Hearing of motion, 18, 889

Landlord and tenant:

Summary proceedings, 12, 901

Mandamus, 18, 896

Money, recovery in, 18, 884

Motions, 18, 885

Appellate court, 18, 889

At common law, 18, 885

Hearing of motion, 18, 889

In trial court, 18, 889

Notice of motion, 18, 888

Requisites of motion, 18, 888

Under statute, 18, 886

Where made, 18, 889

Notice of motion, 18, 888

Object of restitution, 18, 870

Petitions, 18, 893

Possession, writ of, 18, 878

Proceedings to obtain restitution, 18, 885

Assumpsit, 18, 893

Bills of review, 18, 893

Cross-bills, 18, 893

Motion, see *infra*, Motions.

Petitions, 18, 893

Scire facias, 18, 892

Right to restitution, 18, 870

After execution of writ of possession, 18, 878

RESTITUTION, *cont'd.*Right to restitution, *cont'd.*

After reversal on appeal or error, 18, 871

Consideration of matters outside of original suit, 18, 876

Costs, 18, 874

Discretion of court, 18, 875

Effect of dismissal of action, 18, 872

Where judgment is final, 18, 871

Where judgment is not final, 18, 877

Where money has been voluntarily paid, 18, 875

As preliminary to appeal or error by plaintiff, 18, 870

From whom restitution compelled, see *infra*, From whom restitution compelled.

To whom right pertains, 18, 879

Scire facias, 18, 892

Scope of article, 18, 870

Specific property, 18, 882

Where property taken under a judgment subsequently reversed is in the actual possession of the plaintiff, 18, 882

Where specific property is constructively in plaintiff's possession, 18, 883

RESTORATION, see LOST INSTRUMENTS AND RECORDS; RESTITUTION.

RESTRAINING ORDER, see INJUNCTIONS.

RESTRAINT OF TRADE:

Monopolies, see MONOPOLIES.

RETRAXIT, 18, 898

Definition, 18, 898

How and when made, 18, 899

Open court, 18, 899

Pleading, 18, 900

What it effects, 18, 900

RETURNS, 18, 901

Abatement, see *infra*, Plea in abatement or motion to set aside return.

Abbreviations, 18, 918

Acknowledgment of service, 18, 933

Affidavit of service, 18, 907

Before whom made, 18, 911

Certainty sufficient as foundation for indictment, 18, 909

Competency of person making service, 18, 910

In general, 18, 907

Judgment invalid without proper proof, 18, 909

Jurat, 18, 911

Manner and time of service, 18, 910

Notice of appeal, 18, 909

RETURNS, *cont'd.*Affidavit of service, *cont'd.*

Special deputy, 18, 908

Strict construction, 18, 909

Sufficiency of affidavit, 18, 909

Amendments, 1, 666; 18, 950

After action against officer, 18, 958

After expiration of term of office, 18, 959

After filing, 18, 954

After judgment, 18, 957

After removal, 18, 963

Amendment without leave, 18, 954

Application by officer or party, 18, 962

Before filing, 18, 954

By whom made, 18, 961

Change of venue, 18, 963

Compelling amendment, 18, 962

Discretion of court, 18, 954

Effecting amendment, 18, 960

Executions, 1, 674

Facts at time of return, 18, 951

General rule as to amendment of return, 18, 950

In what court, 18, 962

Jurisdictional matters, 18, 956

Lapse of time no bar, 18, 957

Limitation of general rule, 18, 951

Manner of execution, 18, 952

Motion, 18, 960

Name, 18, 953

Necessity of actual amendment, 18, 961

Notice, 18, 952, 955

Pending appeal or error, 18, 958

Place, 1, 666, 667

Proof, 18, 960

Retroactive effect, 18, 963

Scope and character of amendment, 18, 952

Signature, 18, 953

Something to amend by, 1, 667

Time, 1, 666; 18, 953

Waiver of objection for want of notice, 18, 956

Appeals:

Service of notice of appeal, 2, 228

Attachment, see ATTACHMENT.

Bastardy:

Justice's return to trial court, 3, 289

Amendment, 3, 290

Requisites, 3, 289

Substitution, 3, 290

Sufficiency, 3, 289

Time of filing, 3, 289

Bills of exceptions:

Where bill is not required, 3, 408

RETURNS, *cont'd.*

- By whom made, 18, 912
 - Addition to official title to signature, 18, 914
 - Deputy dies, 18, 912
 - Names of principal and deputy, 18, 912
 - Necessity of signature, 18, 912
 - Omission of deputy's name or title, 18, 913
 - Order of names of principal and deputy, 18, 913
 - Showing execution by proper or competent person, 18, 912
 - Sufficiency of execution of return, 18, 912
- Certainty, 18, 916
 - Reasonable certainty, 18, 916, 922
- Certiorari, 4, 203; 18, 973
 - To what court returnable, 4, 203
 - To what term returnable, 4, 204
 - Where and when returnable, 4, 203
- Clerical errors, 18, 917
- Collateral attack, 18, 967
- Conclusiveness, 18, 965
 - Absolute verity as between parties and privies, 18, 965
 - Action against officer for false return, 18, 967
 - Collateral attack, 18, 967
 - Collateral attack on defective return, 18, 968
 - Jurisdiction, 18, 969
 - Nulla bona*, 18, 968
 - Relaxation of strict common-law rule as to conclusiveness, 18, 969
 - Statutes, 18, 966
 - Strict common-law rule, 18, 965
 - Sufficiency of evidence to impeach return*, see *infra*, Evidence.
- Construction, 18, 916
 - Abbreviations, 18, 918
 - Clerical errors, 18, 917
 - Construction by necessary implication, 18, 917
 - In favor of palpable defects, 18, 917
 - In general, 18, 916
 - Surplusage, 18, 918
- Constructive service*, see *infra*, Substituted or constructive service.
- Contempt (see CONTEMPT), 4, 781
- Contents, 18, 915
 - Acknowledgment of service, 18, 933
 - Compliance with statute, 18, 918
 - Manner of executing return, 18, 919
 - "Executed," 18, 919
 - Return insufficient, 18, 920

RETURNS, *cont'd.*

- Contents, *cont'd.*
 - Manner of executing return, *con.*
 - Return sufficient, 18, 919
 - Served, 18, 919
 - Must show legal execution, 18, 915
 - Personal or constructive service, 18, 916
 - Personal service by copy or reading, 18, 921
 - Place, 18, 931
 - Return of evasion of service, 18, 933
 - Service upon corporation*, see *infra*, Corporations.
 - Substituted or constructive service*, see *infra*, Substituted or constructive service.
 - Time, 18, 929
- Corporations:
 - Service on agent, 18, 978
 - Service upon corporation, 18, 924
 - Absence of chief officer from county, 18, 926
 - Character of agency, 18, 925
 - Compliance with statute, 18, 925
 - Foreign corporations, 18, 927
 - Manner of service, 18, 924
 - Name of officer, 18, 926
 - Recital in judgment, 18, 927
 - Service upon agent shows service upon corporation, 18, 927
- Creditors' bills:
 - Requisites and sufficiency of return, 5, 514
 - Collusive returns, 5, 515
 - In general, 5, 514
 - Presumption as to regularity of return, 5, 515
 - Return of *alias* execution, 5, 517
 - Time of making return, 5, 516
 - Two or more joint debtors, 5, 518
- Date:
 - Date of receipt and return, 18, 914, 931
 - Presumption, 18, 914
- Day, see *infra*, Return time.
- Death:
 - Deputy, 18, 912
- Defaults:
 - Motion or action to set aside default judgment, 18, 971
 - Effect of setting aside judgment, 18, 973
 - In general, 18, 971
- Definition, 18, 903
- Depositions*, see DEPOSITIONS.

RETURNS, *cont'd.*

Deputy:

- Death of deputy, 18, 912
- Names of principal and deputy, 18, 912
- Omission of deputy's name or title, 18, 913
- Order of names of principal and deputy, 18, 913

Double return, 18, 940

Dower, 7, 169

Effect:

- Certiorari, 18, 973
- Conclusiveness of return, 18, 965, 969
- Effect of return as against officer, 18, 981
- Effect of return as against strangers, 18, 980
- Evidence in support of return after impeachment, 18, 988
- Evidence of facts returned, 18, 963
- Excuse for failure to execute, 18, 980
- Explanation of return, 18, 988
- Incomplete return, 18, 979
- Matters not certified, 18, 979
- Motion or action to set aside default judgment, 18, 971
- Plea in abatement or motion to set aside return, 18, 973
- Presumption, 18, 965
- Relief in equity, 18, 970
- Sufficiency of evidence to impeach return*, see *infra*, Evidence.
- Traverse, 18, 976
- Unauthorized return and return of facts not within officer's knowledge, 18, 977
- Unofficial return, 18, 984

Equitable relief, 18, 970

Error, writ of, see ERROR, WRIT OF.

Evasion of service, 18, 933

Evidence, 18, 905

Evidence in support of return after impeachment, 18, 988

Return as evidence of facts returned, 18, 963

In general, 18, 963

Lost return, 18, 964

When fact not conclusive, 18, 964

Sufficiency of evidence to impeach return, 18, 984

Character of service shown by record, 18, 987

Contradiction by other parts of record, 18, 986

Convincing testimony required, 18, 984

Decision upon conflicting testimony, 18, 986

RETURNS, *cont'd.*Evidence, *cont'd.**Sufficiency of evidence to impeach return*, *cont'd.*

Effect of recital of service, 18, 987

Exception to general rule of conclusiveness, 18, 986

In general, 18, 984

Mere denial, 18, 985

Presumption after long lapse of time, 18, 987

Single affidavit, 18, 985

Unauthorized return and return of facts not within officer's knowledge, 18, 977

Excuse for failure to execute, 18, 980

"Executed," 18, 919

Executions (see EXECUTIONS; and see *infra*, *Non est, nihil est*, etc.), 18, 912

Executed, 18, 919

Manner of executing return, 18, 919

Return must show legal execution, 18, 915

Sufficiency, 18, 912

Explanation of return, 18, 988

Extent, 8, 788

False return, 20, 128, 146, 148

Forthcoming and delivery bonds, 9, 660

Garnishment, 9, 827

Amendment, 9, 829

Averments, 9, 827

Schedule, 9, 829

Sheriff's declarations, 9, 828

Showing service on proper agent, 9, 828

Where to be made, 9, 827

Habeas corpus, see HABEAS CORPUS.

Impeachment:

Evidence in support of return after impeachment, 18, 988

Sufficiency of evidence to impeach return, see *infra*, Evidence.

Incomplete return, 18, 979

Indictments, see GRAND JURIES.

Indorsement:

On what paper indorsed, 18, 904

Initials, 18, 929

Injunctions:

Stayed by injunction, 18, 942

Insane persons:

Return of proceedings and action of court thereon, 10, 1198

Insurance, 11, 410

Issues to the jury, see ISSUES TO THE JURY.*Judicial sales*, see JUDICIAL SALES.

Jurat, 18, 911

Jury, see JURY.

RETURNS, cont'd.

Justices of the peace, see JUSTICES OF THE PEACE.

Landlord and tenant:

Summary proceedings under statutes, 12, 886

Last usual place of abode, 18, 937

Lost instruments and records, 18, 964

Mailing, see *infra*, Substituted or constructive service.

Mandamus see MANDAMUS.

Motions (see *infra*, Plea in abatement or motion to set aside return):

Amendments, 18, 960

Municipal corporations, 14, 234

Name:

Amendments, 18, 953

Principal and deputy, 18, 921

Name of person upon whom personal service made, 18, 927

Immaterial misspelling, 18, 928

In general, 18, 927

Initials, 18, 929

Mistake in name, 18, 928

Omission of Christian name, 18, 929

Showing service upon several, 18, 928

Wrong name, 18, 928

Name of person with whom copy left, 18, 939

Necessity of return, 18, 905

Compelling return, 18, 907

False return, 18, 906

Final process, 18, 906

In general, 18, 905

Original process, 18, 905

To avoid liability for failure to return, 18, 905

No inhabitant, 18, 942

Non est, see *infra*, *Non est, nihil est*, etc.

Non est, nihil est, etc., 18, 941

Execution against several, 18, 944

Execution against the body, 18, 943

In general, 18, 941

Nihil habet, 18, 941

No inhabitant, 18, 942

Non est inventus, 18, 941

Not executed as to several defendants, 18, 944

Not found, 18, 942, 943

Presumption of diligence, 18, 945

Presumption of residence in county, 18, 945

Propriety of particular returns, 18, 941

Return day, see *infra*, Return time.

Return upon execution, 18, 942

RETURNS, cont'd.

Non est, nihil est, cont'd.

Stayed by injunction, 18, 942

Sufficiency of return, 18, 943

Two *nihil*s, 18, 942

Where defendant is known to be dead, 18, 944

Not found, see *infra*, *Non est, nihil est*, etc.

Notice, see *infra*, Amendments; Substituted or constructive service.

Nulla bona, see *infra*, Conclusiveness; *Non est, nihil est*, etc.

Oath, see *infra*, Affidavit of service.

Officers:

Effect of return as against officer, 18, 981

Contradiction against officer, 18, 983

Contradiction in favor of officer, 18, 981

Limitation of rule, 18, 982

Line of demarcation, 18, 982

Prima facie, 18, 983

Unofficial return, 18, 984

Unauthorized return and return of facts not within officer's knowledge, 18, 977

Official bonds, see OFFICIAL BONDS.

Orders:

Orders to show cause, 15, 367

Paper:

On what paper indorsed, 18, 904

Partnership, see PARTNERSHIP.

Patents:

Return of proceedings and action of commissioner thereon, 16, 18

Personal services (see *infra*, Service of process):

Name of person upon whom personal service made, see *infra*,

Name of person upon whom personal service made.

Place, 18, 931

Contents of return, 18, 931

In general, 18, 931

• Restricted jurisdiction, 18, 932

Place of return, see SUMMONS AND PROCESS.

Plea in abatement or motion to set aside return, 18, 973

Defective service, 18, 974

Defects apparent on face of return, 18, 975

In general, 18, 973

Objections *in limine*, 18, 975

Poor debtor acts:

Notice or citation to creditor, 16, 714

Possession, writ of, 16, 747

Motion by defendant to compel return, 16, 751

RETURNS, cont'd.

Posting, see *infra*, Substituted or constructive service.

Præcipe, 16, 773

Preliminary examination, 16, 862

By whom made, 16, 864

Necessity for, 16, 862

Power to order further return, 16, 864

Reason for requirement, 16, 863

Termination of magistrate's power, 16, 865

To whom warrant returned, 16, 838

Presumptions:

Presumption in favor of, 18, 965

Proper office, 18, 904

Publication (see *infra*, Substituted or constructive service):

Necessity for return, 17, 50

Quo warrant, 17, 455

Reasonable certainty, 18, 916, 922

Replevin, see *REPLEVIN*.

Requisites, 18, 912

By whom made, see *infra*, By whom made.

Contents, see *infra*, *Contents*.

Date of receipt and return, 18, 914

Double return, 18, 940

Non est, see *infra*, *Non est, nihil est*, etc.

Return not executed, see *infra*, *Non est, nihil est*, etc.

Signature, see *infra*, *Signature*.

Writing, 18, 912

Return day, see *SERVICE OF PROCESS*; *SUMMONS AND PROCESS*.

Return time, 18, 945

All days of return term, 18, 946

Compelling return before expiration of time, 18, 948

In general, 18, 945

Non est and *nulla bona* before return day, 18, 947

Not found on summons before return day, 18, 946

Return after return day, 18, 949

Return on return day, 18, 946

When returnable within fixed number of days, 18, 948

Writ of execution after return day, 18, 949

Scire facias, see *SCIRE FACIAS*.

Search warrants, 19, 334

Served, 18, 919

Service of process (see *infra*, Affidavit of service; and see *SERVICE OF PROCESS*):

Acknowledgment of service, 18, 933

Corporations, see *infra*, *Corporations*.

RETURNS, cont'd.

Service of process, *cont'd.*

Evasion of service, 18, 932

Name of person upon whom personal service made, see *infra*,

Name of person upon whom personal service made.

Personal or constructive service, 18, 916, 919

Personal service by copy or reading, 18, 921

In general, 18, 921

Reasonable certainty, 18, 922

Service of copy on several defendants, 18, 922

Where the express language of the return shows an insufficient service, 18, 923

Substituted or constructive service, see *infra*, Substituted or constructive service.

Sheriffs' sales, see *SHERIFFS' SALES*.

Signature, 18, 912

Addition of official title to signature, 18, 914

Amendments, 18, 953

In general, 18, 912

Names of principal and deputy, 18, 912, 913

Necessity, 18, 912

Statutes:

Compliance with statute, 18, 918

Strangers, effect of return as against, 18, 980

Subpoena, 22, 1341

Substituted or constructive service, 18, 933

At whose dwelling house or place of abode, 18, 937

Construction, 18, 938

Equivalent terms, 18, 938

Husband and wife, 18, 936

Inability to find defendant, 18, 934

In general, 18, 933

Last usual place of abode, 18, 937

Leaving copy with member of family, 18, 935, 936

Mailing, 18, 939

Manner of service, 18, 935

Name of person with whom copy left, 18, 939

Nonresidence, 18, 934

Notice, 18, 939

Posting, 18, 939

Process, 18, 939

Publishing, 18, 939

Strict compliance with statute, 18, 935

Strict construction, 18, 933

Substituted service upon several, 18, 939

RETURNS, cont'd.

- Sufficiency of return, 18, 912
- Supplementary proceedings*, see SUPPLEMENTARY PROCEEDINGS.
- Surplusage, 18, 918
- Time (see *infra*, Return time), 18, 914
- Amendments, 18, 953
- Traverse, 18, 976
- Unauthorized return and return of facts not within officer's knowledge, 18, 977
- United States courts, 22, 295
- Venditioni exponas*, 22, 651
- Warrants, see WARRANTS.
- Witnesses, 22, 1341
- Writing, 18, 912

REVENUE (see INTERNAL REVENUE; TAXATION):

- Removal of causes*, see REMOVAL OF CAUSES.
- Suits and prosecutions against federal revenue officers*, see REMOVAL OF CAUSES.

REVERSION:

- Ejectment, 7, 295
 - Assignees of reversion, 7, 297
 - Breach of condition subsequent in deed, 7, 296
 - Ejectment by reversioners, 7, 295
 - Entry or demand, 7, 296
- Executions, 8, 536

REVIEW, 18, 989

- See APPEALS; CHANGE OF VENUE; OPENING, AMENDING. AND VACATING JUDGMENTS.

"Absence," 18, 1027

Accident, 18, 1001

Adoption, 10, 849

Amendments:

Petition, 18, 1012

Review of right, 18, 1040

As respects parties, 18, 1041

Of pleadings in proceedings for review, 18, 1040

Original pleadings, 18, 1041

Appeals, 18, 1050

Appealable judgments, 18, 1050

Question reviewable on appeal, 18, 1051

Questions within discretion of court, 18, 1051

Assignments, 18, 1008

Hastardy, 3, 315

Bills of review, see BILLS OF REVIEW.

Certiorari, see CERTIORARI.

Complaint, see *infra*, Plaintiff's pleading.

Conditions:

Review as of favor, 18, 1015

Construction of statutes, 18, 992

Continuances, see CONTINUANCES.

Coram nobis and *coram vobis*, see CORAM NOBIS AND CORAM VOBIS.

REVIEW, cont'd.

Costs, 18, 1047

Review as of favor 18, 1020

Review of right, 18, 1047

Costs of original trial, 18, 1049

In general, 18, 1047

Liability of indorsers and recognizers, 18, 1049

Reduction of amount of recovery, 18, 1048

Courts, see *infra*, Review as of favor.

Cross-bills, 5, 671

Defaults, 18, 994, 997, 1006

Defendant's pleading, 18, 1038

Complaint, 18, 1038

New matter since original judgment, 18, 1039

Set-off, 18, 1039

To writ, 18, 1038

Diligence:

Diligence of plaintiff, 18, 1035

Failure to exercise reasonable diligence, 18, 1004

Lack of diligence, 18, 1026

Discretion:

Review as of favor, 18, 1014

Divorce, 18, 994

Elections, 7, 395

Evidence:

Original evidence, 18, 1041

Excessive judgment, 18, 1002

Executors and administrators, 18, 1009

Exhibits, 18, 1033, 1034

Favor, see *infra*, Review as of favor.

Final judgments and decrees, 18, 994

Fraud, 18, 1005

Garnishment, 18, 995

Grounds of review, 18, 995

Accident, 18, 1001

Bankruptcy, 18, 1001

Default, 18, 997

Default of absent defendant, 18, 1006

Deprivation of right to proper trial, 18, 1003

Erroneous partition, 18, 1002

Error apparent, 18, 995

Error in entry and form, 18, 996

Errors or mistakes in judgments, 18, 1002

Excessive judgment, 18, 1002

Fraud, 18, 1005

In general, 18, 995

Judgment on defective pleading, 18, 995

Loss of right to ordinary methods, 18, 1004

Mistake, 18, 1001

Newly discovered evidence, 18, 998

New matter, 18, 997

REVIEW, *cont'd.*

- Grounds of review, *cont'd.*
 - Probate settlements, 18, 1000
 - Reasonable diligence, 18, 1004
 - Service of process, 18, 997
 - Technical errors of practice, 18, 996
 - Want of jurisdiction, 18, 996
- Interest, 18, 1020
- Interveners, 18, 1010
- "Intervening damages," 18, 1018
- Judgments, 18, 1020
 - Review as of favor, 18, 1020
- Review of right, 18, 1043
 - Effect on original proceedings, 18, 1045
 - Effect on parties not joining in review, 18, 1046
 - Effect on provisional remedies, 18, 1047
 - Effect on rights vested under original judgment, 18, 1046
 - Form and sufficiency, 18, 1044
 - Increased recovery, 18, 1046
 - In general, 18, 1043
 - Levy of execution, 18, 1046
 - Reversal in part, 18, 1044
- Jurisdiction, 18, 996
 - Jurisdiction to review, 18, 1007
 - Want of jurisdiction, 18, 996
- Loss of right, 18, 1022
 - Absent defendants, 18, 1027
 - Failure to except and object, 18, 1025
 - In general, 18, 1022
 - Lack of diligence, 18, 1026
 - Preliminary motions and proceedings, 18, 1026
 - Pursuing other remedy, 18, 1024
 - Referee's report, 18, 1023
 - Submission to jurisdiction, 18, 1023
- Mistake, 18, 1001
- Nature of proceedings, 18, 991
- Newly discovered evidence, 18, 998
 - Cumulative, 18, 999
 - Failure to exercise reasonable diligence, 18, 1000
 - Impeachment of witnesses, 18, 999
 - In general, 18, 998
 - Probable change of result, 18, 1000
 - Suppression, 18, 999
- New matter:
 - Defendant's pleading, 18, 1039
 - Plaintiff's pleading, 18, 1035
- New trial*, see **NEW TRIAL**.
- Parties, 18, 1008
 - Assignment, 18, 1008
 - Interveners, 18, 1010
 - Joint parties, 18, 1010

REVIEW, *cont'd.*

- Parties, *cont'd.*
 - Original parties, 18, 1008
 - Personal representatives, 18, 1009
 - Real party, 18, 1010
 - Successors in interest, 18, 1009
- Partitions, 18, 994, 1002
- Petitions (see *infra*, Plaintiff's pleading):
 - Review as of favor, 18, 1011
 - Amendments, 18, 1012
 - In general, 18, 1011
- Plaintiff's pleading, 18, 1027
 - Anticipating defense, 18, 1028
 - Completeness of record, 18, 1032
 - Conclusiveness of record, 18, 1034
 - Diligence of plaintiff, 18, 1035
 - Error apparent, 18, 1029
 - Exhibits, 18, 1033
 - Grounds for new trial, 18, 1031
 - Immaterial exhibits, 18, 1034
 - In general, 18, 1027
 - Legal conclusions, 18, 1028
 - Materiality of new matter, 18, 1036
 - Motion for new trial, 18, 1031
 - New matter, 18, 1035
 - Presentation of complete record, 18, 1032
 - Presentation of partial record, 18, 1033
 - Requisites of complaint, 18, 1027, 1030
 - Rulings in original cause, 18, 1031
 - Substitute for appeal, 18, 1029
 - Verification, 18, 1037
 - Writ, 18, 1037
- Process, 18, 1011
- Records, 18, 1032
 - Conclusiveness of record, 18, 1034
 - Exhibits, 18, 1033
 - Presentation of complete record, 18, 1032
 - Presentation of partial record, 18, 1033
- Rendition and entry of judgments, 18, 996
- Review as of favor, 18, 1011
 - Costs, 18, 1020
 - Discretion, 18, 1004
 - Judgment, 18, 1020
 - Petition, 18, 1011
 - Pleading, 18, 1012
 - Stay, 18, 1016
 - Terms and conditions, 18, 1015
 - Variance, 18, 1012
- Review of right, 18, 1021
 - Amendments, 18, 1040
 - Costs, 18, 1047
 - Defendant's pleading, 18, 1038

REVIEW, *cont'd.*Review of right, *cont'd.*

In general, 18, 1021

Judgment, 18, 1043

Loss of right, *see infra*, Loss of right.Plaintiff's pleading, *see infra*, Plaintiff's pleading.

Second review, 18, 1021

Trial, 18, 1041

Verdict, 18, 1043

Waiver, 18, 1022

Right, *see infra*, Review of right.

Scire facias, 18, 993

Scope of article, 18, 990

Second review, 18, 1021

Sentence, *see* SENTENCE.

Service of process, 18, 997

Set-off, recoupment, and counter-claim, 18, 1039

Statutes:

Interpretation of statutes, 18, 992

Statutory proceedings, 18, 990, 991

Stipulations, 18, 1042

Summons and process, 18, 1011

Supersedeas and stay of proceedings, 20, 1259

Review as of favor, 18, 1016

Bond, 18, 1016

By mere institution of proceedings, 18, 1016

Form of bond, 18, 1017

Liability of sureties, 18, 1019

Surrogates, 18, 1000

Taxation, *see* TAXATION.

Terms:

Review as of favor, 18, 1015

Trial, 18, 1041

Retrial of issues of law and fact, 18, 1042

Stipulations, 18, 1042

Variance, 18, 1012

Verdict, 18, 1043

Verification, 18, 1037

Waiver, *see infra*, Loss of right.

What determinations may be reviewed, 18, 992

Default, 18, 994

Divorce proceedings, 18, 994

Final judgment, 18, 994

Garnishment, 18, 995

Interpretation of statutes, 18, 992

Judgment in civil action, 18, 992

Partitions, 18, 994

Scire facias, 18, 993

Writ, 18, 1037

REVIVAL OF ACTIONS, *see* REVIVOR OF SUITS AND ACTIONS.**REVIVAL OF JUDGMENTS, 18, 1053**

Action on judgment, 18, 1087

Alternative remedy with scire facias, 18, 1087

REVIVAL OF JUDGMENTS, *cont'd.*Action on judgment, *cont'd.*

Form of judgment, 18, 1088

Proceedings, 18, 1088

Affidavit, 18, 1074

Necessity for, 18, 1074

Requisites, 18, 1075

Waiver of, 18, 1074

Agreement, 18, 1092

Amendments:

Judgment, 18, 1085

Scire facias, 18, 1082

Computation of time, 18, 1063

Courts of issuance, 18, 1063

Dormant judgments, 18, 1054

Scire facias, 18, 1055

Equity, 18, 1058

Erroneous judgments, 18, 1059

Error, writ of, 18, 1087

Executions:

Where whole debt has not been levied, 18, 1056

Joinder of parties, *see infra*, Parties to actions.

Judgments:

Action on judgment, 18, 1088

Proceedings between issuance of writ and judgment, 18, 1083

Scire facias, 18, 1083

Amendment, 18, 1085

Correction of errors in original judgment, 18, 1086

Docketing, 18, 1086

Effect of judgment, 18, 1087

Effect of reversal of original judgment, 18, 1087

Form, 18, 1083

Jurisdiction, 18, 1063

Leave to issue writ of scire facias, 18, 1072

Motions, 18, 1074

Revival on motion and notice, 18, 1089

Nature of proceeding, 18, 1059

New parties:

To charge or benefit new parties, 18, 1056

Notice:

Revival on motion and notice, 18, 1089

Parties to actions:

Scire facias:

Parties defendant, 18, 1066

Death of original defendant, 18, 1069

Form of scire facias against terre-tenants, 18, 1072

General rule, 18, 1066

Joinder of all parties affected by revival, 18, 1069

REVIVAL OF JUDGMENTS, *cont'd.*Parties to actions, *cont'd.*Scire facias, *cont'd.*Parties defendant, *cont'd.*

Joinder of heirs or representatives with survivor, 18, 1068

Joinder of terre-tenants, 18, 1071

Joinder of terre-tenants after death of judgment debtor, 18, 1072

Joinder of terre-tenants before death of judgment debtor, 18, 1071

Joint judgments, 18, 1067

Revival against administrator alone, 18, 1071

Revival against heirs and terre-tenants alone, 18, 1070

Parties plaintiff, 18, 1065

Assigned judgments, 18, 1066

General rule, 18, 1065

Revival of judgment for use, 18, 1066

Personal judgments, 18, 1057

Petitions, 18, 1073

Purpose of proceeding, 18, 1061

Real judgments, 18, 1057

Requisites of writ of scire facias, 18, 1075

Averment as to plaintiff's title, 18, 1079

Averment of death of judgment debtor, 18, 1080

Averment of defendant's appointment as executor, 18, 1080

Averment of event to which execution had been stayed, 18, 1018

Averment of facts sufficient to authorize relief, 18, 1075

Averment of matters of defense, 18, 1077

Averment of survivorship, 18, 1080

Averment that judgment is in force and unsatisfied, 18, 1080

Averment that judgment of affirmance has been certified, 18, 1081

Citation to show cause, 18, 1082

Description of original judgment, 18, 1077

Failure of writ to set forth a substantial cause of action, 18, 1076

In general, 18, 1075

Names of defendants, 18, 1080

REVIVAL OF JUDGMENTS, *cont'd.*Requisites of writ of scire facias, *com.*

Recital and identification of original judgment, 18, 1077

Terre-tenants, 18, 1081

Writ a substitute for declaration, 19, 1075

Scire facias, 18, 1055

Action on judgment, 18, 1087

Affidavit, 18, 1074

Amendment, 18, 1082

Applicable in equity as at law, 18, 1058

Application for writ, 18, 1073

Application to personal as well as real judgments, 18, 1057

Dormant judgments, 18, 1055

Judgment, see *infra*, Judgments.

Leave to issue writ, 18, 1073

Motion, 18, 1074

Nature of proceeding, 18, 1059

On what based, 18, 1064

Parties, see *infra*, Parties to actions.

Petition, 18, 1073

Proceedings between issuance of writ and judgment, 18, 1083

Purpose of proceeding, 18, 1061

Requisites of writ, see *infra*, *Requisites of writ of scire facias*.

Time, 18, 1061

To change or benefit new parties, 18, 1056

What judgments may be revived, 18, 1058

When proper, 18, 1055

Where whole debt has not been levied, 18, 1056

Writ of error to judgment, 18, 1087

Sheriffs and constables:

Summary proceedings, 20, 168

Stipulations, 18, 1092

Suggestion, 18, 1092

Summons to show cause, 18, 1090

Effect of failure to make defense, 18, 1090, 1091

Time, 18, 1091

Terre-tenants (see *infra*, Parties to actions):

Requisites of writ, 18, 1081

Time, 18, 1061

Computation of time, 18, 1063

In general, 18, 1061

Summons to show cause, 18, 1091

When time begins to run, 18, 1062

Venditioni exponas, 22, 645

Void judgments, 18, 1059

REVIVOR OF SUITS AND ACTIONS, 18, 1094

See SURVIVAL OF ACTIONS.

Abatement of actions:

Common-law rule, 18, 1122

REVIVOR OF SUITS AND ACTIONS, *cont'd.*

- Amendments, 18, 1143
- Answers, 18, 1112
- Answers in equity pleading, 18, 1118, 1119
- Bills of review, 3, 593
- Bills of revivor, 18, 1097
 - Answer, 18, 1112
 - Bills of revivor and supplement*, see *infra*, Bills of revivor and supplement.
 - Charge that suit should be revived, 18, 1108
 - Concurrent remedy with statutory method of revivor, 18, 1100
 - Costs, 18, 1099
 - Definition, 18, 1097
 - Demurrer, for what demurrer will lie, 18, 1111
 - Demurrer in general, 18, 1111
 - Effect of failure to obtain order, 18, 1110
 - Hearing, 18, 1113
 - Limitation of time for revivor, 18, 1106
 - Must pursue original bill, 18, 1107
 - Nature, 18, 1098
 - Order to revive, 18, 1110
 - Original bills in nature of revivor and supplement, 18, 1120
 - Original bills in the nature of bills of revivor*, see *infra*, Original bills in the nature of bills of revivor.
 - Parties defendant, 18, 1106
 - General rule, 18, 1106
 - Where suit abates by death of defendant, 18, 1106
 - Where suit abates by death or marriage of complainant, 18, 1106
 - Parties plaintiff, 18, 1101
 - Permission of court to file, 18, 1201
 - Plea, 18, 1112
 - Prayers, 18, 1108
 - Procedure, 18, 1114
 - Purpose, 18, 1098
 - Questions raised by bill, 18, 1110
 - Replication, 18, 1113
 - Requisites of bill, 18, 1107
 - Service of subpoena, 18, 1109
 - Signature, 18, 1108
 - Signature of counsel, 18, 1112
 - Statement of original bill and proceedings thereon and abatement, 18, 1107
 - Statutory substitutes (see *infra*, Statutory substitutes for bills of revivor), 18, 1100

REVIVOR OF SUITS AND ACTIONS, *cont'd.*

- Bills of revivor, *cont'd.*
 - Subpoena, 18, 1108
 - Title of plaintiff to revive, 18, 1107
 - What suits may be revived, 18, 1099
 - When proper, 18, 1098
 - Who may file where suit abates by death, 18, 1101
 - General rule, 18, 1101
 - Interest in prosecution of suit essential, 18, 1104
 - In what kinds of suits, 18, 1104
 - Revivor by defendant, 18, 1102
 - Revivor by defendant after decree, 18, 1103
 - Who may file where suit abates by marriage of female plaintiff, 18, 1105
- Bills of revivor and supplement, 18, 1118
 - Answer, 18, 1119
 - Definition, 18, 1118
 - Demurrer, 18, 1119
 - Form of bill, 18, 1119
 - Hearing, 18, 1120
 - Nature, 18, 1118
 - Original bills in nature of revivor and supplement, 18, 1120
 - Plea, 18, 1119
 - When proper, 18, 1119
- Common-law rule, 18, 1122
- Concurrent remedies:
 - Statutory method in bill of revivor, 18, 1100
 - Statutory methods exclusive, 18, 1128
 - Supplemental pleadings in motion, 18, 1148
- Conditional order, 18, 1137, 1139
- Cross-bills, 5, 664
- Decrees:
 - Original bills in the nature of bills of revivor, 18, 1118
- Demurrers in chancery, 6, 436; 18, 1111, 1118, 1119
- Detinue, 6, 648
- Discretion of court, 18, 1140
- Equity, 18, 1096
 - Bills of revivor*, see *infra*, Bills of revivor.
 - Bills of revivor and supplement*, see *infra*, Bills of revivor and supplement.
 - Manner of revivor in general, 18, 1097
 - Original bills in nature of revivor and supplement, 18, 1120

REVIVAL OF JUDGMENTS, *cont'd.*Parties to actions, *cont'd.*Scire facias, *cont'd.*Parties defendant, *cont'd.*

Joinder of heirs or representatives with survivor, 18, 1068

Joinder of terre-tenants, 18, 1071

Joinder of terre-tenants after death of judgment debtor, 18, 1072

Joinder of terre-tenants before death of judgment debtor, 18, 1071

Joint judgments, 18, 1067

Revival against administrator alone, 18, 1071

Revival against heirs and terre-tenants alone, 18, 1070

Parties plaintiff, 18, 1065

Assigned judgments, 18, 1066

General rule, 18, 1065

Revival of judgment for use, 18, 1066

Personal judgments, 18, 1057

Petitions, 18, 1073

Purpose of proceeding, 18, 1061

Real judgments, 18, 1057

Requisites of writ of scire facias, 18, 1075

Averment as to plaintiff's title, 18, 1079

Averment of death of judgment debtor, 18, 1080

Averment of defendant's appointment as executor, 18, 1080

Averment of event to which execution had been stayed, 18, 1018

Averment of facts sufficient to authorize relief, 18, 1075

Averment of matters of defense, 18, 1077

Averment of survivorship, 18, 1080

Averment that judgment is in force and unsatisfied, 18, 1080

Averment that judgment of affirmance has been certified, 18, 1081

Citation to show cause, 18, 1082

Description of original judgment, 18, 1077

Failure of writ to set forth a substantial cause of action, 18, 1076

In general, 18, 1075

Names of defendants, 18, 1080

REVIVAL OF JUDGMENTS, *cont'd.*Requisites of writ of scire facias, *con.*

Recital and identification of original judgment, 18, 1077

Terre-tenants, 18, 1081

Writ a substitute for declaration, 19, 1075

Scire facias, 18, 1055

Action on judgment, 18, 1087

Affidavit, 18, 1074

Amendment, 18, 1082

Applicable in equity as at law, 18, 1058

Application for writ, 18, 1073

Application to personal as well as real judgments, 18, 1057

Dormant judgments, 18, 1055

Judgment, see *infra*, Judgments.

Leave to issue writ, 18, 1073

Motion, 18, 1074

Nature of proceeding, 18, 1059

On what based, 18, 1064

Parties, see *infra*, Parties to actions.

Petition, 18, 1073

Proceedings between issuance of writ and judgment, 18, 1083

Purpose of proceeding, 18, 1061

Requisites of writ, see *infra*, Requisites of writ of scire facias.

Time, 18, 1061

To change or benefit new parties, 18, 1056

What judgments may be revived, 18, 1058

When proper, 18, 1055

Where whole debt has not been levied, 18, 1056

Writ of error to judgment, 18, 1087

Sheriffs and constables:

Summary proceedings, 20, 168

Stipulations, 18, 1092

Suggestion, 18, 1092

Summons to show cause, 18, 1090

Effect of failure to make defense, 18, 1090, 1091

Time, 18, 1091

Terre-tenants (see *infra*, Parties to actions):

Requisites of writ, 18, 1081

Time, 18, 1061

Computation of time, 18, 1063

In general, 18, 1061

Summons to show cause, 18, 1091

When time begins to run, 18, 1062

Venditioni exponas, 22, 645

Void judgments, 18, 1059

REVIVOR OF SUITS AND ACTIONS, 18, 1094

See SURVIVAL OF ACTIONS.

Abatement of actions:

Common-law rule, 18, 1122

REVIVOR OF SUITS AND ACTIONS, *cont'd.*

- Amendments, 18, 1143
- Answers, 18, 1112
- Answers in equity pleading, 18, 1118, 1119
- Bills of review, 3, 593
- Bills of revivor, 18, 1097
 - Answer, 18, 1112
 - Bills of revivor and supplement*, see *infra*, Bills of revivor and supplement.
 - Charge that suit should be revived, 18, 1108
 - Concurrent remedy with statutory method of revivor, 18, 1100
 - Costs, 18, 1099
 - Definition, 18, 1097
 - Demurrer, for what demurrer will lie, 18, 1111
 - Demurrer in general, 18, 1111
 - Effect of failure to obtain order, 18, 1110
 - Hearing, 18, 1113
 - Limitation of time for revivor, 18, 1106
 - Must pursue original bill, 18, 1107
 - Nature, 18, 1098
 - Order to revive, 18, 1110
 - Original bills in nature of revivor and supplement, 18, 1120
 - Original bills in the nature of bills of revivor*, see *infra*, Original bills in the nature of bills of revivor.
 - Parties defendant, 18, 1106
 - General rule, 18, 1106
 - Where suit abates by death of defendant, 18, 1106
 - Where suit abates by death or marriage of complainant, 18, 1106
 - Parties plaintiff, 18, 1101
 - Permission of court to file, 18, 1201
 - Plea, 18, 1112
 - Prayers, 18, 1108
 - Procedure, 18, 1114
 - Purpose, 18, 1098
 - Questions raised by bill, 18, 1110
 - Replication, 18, 1113
 - Requisites of bill, 18, 1107
 - Service of subpoena, 18, 1109
 - Signature, 18, 1108
 - Signature of counsel, 18, 1112
 - Statement of original bill and proceedings thereon and abatement, 18, 1107
 - Statutory substitutes (see *infra*, Statutory substitutes for bills of revivor), 18, 1100

REVIVOR OF SUITS AND ACTIONS, *cont'd.*

- Bills of revivor, *cont'd.*
 - Subpoena, 18, 1108
 - Title of plaintiff to revive, 18, 1107
 - What suits may be revived, 18, 1099
 - When proper, 18, 1098
 - Who may file where suit abates by death, 18, 1101
 - General rule, 18, 1101
 - Interest in prosecution of suit essential, 18, 1104
 - In what kinds of suits, 18, 1104
 - Revivor by defendant, 18, 1102
 - Revivor by defendant after decree, 18, 1103
 - Who may file where suit abates by marriage of female plaintiff, 18, 1105
- Bills of revivor and supplement, 18, 1118
 - Answer, 18, 1119
 - Definition, 18, 1118
 - Demurrer, 18, 1119
 - Form of bill, 18, 1119
 - Hearing, 18, 1120
 - Nature, 18, 1118
 - Original bills in nature of revivor and supplement, 18, 1120
 - Plea, 18, 1119
 - When proper, 18, 1119
- Common-law rule, 18, 1122
- Concurrent remedies:
 - Statutory method in bill of revivor, 18, 1100
 - Statutory methods exclusive, 18, 1128
 - Supplemental pleadings in motion, 18, 1148
- Conditional order, 18, 1137, 1139
- Cross-bills, 5, 664
- Decrees:
 - Original bills in the nature of bills of revivor, 18, 1118
- Demurrers in chancery, 6, 436; 18, 1111, 1118, 1119
- Detinue, 6, 648
- Discretion of court, 18, 1140
- Equity, 18, 1096
 - Bills of revivor*, see *infra*, Bills of revivor.
 - Bills of revivor and supplement*, see *infra*, Bills of revivor and supplement.
 - Manner of revivor in general, 18, 1097
 - Original bills in nature of revivor and supplement, 18, 1120

REVIVOR OF SUITS AND ACTIONS, *cont'd.*Equity, *cont'd.*

Original bills in the nature of bills of revivor, see infra, Original bills in the nature of bills of revivor.

Statutory substitutes, see infra, Statutory substitutes for bills of revivor.

When necessary, 18, 1096

Executions, see EXECUTIONS.

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Hearing, 18, 1139

Bills of revivor, 18, 1113

Bills of revivor and supplement, 18, 1120

Original bills in the nature of bills of revivor, 18, 1118

Judgments, see REVIVAL OF JUDGMENTS.

Motions (see *infra*, Statutory substitutes for bills of revivor), 18, 1129

Conditional order, 18, 1137

Final order, 18, 1142

Hearing, 18, 1139

Manner of giving notice, 18, 1137

Necessity for amended or supplemental pleadings, 18, 1143

Necessity for notice of motion, 18, 1134

Notice of motion, 18, 1134

Objections to revivor of actions, 18, 1139

Revivor on motion with consent, 18, 1132

Rules governing determination, 18, 1140

Service of notice, 18, 1138

Suggestion of death or disability, 18, 1133

Time of motion, 18, 1132

To introduce new defendant, 18, 1131

To introduce new plaintiff, 18, 1129

When proper, 18, 1129

Necessity for revivor, 18, 1098, 1124

Effect of failure to revive, 18, 1124

In general, 18, 1124

Notice, 18, 234, 1121

Notice of application, 18, 1121

Notice of motion, 18, 1134

Conditional order, 18, 1137

Manner of giving notice, 18, 1137

Necessity for, 18, 1134

Service of notice, 18, 1138

Where new defendant is introduced, 18, 1136

Where new plaintiff is introduced, 18, 1134

REVIVOR OF SUITS AND ACTIONS, *cont'd.*

Order of revivor, 18, 1121

Orders, 18, 1142

Bills of revivor, 18, 1110

Conclusiveness, 18, 1142

Conditional order, 18, 1137, 1139

Final order, 18, 1142

Form, 18, 1142

Necessity for, 18, 1142

Statutory substitutes for bills of revivor, 18, 1121

Supplemental pleadings, 18, 1150

Order to revive, 18, 1110

Original bills in the nature of revivor and supplement, 18, 1120

Original bills in the nature of bills of revivor, 18, 1114

Administrator *de bonis non*, 18, 1116

Answer, 18, 1118

Decree, 18, 1118

Definition, 18, 1114

Demurrer, 18, 1118

Devisee, 18, 1115

Effect of bill, 18, 1114

Form of bill, 18, 1117

Hearing, 18, 1118

Parties, 18, 1117

Plea, 18, 1118

Prayer, 18, 1117

Questions raised by bill, 18, 1117

When necessary, 18, 1115

Parties to actions (see *infra*, Bills of revivor), 18, 1125

Against whom actions may be revived, 18, 1127

Heirs and personal representatives, 18, 1128

Heirs or devisees, 18, 1128

Personal representatives, 18, 1127

By whom actions may be revived, 18, 1125

Devisees, 18, 1126

Heirs, 18, 1126

Personal representatives, 18, 1125

Representatives of defendant, 18, 1127

Representatives of plaintiff, 18, 1125

Representative's successor, 18, 1126

Original bills in the nature of bills of revivor, 18, 1117

Petitions, see infra, Statutory substitutes for bills of revivor.

Pleas in equity, 18, 1112, 1118, 1119

Prayers for relief, 18, 1108, 1117

Public officers, see PUBLIC OFFICERS.

Replications and replies, 18, 1113

REVIVOR OF SUITS AND ACTIONS, *cont'd.*

Revival of judgments, see **REVIVAL OF JUDGMENTS**.

Right of property, trial of, 18, 1181

Scire facias, 18, 1143

To introduce new defendant, 18, 1144

Effect of failure to appear, 18, 1147

Issue raised on return of writ, 18, 1147

Necessity for, 18, 1144

Return, 18, 1146

Suggestion of death on record, 18, 1145

To introduce new plaintiff, 18, 1143

Sequestration, 19, 547

Service of process, 18, 1109, 1138

Signature, 18, 1108, 1113

Statutory changes, 18, 1122

Statutory substitutes for bills of revivor, 18, 1120

Form of petition, 18, 1121

in general, 18, 1120

Notice of application, 18, 1121

Order of revivor, 18, 1121

Revivor on motion or petition, 18, 1121

Who may maintain, 18, 1121

Subpoena, 18, 1108

Necessity for, 18, 1108

Service, 18, 1109

Supplement, see *infra*, **Bills of revivor and supplement**.

Supplemental pleadings, 18, 1147; 21, 36

Cumulative or concurrent remedy with motion, 18, 1148, 1150

Manner of showing cause, 18, 1150

Notice to show cause, 18, 1149

Order, 18, 1150

What constitutes supplemental complaint, 18, 1149

Where time for motion has expired, 18, 1147

Time of motion, 18, 1132

Trusts and trustees, 22, 148

United States courts, 22, 300

Winding up corporations, 22, 1278, 1301

REWARD, 18, 1151

Appeals, 18, 1162

Assumpsit:

Assumpsit or debt, 18, 1151

Averments and proof, 18, 1152

Authority to make arrest, 18, 1157

Compliance with conditions of offer, 18, 1154

Conviction of offender, 18, 1156

REWARD, *cont'd.*

Averments and proof, *cont'd.*

Fact of offer, 18, 1153

Jurisdiction of court to convict, 18, 1157

Negating duty to perform required services, 18, 1157

Notice of performance of services, 18, 1158

Offerer, 18, 1154

Right to reward, 18, 1152

Subject-matter of offer, 18, 1154

Substantial performance of service, 18, 1156

Conditions:

Compliance with conditions of offer, 18, 1154

Conviction:

Averment of conviction of offender, 18, 1156

Jurisdiction of court to convict, 18, 1157

Debt:

Assumpsit or debt, 18, 1151

Directing verdict, 18, 1158

Dismissal, discontinuance, and nonsuit, 18, 1158

Form of action, 18, 1151

Instructions, 18, 1158

Interpleader, 18, 1159

Joinder of parties, 18, 1151

Negating duty to perform required services, 18, 1157

Offer:

As to offerer, 18, 1154

As to subject-matter of offer, 18, 1154

Averments of answer, 18, 1153

Averments of declaration, 18, 1153

Compliance with conditions of offer, 18, 1154

Parties to actions, 18, 1151

Performance:

Compliance with conditions of offer, 18, 1154

Negating duty to perform required services, 18, 1157

Notice of performance of services, 18, 1158

Province of court and jury, 18, 1158

Remittitur, 18, 1163

Right to reward, 18, 1152

State, municipal, and statutory rewards, 18, 1161

RIGHT OF PROPERTY, TRIAL OF, 18, 1164

Affidavit or notice of claim, 18, 1174

Amendment, 18, 1175

Necessity for, 18, 1174

Sufficiency, 18, 1175

Amendments, 18, 1175, 1178, 1192

Appeals, 18, 1194

RIGHT OF PROPERTY, TRIAL OF, *cont'd.*

Bonds, 18, 1175
 Change of venue, 18, 1180
 Consolidation of claims, 18, 1181
 Continuance, 18, 1179
 Costs, 18, 1193
 Damages:
 Damages for detention of property, 18, 1184
 Death, 18, 1181
 Defenses, 18, 1186
 Directing verdict, 18, 1187
 Dismissal, discontinuance, and nonsuit, 18, 1180
 Election of remedy, 18, 1166
 Effect of election, 18, 1167
 Right of election, 18, 1166
 Independent of main action, 18, 1165
 Instructions, 18, 1186
 Issues determinable, 18, 1183
 Damages for detention of property, 18, 1184
 Defenses, 18, 1186
 Direction of verdict, 18, 1187
 Equities of third persons, 18, 1186
 Instructions, 18, 1186
 Issues not raised by pleadings, 18, 1187
 Priority of liens, 18, 1186
 Title to property, 18, 1183
 Validity of seizure, process, or other proceedings, 18, 1185
 Joint owners, 18, 1173
 Judgments:
 Alternative, 18, 1191
 Amendment, 18, 1192
 Assessing value of property, 18, 1191
 Conformity to verdict, 18, 1190
 Default, 18, 1192
 When against claimant, 18, 1190
 When in favor of claimant, 18, 1192
 Jurisdiction, 18, 1168
 Court issuing seizure process, 18, 1168
 Court of county where property was seized, 18, 1168
 Justices of the peace, 18, 1169
 Jury:
 Composition of jury, 18, 1183
 Right to trial by jury, 18, 1182
 Trial by jury, 18, 1182
 Justices of the peace, 18, 1169
 Appeal from justice, 18, 1195
 Levying officers:
 Protection to levying officers, 18, 1166
 Who may institute proceeding, 18, 1172
 Lienholders, 18, 1171

RIGHT OF PROPERTY, TRIAL OF, *cont'd.*

Liens, priority of, 18, 1186
 Married women, 18, 1173
 Mortgagees, 18, 1172
 Nature and purpose of proceeding, 18, 1165
Notice of claim, see infra, Affidavit or notice of claim.
 Open and close, 18, 1183
 Pleading, 18, 1176
 Amendment, 18, 1178
 Formal pleadings, 18, 1176
 Pleading and proof, 18, 1178
 Special plea, 18, 1178
 Sufficiency of pleadings, 18, 1177
 Written pleadings, 18, 1177
 Proceedings before trial, 18, 1177
 Process:
 Validity of seizure, process, or proceedings, 18, 1185
 Property subject to proceeding, 18, 1169
 Personalty, 18, 1169
 Realty, 18, 1170
 Protection of levying officer, 18, 1166
 Removal of causes, 18, 1180
 Return of property, 18, 1193
 Revivor of suits and actions, 18, 1181
 Scope of article, 18, 1165
 Second interposition of claim, 18, 1193
 Sequestration, 19, 562
 Special plea, 18, 1178
 Time of instituting proceeding, 18, 1173
 Title to property, 18, 1183
 Trial, 18, 1182
 Verdict, 18, 1188
 Assessing each article separately, 18, 1189
 Assessing value of property, 18, 1189
 Disposing of issue, 18, 1188
 Responsiveness to issue, 18, 1188
 Who may institute proceeding, 18, 1170
 Joint owners, 18, 1173
 Levying officers, 18, 1172
 Lienholders, 18, 1171
 Married women, 18, 1173
 Mortgages, 18, 1172
 Persons claiming interest or ownership, 18, 1170
 Written pleadings, 18, 1177
RIGHT, WRIT OF, see REAL ACTIONS.
RIOT, 18, 1196
 See UNLAWFUL ASSEMBLY.
 Acts pursuant to assembly, 18, 1200
 Assault and battery, 18, 1204
 Attempts, 18, 1201

RIOT, *cont'd.*

- Charging and proving the offense, 18, 1196
 - Alleging facts as to unlawful act, 18, 1202
 - Attempt, 18, 1201
 - Averments generally, 18, 1196
- Charging riot and other offenses, 18, 1204
- Common-law offense, 18, 1196
- Conclusion of indictment or information, 18, 1204
- Designation of defendants, 18, 1198
- Force and arms, 18, 1202
- Intent or purpose of the assembly, 18, 1200
- Language of statute, 18, 1197
- Number of defendants, 18, 1199
- Performance of act pursuant to assembly, 18, 1200
- Place, 18, 1198
- Statutory offense, 18, 1197
- Surplusage, 18, 1206
- Time, 18, 1198
- Unlawful assembly, 18, 1199
- Variance, 18, 1203
- Violence, 18, 1197
- Conclusion of indictment or information, 18, 1204
 - Contra formam statuti*, 18, 1205
 - In terrorem populi*, 18, 1204
- Defining the offense, 18, 1208
- Force, 18, 1197, 1202
- Instructions, 18, 1207
- Joinder of offenses, 18, 1204
- Judgment, 18, 1211
- Jury, 18, 1206
- Language of statute, 18, 1197
- Municipal corporation, 18, 240
- Names:
 - Designation of defendants, 18, 1198
- Number, 18, 1199, 1211
- Place, 18, 1198
- Riotously, 18, 1202
- Sentences, 18, 1211
- Separate trials, 18, 1206
- Surplusage, 18, 1206
- Time, 18, 1198
- Trial, 18, 1206
- Unlawful assembly 18, 1199
 - Intent or purpose of the assembly, 18, 1200
- Variance, 18, 1203
- Verdict, 18, 1210
 - Conviction of less than number necessary to commit offense, 18, 1211
 - General requisites, 18, 1210
 - Guilty, 18, 1210
- Violence, 18, 1197, 1202
- Index Pl. & Pr. — 61

RIPARIAN RIGHTS, 18, 1213

- See WATERS AND WATERCOURSES.
- Access, obstruction of, 18, 1215
- Deposit of waste or refuse, 18, 1214
- Ice, 18, 1214
- In general, 18, 1213
- Injuries to riparian lands, 18, 1213
- Removal of soil or its products, 18, 1213
- Replevin, 18, 1214
- Title, ownership, and possession:
 - Suits to determine title, 18, 1215
- Unlawful entry, 18, 1213

ROBBERY, 18, 1217

- See LARCENY.
- Against his will, 18, 1227
- Armed with dangerous weapon, 18, 1219
- Assault and battery:
 - Assault with intent to rob, 2, 849
- Bailment, 18, 1224, 1228
- Burglary:
 - Joinder, 3, 796
- Conspiracy, 4, 731
- Definition, 18, 1217
- Description of property, 18, 1220
 - Excuse for defective description, 18, 1222
 - In general, 18, 1220
 - Money, 18, 1221
 - Phrases prescribed by statute, 18, 1221
 - Same as in larceny, 18, 1221
 - Variance, 18, 1222
- Felonious intent, 18, 1219
- Feloniously, 18, 1220
- Force and intimidation, 18, 1225
 - Alternative averments, 18, 1226
- From the person, 18, 1224
- Indictment, 18, 1217
- In his presence, 18, 1225
- Instructions, 18, 1231
- Intent, 18, 1219
- Intimidation, 18, 1225
- Joinder of offenses, 18, 1230
- Larceny, 12, 1010; 18, 1217
- Money, 18, 1221
- Ownership of property, 18, 1223
 - Bailee, 18, 1224
 - General rule, 18, 1223
 - Some person other than defendant, 18, 1224
- Place, 18, 1230
- Post office:
 - Indictment for robbing mails, 16, 762
- "Rob," 18, 1225
- Sentence, 18, 1233
- Statute, 18, 1218
- Time, 18, 1229
- Title, ownership, and possession, 18, 1223
- Value of property, 18, 1228

ROBBERY, *cont'd.*

Variance, 18, 1222

Verdict, 18, 1233

Violent, 18, 1227

Weapon, 18, 1219

ROGATORY, *see* LETTERS ROGATORY.**RULES OF COURT, 18, 1235***See* RULES OF COURT.

Adoption, 18, 1257

Adoption by convention of judges,
18, 1259Adoption by state of federal rules,
18, 1259

Affidavits of merits or defense, 1, 339

Validity of rules requiring affi-
davit of defense, 18, 1246

Allowance of costs, 18, 1255

Amendments, 18, 1271

Appeals, 2, 12, 14: 18, 1254

Dismissal of appeal, 2, 338

Appearances, 2, 592

Arguments of counsel, 18, 1253

As to rule as an order, see ORDERS.

Authority to adopt rules, 18, 1236

In general, 18, 1236

Rules in equity and admiralty,
18, 1237

State courts, 18, 1236

United States courts, 18, 1237

Bills of exceptions:

Time for settlement and signa-
ture, 3, 462

Briefs:

Validity of rules of court, 18, 1245

Calendars and trial dockets, 3, 802

Preferences, 3, 804

Change of venue:

Validity of rules of court, 18,
1243*Common law, see infra.* Rules in con-
travention of common law or statu-
te.

Construction, 18, 1262

In general, 18, 1262

Interference by appellate court
with construction of lower
court, 18, 1263

Liberal construction, 18, 1262

Depositions, 18, 1250

Dispensing with rules, 18, 1267

Applications to have rules set
aside, 18, 1271

In general, 18, 1267

Particular rules, 18, 1268

Rules prescribed by higher court,
18, 1271Rules which may be suspended,
18, 1269Rules which may not be sus-
pended, 18, 1268

Enforcement, 18, 1263

Dispensing with rules, see infra,
Dispensing with rules.**RULES OF COURT, *cont'd.***Enforcement, *cont'd.*Enforcement of invalid rule, 18,
1264Failure by court to enforce valid
rule, 18, 1265Penalties for noncompliance, 18,
1263Waiver of right to insist on en-
forcement, 18, 1266

Evidence:

Proof, 18, 1260

Proof of pleadings and written
instruments, 18, 1249

Exceptions and objections, 18, 1253

Failure by court to enforce valid
rule, 18, 1265

Filing, 18, 1272

Foreclosure of mortgages:

Deficiency judgments, 9, 463

Form of pleadings, briefs, and stipu-
lations, 18, 1244

Instructions, 18, 1252

Judicial notice, 18, 1260

Jurisdiction, 18, 1241

Jury:

Right to trial by jury, 18, 1247

Mandamus, see MANDAMUS.

Method of adoption, 18, 1257

Motions, 18, 1251

Operation, 18, 1259, 1272

Order, 15, 317

Order of proof, 18, 1248

Order to show cause, 18, 1252

Penalties for noncompliance, 18, 1263

Petitions, 18, 1251

Printing and filing copies, 18, 1258

Proof, 18, 1260

Publication, 18, 1272

Validity of rules of court, 18,
1242

Repeal, 18, 1271

Repeal by enactment of statute, 18,
1272Rules in contravention of common
law or statute, 18, 1239Affecting court's jurisdiction, 18,
1241

In general, 18, 1239

Limiting court's discretion, 18,
1240*Rule to plead, see* DEFAULTS; TIME TO
PLEAD.

Scandal and impertinence, 19, 184

Security for costs, 18, 1255

Service of process:

Validity of rules of court, 18, 1243

Settlement of case, 18, 1253

Statutes, see infra. Rules in contra-
vention of common law or statute.

Stipulations, 20, 608

Validity of rules of court, 18,
1245

RULES OF COURT, *cont'd.*

Supreme court:

Where supreme court is authorized to provide uniform rules, 18, 1237

Terms and sessions of court, see **TERMS AND SESSIONS OF COURT**.

Terms of court:

Designating terms and arranging business of court, 18, 1242

Time to plead, see **TIME TO PLEAD**.

Validity of rules of court, 18, 1244

United States courts, 22, 293

Authority to adopt rule, 18, 1237

In civil cases other than those in admiralty and equity, 18, 1239

Method of adoption, 18, 1257

Rules in equity and admiralty, 18, 1237

Validity of enforcement of invalid rule, 18, 1264

Validity of rules in relation to particular subjects, 18, 1239

Allowance of costs and applications for security, 18, 1255

Appellate procedure, 18, 1254

Applications for change of venue or judge, 18, 1243

Arguments of counsel, 18, 1253

Briefs, 18, 1244

Designating terms and arranging business of the court, 18, 1242

Form of pleadings, 18, 1244

Miscellaneous rules, 18, 1256

Motions and orders to show cause, 18, 1251

Number of witnesses and order of proof, 18, 1248

Proof of pleadings and written instruments, 18, 1249

Publication of legal notice, 18, 1242

Requests for instructions to the jury, 18, 1252

Requiring affidavit of defense, 18, 1246

Rules in contravention of common law or statute, see *infra*, **RULES IN CONTRAVENTION OF COMMON LAW OR STATUTE**.

Service of process, 18, 1243

Settlement of case and exceptions, 18, 1253

Stipulations, 18, 1244

Trial by jury, 18, 1247

Witnesses:

Number of witnesses, 18, 1248

RULES OF DECISION, see **UNITED STATES COURTS**.

RULINGS, see **APPEALS**.

SABBATH, see **SUNDAYS AND HOLIDAYS**.

SALES, 19, 1

See **VENDOR AND PURCHASER**.

Accounts:

Declaration on account annexed, 19, 23

Action:

Recovery by vendee of money paid, see *infra*, *Recovery by vendee of money paid*.

Vendee's action for nondelivery, see *infra*, *Vendee's action for nondelivery*.

Warranties and false representations, see *infra*, *Warranties and false representations*.

Action for damages, 19, 63

Averment of damages, 19, 66

Declaration and complaint, 19, 63

Election of remedies, 19, 4, 11

Instructions, 19, 67

Market price, 19, 66

Performance by plaintiff and breach by defendant, 19, 63

Plea or answer, 19, 66

Resale after breach, 19, 65

Vendor's actions, 19, 63

Action for goods:

Vendee's action for goods, 19, 71

Action for price, 19, 12

Affidavits of defense, 19, 48

Declaration and complaint, 19, 14

Election of remedies, 19, 2, 7

Failure of consideration, see *infra*, *Failure of consideration*.

Findings, 19, 58

Instructions, see *infra*, *Instructions*.

Judgment, 19, 59

Parties to actions, see *infra*, *Parties to actions*.

Plea or answer, 19, 35

Affidavits of defense, 19, 48

Argumentative denial, 19, 35

Confession and avoidance, 19, 37

Date of time of sale, 19, 35

Denial of indebtedness, 19, 38

Denial of value, 19, 40

Failure of consideration (see *infra*, *Failure of consideration*), 19, 38

Failure of title, 19, 38

General denial, 19, 36

General issue, 19, 36

Illegality of sale, 19, 40

Inconsistent defenses, 19, 40

In general, 19, 35

New matter, 19, 37

Promise to pay, 19, 35

Province of court and jury, 19, 50

SALES, *cont'd.*

- Action for price, *cont'a.*
 - Remedies against goods sold, 19, 60
 - Reply, 19, 50
 - Verdict, 19, 58
- Action to recover goods, 19, 67
 - Appellate review, 19, 71
 - Conditional sale, 19, 68, 70
 - Declaration and complaint, 19, 68
 - False representations, 19, 68
 - Parties, 19, 67
 - Plea or answer, 19, 69
 - Province of court and jury, 19, 69
 - Recovery of counsel fees, 19, 70
 - Supplemental complaint, 19, 69
 - Verdict, 19, 70
- Affidavits of defense:
 - Action for price, 19, 48
- Agency:
 - Action for price, 19, 13
- Amendments, 19, 35, 110
- Answers, see *infra*, Plea or answer.
- Answers in code pleading:
 - General denials, 1, 820
- Appeals:
 - Vendor's action to recover goods, 19, 71
- Assumpsit (see *infra*, Common counts), 2, 1005
 - Bargained and sold, 2, 1007
 - Delivery of goods, 2, 1006
 - Delivery to satisfy statute of frauds, 2, 1006
 - Goods sold, 2, 1005
 - Goods sold on trial, 2, 1007
 - Possession of purchaser, 2, 1006
 - Sale or return, 2, 1006
 - Sold and delivered, 2, 1005
 - When the count of goods sold will not lie, 2, 1007
- Attorneys' fees:
 - Recovery of counsel fees, 19, 70
- Breach (see *infra*, Warranties and false representations):
 - Averment of nonpayment or breach, 19, 31
 - Vendee's action for nondelivery, 19, 77
- Breach of warranty, see *infra*, Warranties and false representations.
- Common counts, 19, 14
 - Action on special contract or implied assumpsit, 19, 22
 - Common counts in code pleading, 19, 21
 - Delivery essential, 19, 16
 - Delivery to third person, 19, 17
 - Executed contract, 19, 14
 - Goods bargained and sold, 19, 20
 - Goods sold and delivered, 19, 15
 - In general, 19, 14
 - Note for price, 19, 19

SALES, *cont'd.*

- Common counts, *cont'd.*
 - Price other than money, 19, 18
 - Recovery by vendee of money paid, 19, 71
 - Remedy for uncertainty, 19, 23
 - Resale by vendor, 19, 21
 - Sale conditional on payment, 19, 18
 - Stare decisis*, 19, 23
 - Title, 19, 21
 - Title must pass, 19, 17
 - Vendee's action for nondelivery, 19, 76
 - Work, labor, and materials, 19, 18
- Conditional sale:
 - Vendor's action to recover goods, 19, 68, 70
- Conditions precedent, 19, 32
- Averment of compliance with conditions precedent, 19, 107
- Conditions subsequent, 19, 32
- Confession and avoidance:
 - General issue, 19, 37
- Consideration (see *infra*, Failure of consideration):
 - Averment of consideration in assumpsit upon warranty, 19, 101
 - Vendee's action for nondelivery, 19, 76
- Damages (see *infra*, Action for damages; Vendee's action for nondelivery):
 - Averment of damages for breach of warranty or for misrepresentation, 19, 107
 - Averment of damages in vendee's action for nondelivery, 19, 80
- Instructions, 19, 116
- Date of sale, 19, 35
- Deceit*, see *infra*, Fraud.
- Declaration and complaint, 19, 14
 - Action for price, 19, 14
 - Amendments, 19, 35
 - Averment as to performance by plaintiff, 19, 32
 - Averment of nonpayment or breach, 19, 31
 - Averment of promise to pay, 19, 29
 - Averment of sale, 19, 26
 - Avoiding statute of frauds, 19, 29
 - Description of goods, 19, 28
 - Necessity and sufficiency, 19, 26
 - Place of sale, 19, 28
 - Price, 19, 28
 - Request of defendant, 19, 29

SALES, *cont'a.*Declaration and complaint, *cont'd.*Action for price, *cont'd.*

Averment of value, 19, 30

Common counts, *see infra*,

Common counts.

Conditions, 19, 32

Declaration on account annexed, 19, 23

Delivery, 19, 33

Description of goods, 19, 28

Form and sufficiency in general, 19, 25

Indebtedness, 19, 26

Joinder of counts, 19, 34

Particular averments, 19, 25

Place of sale, 19, 28

Price, 19, 28

Request of defendant, 19, 29

Statute of frauds, 19, 29

Warranties, 19, 33

Vendee's action for nondelivery, see infra, Vendee's action for nondelivery.

Vendor's action for damages, 19, 63

Vendor's action to recover goods, 19, 68

*Warranties and false representations, see infra, Warranties and false representations.**Defenses, see infra, Plea or answer.*Delivery (*see infra*, Common counts):

Allegations of delivery, 19, 33

Time of delivery, 19, 51

*Vendee's action for nondelivery, see infra, Vendee's action for nondelivery.***Demand:**

Vendee's action for nondelivery, 19, 77

Description of goods:

Averment of, 19, 28

Election of remedies, 19, 4

Of vendee, 19, 11

Action for damages, 19, 11

After obtaining possession, 19, 11

Before obtaining possession, 19, 11

Specific performance, 19, 11

Where title has not passed, 19, 11

Where title is passed, 19, 11

Of vendor, 19, 4

Action for damages, 19, 4

Action for goods or value, 19, 6

Action for price, 19, 4, 7

Alternative and inconsistent remedies, 19, 10

Failure to give agreed security, 19, 8

SALES, *cont'd.*Election of remedies, *cont'd.*Of vendor, *cont'd.*

Fraud, 19, 9

Replevin, 19, 9

Sales for cash, 19, 9

Sales on credit, 19, 8

Title reserved until payment, 19, 6

Trespass, 19, 10

Trover, 19, 10

When title has not passed, 19, 4

When title has passed, 19, 7

Warranties and false representations, 19, 83

Executors and administrators:

Action for price, 19, 13

Failure of consideration, 19, 40

General denial, 19, 40

In general, 19, 40

Misrepresentations and breach of warranty, 19, 41

Answer by joint defendants, 19, 44

Averring knowledge of defects, 19, 43

Defects or breach, 19, 45

General allegation that goods were without value, 19, 46

In general, 19, 41

Injury to defendant, 19, 43

Misrepresentations, 19, 42

Rescission, 19, 47

Results of defects, 19, 46

Return, 19, 47

Stipulation limiting action for breach, 19, 45

Warranties, 19, 43

Where breach of an implied warranty, 19, 44

Failure of title, 19, 38

False representations (*see infra*, Warranties and false representations).

Vendor's action to recover goods, 19, 68

Findings, 19, 58

Fraud:

Averment of fraud and deceit in action for breach of warranty or misrepresentation, 19, 93

Action not founded on warranty, 19, 94

Assumpsit on warranty, 19, 93

In case for false warranty, 19, 94

Election of remedies, 19, 9

In general, 19, 9

Replevin, 19, 9

SALES, *cont'd.***Fraud, *cont'd.***Election of remedies, *cont'd.*

Trespass, 19, 10

Trover, 19, 10

Instructions, 19, 114

Frauds, statute of:

Avoiding statute of frauds, 19, 29

Vendee's action for nondelivery,
19, 76**General issue and general denial, 19,
36**

Applications of rules, 19, 37

Failure of consideration, 19, 38

Failure of title, 19, 38

General denial, 19, 36

General denial limited by special
denial, 19, 37

New matter, 19, 37

Statement of rules, 19, 36

Harmless error:

Instructions, 19, 57

Reply, 19, 50

Illegality of sale as defense, 19, 40**Illegal sales, 19, 40*****Implied warranty, see infra, War-
ranties and false representations.*****Inconsistent defenses, 19, 49****Indebtedness:**

Averment of indebtedness, 19, 26

Denial of indebtedness, 19, 38

Infants, see INFANTS.**Insane persons, 19, 1233****Instructions:**

Action for price, 19, 51

Argumentativeness, 19, 56

Assumption of facts, 19, 52

Basing on issues and evi-
dence, 19, 54

Burden of proof, 19, 57

Consistency, 19, 56

Elements and requisites, 19,
54

Fairness, 19, 50

Harmless error, 19, 57

In general, 19, 50

Invading province of jury,
19, 51Requests for instructions,
19, 53

Time of delivery, 19, 51

Vendee's action for nondelivery,
19, 81Vendor's action for damages, 19,
67***Warranties and false representa-
tions, see infra, Warranties
and false representations.*****Joinder of counts and causes, 19,
34****Warranties and false representa-
tions, 19, 109****Joinder of parties, 19, 12, 14****SALES, *cont'd.*****Judgments:**

Action for price, 19, 59

Judicial sales, see JUDICIAL SALES.**Market price:**

Allegation, 19, 66

***Misrepresentations, see infra, False
representations; Warranties and
false representations.******Nondelivery, see infra, Delivery;
Vendee's action for nondelivery.*****Parties to actions:**

Action for price, 19, 12

Assignor of purchase money
note, 19, 13

Defendants, 19, 13

Executor or administrator,
19, 13

Holder of legal interest, 19, 12

Insane person, 19, 14

Joinder of defendants, 19, 14

Plaintiffs, 19, 12

Principal and agent, 19, 13

Action to recover goods, 19, 67

Vendee's action for nondelivery,
19, 74**Warranties and false representa-
tions, 19, 85*****Partition, see PARTITION.*****Performance:**Averment as to performance by
plaintiff, 19, 32**Place of sale:**

Averment of, 19, 28

**Plea or answer (see *infra*, Action for
price):*****Action for price, see infra, Action
for price.*****Vendee's action for nondelivery,
19, 80****Vendor's action to recover goods,
19, 69****Warranties and false representa-
tions, 19, 111****Possession:****Remedies against goods sold, 19,
60****Price (see *infra*, Action for price):**

Averment of, 19, 28

Promise:Averment as to performance by
plaintiff, 19, 32Averment of nonpayment or
breach, 19, 31Averment of promise to pay, 19,
29

Denial of promise to pay, 19, 35

Implied promise, 19, 30

Questions of law and fact, 19, 50

Invading province of jury, 19, 51

Time of delivery, 19, 51

**Vendor's action to recover goods,
19, 69**

SALES, *cont'd.*

Readiness to perform, see infra, Tender.
Receivers, see RECEIVERS.

Recovery by vendee of money paid,
 19, 71

Appeals, 19, 74

Averting ground of recovery,
 19, 72

Common counts, 19, 71

Nonsuit, 19, 73

Reply, 19, 73

Remedies against goods sold, 19,
 60

Replevin:

Fraud, 19, 9

Replications and replies:

Action for price, 19, 50

"Represented," 19, 97

Resale:

Vendor's action for damages, 19,
 65

Rescission, 19, 47

Scienter:

Averment of scienter in action
 for breach of warranty or
 misrepresentation, 19, 86

Action not founded on war-
 ranty, 19, 88

After verdict, 19, 89

Case for false warranty, 19,
 86

Declaration with double
 aspect, 19, 89

Double-aspect doctrine
 stated, 19, 89, 91

Implied warranty, 19, 92

Where action is in contract,
 19, 92

Form of action where scienter
 cannot be shown, 19, 83

Instructions, 19, 116

Warranties and false representa-
 tions, 19, 83

Specific performance, 19, 11

Tender:

Averment of readiness to per-
 form in vendee's action for
 nondelivery, 19, 78

Averment of tender or readiness
 to perform, 19, 34

Time of sale, 19, 35

Title (*see infra*, Common counts;
 Election of remedies), 19, 38

Trespass:

Fraud, 19, 10

Trover:

Fraud, 19, 10

*Trusts and trustees, see TRUSTS AND
 TRUSTEES.*

Value:

Averment of, 19, 30

Denial of, 19, 40

Variance, 19, 27

SALES, *cont'd.*

Vendee's action for nondelivery, 19,
 74

Declaration and complaint, 19,
 74

Averment of contract, 19, 75

Breach, 19, 77

Common counts, 19, 76

Consideration, 19, 76

Damages, 19, 80

Demand, 19, 77

Promise to pay, 19, 76

Readiness to perform, 19, 78

Statute of frauds, 19, 76

Summary statement of es-
 sential averments, 19, 74

Variance, 19, 75

Parties, 19, 74

Venditioni exponas, 22, 651

Vendor's action for damages, see infra,
Action for damages.

Vendor's action to recover goods, see
infra, Action to recover goods.

Verdict, 19, 58

Vendor's action to recover goods,
 19, 70

"Warranted," 19, 97

Warranties and false representations,
 19, 82

Action by third person against
 vendee, 19, 116

Allegations of complaint, 19, 33

Amendments, 19, 110

Averment of breach, 19, 104

Averment of test of machine,
 19, 106

Averment of worthlessness,
 19, 106

Breach of warranty of
 soundness, 19, 105

Express warranty of title,
 19, 106

Necessity for, 19, 104

Pleading and proof, 19, 104

Variance, 19, 104

Averment of compliance with
 conditions precedent, 19, 107

Averment of damages, 19, 107

Averment of reliance on war-
 ranty or representation, 19,
 102

Averment of sale and warranty,
 19, 96

Case on warranty, 19, 99

General or special assump-
 sit, 19, 96

Implied warranty, 19, 98

In case for deceit, 19, 98

In general, 19, 96

Pleading and proof, 19, 99

Represented, 19, 97

Setting out warranty, 19, 96

Variance, 19, 99

SALES, *cont'd.*Warranties and false representations,
*cont'd.*Averment of sale and warranty,
cont'd.

Warranted, 19, 97

Writing, 19, 98

Declaration and complaint, 19, 86

Action not founded on war-
ranty, 19, 88

Amendments, 19, 110

Averment of breach, 19, 104

Averment of compliance
with conditions precedent,
19, 107Averment of consideration,
19, 101Averment of damages, 19,
107Averment of fraud and de-
ceit, 19, 93Averment of reliance on
warranty or representa-
tion, 19, 102Averment of sale and war-
ranty, 19, 96

Averment of scienter, 19, 86

Case for false warranty, 19, 86

Declaration with double
aspect, 19, 89

Implied warranty, 19, 82

Joinder of counts, 19, 109

Pleading and proof, 19, 90

Scienter as gist of deceit, 19,
88

Tort or contract, 19, 95

Whether action is in con-
tract or tort, 19, 95

Form of action, 19, 82

Case or assumpsit, 19, 82

Election of remedies, 19, 83

Where scienter cannot be
shown, 19, 83Fraud and deceit, averment of,
19, 93

Instructions, 19, 112

As to warranty or fraud, 19,
114Basing instructions on evi-
dence, 19, 113Basing on issues and evi-
dence, 19, 112Contradictory, misleading,
and argumentative in-
structions, 19, 113

Damages, 19, 116

Error cured by other instruc-
tions, 19, 114

General principles, 19, 112

Proof of fraud, 19, 115

Scienter, 19, 116

What constitutes warranty,
19, 114**SALES, *cont'd.***Warranties and false representations,
cont'd.

Joinder of counts, 19, 109

Misrepresentations and breach
of warranty, 19, 41Answer by joint defendants,
19, 44Averring knowledge of de-
fects, 19, 43

Defects or breach, 19, 45

General allegation that
goods were without value,
19, 46

In general, 19, 41

Injury to defendant, 19, 43

Misrepresentations, 19, 42

Rescission, 19, 47

Results of defects, 19, 46

Return, 19, 47

Stipulation limiting action
for breach, 19, 45

Warranties, 19, 43

Where breach of an implied
warranty, 19, 44

Parties, 19, 85

Assignee, 19, 85

Defendants, 19, 86

Plaintiffs, 19, 85

Tort or contract, 19, 95

SALVAGE, 20, 256

Admiralty:

Recaptures, 1, 304

Answer, 20, 258

Appeal, 20, 259

Costs, 20, 259

Form of proceedings, 20, 257

Jurisdiction, 20, 256

Libel, 20, 258

Parties defendant, 20, 258

Parties plaintiff, 20, 257

**SATISFACTION (see ACCORD AND
SATISFACTION; PAYMENT; RELEASE;
SATISFACTION AND DISCHARGE OF
JUDGMENTS; TENDER):**

Notice:

Motion to set off judgment
against judgment, 19, 169**SATISFACTION AND DIS-
CHARGE OF JUDGMENTS,**
19, 117

Accord and satisfaction, 19, 171

Action on the case, 19, 138

Actions:

Civil actions, 19, 131

Set-off of judgment against judg-
ment:

Application for set-off, 19, 164

Discretion of court, 19, 159

Distinction between motions
and actions, 19, 159Vacating satisfaction, 19, 141,
142

SATISFACTION, ETC., OF JUDGMENTS, *cont'd.*

- Actions on judgments, 11, 1088
 - Plea of discharge, payment, and satisfaction, 11, 1164
- Affidavits, 19, 135, 145
- Appeals, 19, 137
 - Effect on right of appeal, 19, 175
 - Acceptance of benefit, 19, 176
 - Acceptance of costs, 19, 178
 - Acceptance of money, 19, 178
 - Dismissal of appeal, 19, 179
 - Execution pending right of appeal, 19, 176
 - General rule, 19, 175
 - Issuance of execution, 19, 178
 - Remarriage after divorce, 19, 178
 - Voluntary performance, 19, 179
 - Set-off of judgment against judgment, 19, 163
 - Vacating satisfaction, 19, 145
- Application to court, 19, 125
- Audita querela, 19, 128
- Bill in equity, 19, 129
- Civil actions, 19, 131
- Costs, 19, 137
- Determination, 19, 134
- Form of action, 19, 125
- Hearing, 19, 134
- Motion, *see infra*, Motions.
- Order, 19, 136
- Parties, 19, 133
- Attorney:
 - Vacation of fraudulent satisfaction, 19, 144
 - Want of authority, 19, 148
- Audita querela, 19, 128
- Bills in equity, 19, 129
 - Set-off of judgment against judgment, 19, 166
 - Vacating satisfaction, 19, 140
- Clerks:
 - Vacating entry of satisfaction, 19, 140
- Compelling entry of satisfaction, 19, 122
 - Action for penalty, 19, 137
 - Action on the case, 19, 138
 - Application to court, *see infra*, Application to court.
 - Grounds, 19, 124
 - In general, 19, 122
 - Judicial act, 19, 124
 - Power of court, 19, 122
 - Satisfaction as to all, 19, 124
- Costs, 19, 137
 - Vacating satisfaction, 19, 146
 - Waiver of right of appeal, 19, 178

SATISFACTION, ETC., OF JUDGMENTS, *cont'd.*

- Courts (*see infra*, Power of court):
 - Application to court, *see* APPLICATION TO COURT.
 - Judicial act, 19, 124
 - Power of court to vacate entry of satisfaction, 19, 139
 - Set-off of judgment against judgment, *see infra*, Set-off of judgment against judgment.
- Determination, 19, 134
 - Set-off of judgment against judgment, 19, 169
- Discretion of court:
 - Set-off of judgment against judgment, 19, 159
- Entry of satisfaction, 19, 119
 - Authority of clerk, 19, 120
 - Bar to further proceedings, 19, 119
 - Compelling entry of satisfaction, *see infra*, Compelling entry of satisfaction.
 - Entry not a judicial act, 19, 120
 - Entry without notice, 19, 120
 - Form of entry, 19, 120
 - Mere satisfaction piece, 19, 121
 - Nature and effect, 19, 119
 - "Settled," 19, 121
 - Vacating entry of satisfaction, *see infra*, Vacating entry of satisfaction.
- Executions (*see* EXECUTIONS):
 - Absence of leviable interest in property sold, *see infra*, Vacating entry of satisfaction.
 - Satisfaction under void levy or sale, 19, 149
- Fraud, 19, 147
- Grounds, 19, 124
 - Grounds antedating rendition of judgment, 19, 125
- Hearing, 19, 134, 145
 - Set-off of judgment against judgment, 19, 169
- Judicial act, 19, 124
- Judicial sales:
 - Satisfaction under void levy or sale, 19, 149
- Jurisdiction, *see infra*, Courts.
- Jury, 19, 134
- Justices of the peace, 19, 122, 140
- Misrepresentations, 19, 147
- Mistake, 19, 147
- Motions, 19, 125
 - Allowance of credit, 19, 126
 - Audita querela, 19, 129
 - Form of motion, 19, 128
 - Intervening rights of third parties, 19, 127
 - Nature of proceeding, 19, 128
 - Notice of motion, 19, 132

SATISFACTION, ETC., OF JUDGMENTS, *cont'd.***Motions, *cont'd.***

Notice of motion to set off judgment against judgment, 19, 169

Parties, 19, 133

Place of moving, 19, 132

Set-off of judgment against judgment:

Application for set-off, 19, 164

Courts of equity, 19, 166

Discretion to grant or refuse motion, 19, 160

Distinction between motion and action, 19, 159

Form of application, 19, 164

Time of moving, 19, 132

Vacating satisfaction, 19, 141

When proper, 19, 125

Where the facts are doubtful and controverted, 19, 127

Notice:

Application to vacate satisfaction, 19, 143

Order, 19, 136

Set-off of judgment against judgment, 19, 154, 170

Parties, 19, 133

Necessary parties, 19, 133

Strangers in interest, 19, 133

Vacating entry of satisfaction, 19, 144

Attorney with a lien, 19, 144

Judgment defendants, 19, 144

Necessary parties, 19, 144

Plaintiff or his assignee, 19, 144

Strangers, 19, 144

Who may maintain, 19, 144

Who may maintain, 19, 133

Payment (see *infra*, Pleading payment or satisfaction):

Issue as to payment, 19, 134

Plea of payment, 19, 171

Admissibility of plea, 19, 171

Necessity of pleading specially, 19, 173

Pleading of *nul tiel record*, 19, 173

Sufficiency of plea, 19, 174

Proof, 19, 135

Penalties and penal actions, 19, 137

Pleading payment or satisfaction, 19, 171

Accord and satisfaction, 19, 171

Admissibility of plea, 19, 171

Necessity of pleading specially, 19, 173

Payment, 19, 171

Payment and *nul tiel record*, 19, 173

SATISFACTION, ETC., OF JUDGMENTS, *cont'd.*

Pleading payment or satisfaction. *cont'd.*

Release, 19, 172

Sufficiency of plea, 19, 174

Power of court, 19, 122

In general, 19, 122

Justice of the peace, 19, 122

References, 19, 135

Set-off of judgment against judgment, 19, 169

Release, 19, 172

Set-off of one judgment against another, 19, 170

Remittitur:

Set-off of judgment against judgment, 19, 154, 170

Scire facias, 19, 286

Vacating satisfaction, 19, 141

Set-off of judgment against judgment, 19, 154, 170

Action, 19, 166

Application for set-off, 19, 164

Arbitrary exercise of discretion, 19, 163

Bills in equity, 19, 166

Both debts not in judgment, 19, 167

Determination, 19, 169

Different courts, 19, 157

Discretion of court, 19, 159

Discretion to grant or refuse motion, 19, 160

Distinction between motions and actions, 19, 159

Formal pleadings, 19, 165

Form of application for set-off, 19, 164

Hearing, 19, 169

In promotion of justice, 19, 162

Judgments of different courts, 19, 157

Jurisdiction independently of statute, 19, 158

Jurisdiction of courts of law and equity, 19, 154

Motion, 19, 164

Motion for bill in equity, 19, 166

Nature of proceeding, 19, 156

Notice of application, 19, 169

Order of set-off, 19, 170

Place of application, 19, 168

Protection of *bona fide* assignee, 19, 164

Reference, 19, 169

Release, 19, 170

Remittitur, 19, 170

Review on appeal, 19, 163

Set-off pending appeal from judgment, 19, 161

Setting off executions, 19, 159

SATISFACTION, ETC., OF JUDGMENTS, *cont'd.*Set-off of judgment against judgment, *cont'd.*

Staying proceedings until recovery of judgment, 19, 159

Time of application, 19, 168

Set-off, recoupment, and counterclaim:

Judgment against judgment, 19, 170

"Settled," 19, 121

Supersedeas and stay of proceedings:

Set-off of judgment against judgment, 19, 159

Trial of issues, 19, 134

Vacating entry of satisfaction, 19, 139

Absence of leviable interest in property sold, 19, 150

At common law, 19, 150

Concurrent remedies, 19, 152

Construction of statutes, 19, 153

In equity, 19, 151

Statutes, 19, 152

Application, 19, 140

Affidavits, 19, 145

Attorney having a lien, 19, 144

Bill in equity, 19, 140

Costs, 19, 146

Determination, 19, 145

Directing issue to jury, 19, 145

Form of application, 19, 140

Hearing, 19, 145

Motion, 19, 141

Necessary parties, 19, 144

Notice of application, 19, 143

Parties, 19, 144

Place of application, 19, 143

Review on appeal, 19, 145

Scire facias, 19, 141

When action necessary or proper, 19, 142

Who may maintain, 19, 144

Attorney's want of authority, 19, 148

Clerk, 19, 140

Effect, 19, 146

Equitable power, 19, 139

Fraud, 19, 147

Grounds for vacating, 19, 147

Inherent power, 19, 139

Intervening rights, 19, 146

Justice of the peace, 19, 140

Misrepresentation, 19, 147

Mistake, 19, 147

Nonperformance of conditions, 19, 148

Operation, 19, 146

Placing parties *in statu quo*, 19, 149**SATISFACTION, ETC., OF JUDGMENTS, *cont'd.***Vacating entry of satisfaction, *cont'd.*

Power in general, 19, 139

Power of court of law, 19, 139

Satisfaction under void levy or sale, 19, 149

Various grounds, 19, 147

Want of authority, 19, 148

SATISFACTORILY:

Conditions precedent, 4, 645

SATISFIED:*Payment*, see PAYMENT.**SCANDAL AND IMPERTINENCE, 19, 181**

See SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER.

Admiralty, 19, 183

Affidavits (see *infra*, Striking out or expunging), 19, 184, 186

Answering immaterial issues, 19, 198

Answers (see *infra*, Striking out or expunging):

Impertinence in answer, 19, 193

Answers in equity pleading, 1, 874

Necessity of answer to scandalous matter, 1, 874

Striking answer from the files, 1, 894

Appeals, 19, 227

Chancery practice, 19, 228

Code practice, 19, 228

Final decree, 19, 229

In general, 19, 227

Attorneys:

Disbarment, 19, 220

Liability of attorney for costs, 19, 225

Suspension of attorneys, 19, 221

Bills in equity, see *infra*, Striking out or expunging.

Briefs, 19, 186

Chancery pleadings, 19, 182

Contempt, 19, 220

Costs, 19, 224

Against unsuccessful applicant, 19, 226

Allegations bearing upon costs, 19, 191

Application allowed in part and part disallowed, 19, 226

Attorney's liability, 5, 153

Liability of attorney for costs, 19, 225

To successful applicant, 19, 224

Courts, see *infra*, Striking out or expunging.

Courts of admiralty, 19, 183

Courts of equity, 19, 182

Courts of law, 19, 183

Definition, 19, 182

Demurrers, 19, 214

Demurrers in chancery, 6, 409

SCANDAL AND IMPERTINENCE,*cont'd.*

- Depositions, 19, 184, 186
- Exceptions and objections, 19, 208
 - Each exception must be supported in its entirety, 19, 209
- Exceptions to report of master, 19, 212
- Failure of exceptions to embrace whole of impertinent matter, 19, 210
- Motions instead of exceptions, 19, 211
- Notice, 19, 208
- Written exceptions, 19, 208
- Expunging*, see *infra*, Striking out or expunging.
- Impertinence:
 - Matters in, 19, 193
 - Relation of scandal to impertinence, 19, 197
 - To what papers applicable, 19, 185
 - What constitutes impertinence, 19, 187
 - Abatement, 19, 193
 - Affirmative relief, 19, 193
 - Answers, 19, 188, 193
 - Answer to bill of revivor, 19, 188
 - Argument, 19, 188
 - Costs, 19, 191
 - Defect of title, 19, 194
 - General allegations to avoid prolixity, 19, 190
 - History of transaction, 19, 190
 - In general, 19, 187
 - Irrelevant, immaterial, and redundant matters, 19, 187
 - Prolixity, 19, 189
 - Redundancy, 19, 198
 - Repetition, 19, 188
 - Replications, 19, 188
 - Repugnancy, 19, 189
 - Rhetoric, 19, 188
 - Test of impertinence, 19, 187
 - Trivial impertinence, 19, 193
 - Two-fold character of bill in equity, 19, 191
 - Various other descriptions, 19, 187
- Injunctions, 19, 922; 19, 203
- Interrogatories (see *infra*, Striking out or expunging), 19, 184, 185
- Irrelevancy, 19, 187, 189
- Issues made by application to strike out, 19, 215
 - In general, 19, 215
 - Liberal construction, 19, 215
 - Remedy for impertinence compared with demurrer, 19, 216
 - Statutory interrogatories, 19, 216

SCANDAL AND IMPERTINENCE,*cont'd.*

- Legal conclusions, 19, 198
- Libel and slander, 19, 196, 221
 - Civil actions, 19, 221
 - Criminal actions, 19, 221
 - Publication outside of court, 19, 221
 - Relation between actions for libel, malicious prosecution, and the like, 19, 222
- Scandal against strangers to suit, 19, 221
- Whether action or prosecution for libel will lie for scandal published in due course of legal proceedings, 19, 221
- Malicious prosecution, 19, 222
- Motion (see **MOTIONS**), 14, 157
 - Striking from record, 19, 207
 - Motion or petition, 19, 207
 - Motions instead of exceptions, 19, 211
 - Notice of motion, 19, 214
 - Reference to master, 19, 207
- Notice of exceptions, 19, 208
- Notice of motion to strike out, 19, 214
- Origin, 19, 182
- Perjury, 19, 221
- Petitions, 16, 516; 19, 207
- Pleadings, 19, 183
- Prolixity, 19, 183, 189
 - Common instances of prolixity, 19, 189
- Records*, see *infra*, Striking out or expunging.
- Redundancy, 19, 187, 189
- Reference to master, 19, 207, 212, 214
 - Exceptions to report of master, 19, 212
 - In general, 19, 207, 212
 - Refusal, 19, 212
- Remedies for scandal and impertinence, 19, 199
 - Civil actions, 19, 221
 - Contempt, 19, 220
 - Criminal actions, 19, 221
 - Punishments, 19, 220
 - Striking out or expunging*, see *infra*, Striking out or expunging.
- Repugnancy, 19, 189
- Rules of court, 19, 184
- Scandal:
 - Effect of scandal on reputation of attorneys, 19, 196
 - Examples, 19, 195, 197
 - General allegations of misconduct, 19, 196
 - Matter constituting scandal, 19, 195
 - Relation of scandal to impertinence, 19, 197

SCANDAL AND IMPERTINENCE,

cont'd.

Scandal, *cont'd.*

To what papers applicable, 19, 186

Scope of article, 19, 182

Self-crimination, 19, 185

Statutes, 19, 184

Changes of, 19, 185

Striking out or expunging, 19, 199

Court's own motion, 19, 206

Demurrers and exceptions for insufficiency, 19, 214

Equity practice, 19, 207

Exceptions, 19, 208

Exceptions to report of master, 19, 212

Form of application, 19, 207

How stricken from record when contained in affidavits, 19, 219

How stricken from record when contained in pleadings, 19, 217

Interrogatories, 19, 219

Issues made by application, 19, 215

Motion or petition, 19, 207

Motions instead of exceptions, 19, 211

Parties to application, 19, 206

Petition, 19, 207

Practice under codes, 19, 212

Procedure, 19, 207

Reference to master, 19, 212, 214

Scandalous matter, 19, 199

Separate defenses, 19, 218

Source of court's power, 19, 199

Statutes, 19, 199

Stranger's application, 19, 207

Striking out entire pleading, 19, 218

When application made, 19, 200

Affidavit, 19, 201

Answers, 19, 201, 202

Bills, 19, 201

Discretion of court, 19, 201

Distinction between application by party and court's own motion, 19, 201

Effect of waiver, 19, 204

For impertinence in answer, 19, 202

Inherent power of court, 19, 199

Injunctions, 19, 203

Interrogatories, 19, 201, 205

When application made in case of mere impertinence, 19, 200

Supersedes and stay of proceedings, 19, 229

Time of application for striking out, see *infra*, Striking out or expunging.

SCANDAL AND IMPERTINENCE,

cont'd.

Title, defect of, 19, 194

To what papers applicable, 19, 183

Impertinence, 19, 183

Scandal, 19, 186

Trivial impertinence, 19, 193

Waiver, 19, 204

SCHOOL DISTRICTS, see SCHOOLS.

SCHOOLS, 19, 230

Actions:

School lands, see infra. School lands.

Actions by and against districts, 19,

31

Action against school district for labor performed, 19, 232

Claim for money against district, 19, 233

Enforcement of judgment, 19,

233

In general, 19, 231

Parties, 19, 231

Pleadings, 19, 232

Province of court and jury, 19,

233

Suits for division of assets, 19,

232

Actions by and against officers, 19,

234

Costs, 19, 235

Enforcement of judgment, 19,

236

For breach or neglect of duty, 19, 235

In general, 19, 234

Actions by pupils for exclusion or expulsion from school, 19, 249

Actions by teachers, 19, 245

Averment of employment and performance, 19, 247

Averment of qualification to teach, 19, 248

Defenses to actions on contract, 19, 245

In general, 19, 245

Parties, 19, 246

Pleadings, 19, 247

Province of court and jury, 19,

249

Remedy for wrongful discharge, 19, 246

Actions on bonds, 19, 238

Actions on contracts for buildings and supplies, 19, 242

Parties, 19, 242

Pleadings, 19, 243

Province of court and jury, 19,

244

Actions on orders, 19, 238

Actions on promissory notes, 19, 239

Actions to recover funds, 19, 236

Costs, 19, 238

SCHOOLS, *cont'd.*Actions to recover funds, *cont'd.*

In general, 19, 236

Parties, 19, 236

Pleadings, 19, 237

Bills and notes, 19, 239

Bonds and other evidence of indebtedness, 19, 238

Actions on bonds, 19, 238

Actions on orders, 19, 238

Actions on promissory notes, 19, 239

Buildings, see *infra*, School buildings and supplies.

Certiorari:

Jurisdictional errors of school trustees, 4, 97

Complaint for disturbing school while in session, 19, 250

Costs:

Actions by and against officers, 19, 234

Actions to recover funds, 19, 236

School lands, 19, 241

Districts, see *infra*, Actions by and against districts.

Disturbing meetings, 7, 38; 19, 250

Expulsion, 19, 249

Funds (see *infra*, Actions to recover funds):

Suits to restrain diversion of funds, 19, 238

Injunctions:

Suits to restrain diversion of funds, 19, 238

Judgments:

Enforcement of judgments in actions by and against districts, 19, 236

Enforcement of judgments in actions by and against officers, 19, 236

Lands, see *infra*, School lands.

Location of school buildings, 19, 244

Mandamus:

Private citizens, 13, 635

Relator's pleading, 13, 692

Admission of pupil, 13, 692

Apportionment of funds, 13, 693

Exclusion of pupil, 13, 692

Payment for schoolhouse, 13, 693

Prevention of religious instruction, 13, 693

What is a sufficient private interest, 13, 638

Officers, see *infra*, Actions by and against officers.

Parties:

Actions by and against school districts, 19, 231

SCHOOLS, *cont'd.*Parties, *cont'd.*

Actions on contracts for buildings and supplies, 19, 242

Actions to recover school funds, 19, 236

School lands, 19, 239

Public officers, see *infra*, Actions by and against officers.

Pupils:

Cruel and excessive punishment of pupils, 19, 249

Exclusion, 19, 249

Expulsion, 19, 249

School buildings and supplies, 19, 242

Actions on contracts for buildings and supplies, see *infra*, Actions on contracts for buildings and supplies.

Injuries to school buildings and improper use thereof, 19, 245

Suits concerning location of school buildings, 19, 244

School lands, 19, 239

Actions for injuries to school lands, 19, 242

Actions to recover purchase money, 19, 241

Bill to avoid payment of note given for school lands, 19, 242

Costs in suits to determine title, 19, 241

Judgment in suits to determine title, 19, 241

Parties in suits to determine title, 19, 239

Pleadings in suits to determine title, 19, 240

Suits to determine title, 19, 239

Teachers:

Actions against teachers, 19, 249

Actions by teachers, see *infra*, Actions by teachers.

Cruel and excessive punishment of pupils, 19, 249

SCIENTER:

Counterfeiting, 5, 273, 274

Having counterfeit banknotes in possession, 5, 281

Passing counterfeit banknotes, 5, 276

Declaration or complaint, 4, 615

False pretenses, 8, 861

False representations and deceit, 8, 898, 901

Actual knowledge, 8, 905

Allegations, 8, 901

Conclusiveness, 8, 898

False warranty, 8, 903

Manner of proof, 8, 905

Proof, 8, 903

Statement by one who should have known the truth, 8, 905

SCIENTER, *cont'd.*

- Forgery, 9, 558
 - Intoxicating liquors, 11, 535
 - Obstructing justice, 15, 5
- SCILICET OR VIDELICET, 19, 251**
- Certainty of place, 19, 254
 - Certainty of time, 19, 254
 - Criminal procedure, 19, 255
 - Definition, 19, 251
 - Effect, 19, 255
 - Adversary not bound by allegation, 19, 257
 - No proof required of immaterial matter under videlicet, 19, 257
 - On immaterial matter, 19, 256
 - On material matter, 19, 255
 - Traverse of matter stated under videlicet, 19, 256
 - Indictments, 19, 255
 - Nature, 19, 251
 - Necessity and advisability, 19, 253
 - Certainty of place, 19, 254
 - Certainty of time, 19, 254
 - In general, 19, 253
 - Omission of videlicet, 19, 254
 - Omission of videlicet, 19, 254
 - Repugnancy of dates, 19, 253
 - Surplusage, irrelevant or redundant matter, 21, 291
 - Use of, 19, 251
 - Variance, 22, 609, 628

SCINTILLA OF EVIDENCE:

- Directing verdict, 6, 675

SCIRE FACIAS, 19, 258

- Abolition of writ, 19, 266
- Actions (see *infra*, New action), 19, 263
 - Release of all actions, 19, 264
 - Scire facias held to be an action, 19, 263
 - Scire facias not an original action, 19, 263
 - To what extent considered an action, 19, 264
- Ad audiendum errores*, 19, 293
- Ad rebandam terram*, 19, 291
 - Object of writ, 19, 291
 - When lies, 19, 291
- Affidavits of merits or defense, 1, 349; 19, 286
- Alias* writ, 19, 280
 - Effect of return of *nihil*, 19, 281
 - Relief from judgment on two returns of *nihil*, 19, 282
 - Return, 19, 281
 - When proper, 19, 280
 - When returnable, 19, 281
- Amendments, 1, 670; 18, 1082
 - Judgment, 18, 1085
 - Recognizances in criminal cases, 19, 313
- Amendment of return, 19, 280
- Amendment of writ, 19, 272
 - In general, 19, 272

SCIRE FACIAS, *cont'd.*

- Amendment of writ, *cont'd.*
 - In what court, 19, 274
 - Scire facias against bail in civil cases, 19, 302
 - Time of amendment, 19, 273
- Appeals:
 - Death of parties, 2, 200
 - Judgment in scire facias, 19, 289
 - Finality of judgment, 19, 289
 - In general, 19, 289
 - Recognizances in criminal cases, 19, 318
- Bail and recognizance (see *infra*, Recognizances in criminal cases):
 - Bail in civil cases (see *infra*, Recognizances in criminal cases), 19, 293
 - Amendments, 19, 302
 - Averment as to officer before whom taken, 19, 299
 - Averment of execution by principal, 19, 300
 - Averment of issuance and return of ca. sa., 19, 301
 - Averment of issuance and return of execution, 19, 300
 - Averment of liability of bail, 19, 300
 - Averment of nonpayment, 19, 301
 - Averment of notice to bail, 19, 300
 - Averment of rendition of judgment, 19, 300
 - Averments essential in declaration, 19, 298
 - Averment that defendant has removed his effects, 19, 301
 - Bail bond as part of record, 19, 295
 - Conformity to record, 19, 298
 - Continuance, 19, 305
 - Demurrer, 19, 304
 - Discontinuance, 19, 305
 - In general, 19, 293
 - Judgment, 19, 305
 - Jury trial, 19, 304
 - Nature and purpose of writ, 19, 294
 - Notice to bail, 19, 298
 - On what based, 19, 295
 - Order requiring bail, 19, 299
 - Order to appear and show cause, 19, 301
 - Out of what court issued, 19, 296
 - Parties defendant, 19, 297
 - Parties plaintiff, 19, 297
 - Pendency of action and issuance of process, 19, 299
 - Plea, 19, 303
 - Prayer, 19, 302
 - Replication, 19, 304
 - Requisites of writ, 19, 298
 - Return of writ, 19, 302

SCIRE FACIAS, *cont'd.*

- Bail in civil cases, *cont'd.*
 - Service of writ, 19, 302
 - Setting out bail bond, 19, 299
 - Stay of proceedings, 19, 305
 - Time of issuance, 19, 296
 - Writ serves as process to entire pleading, 19, 298
- Bastardy, 3, 309
- Bonds (*see infra*, Bail in civil cases; Demands arising after judgment in debt or on bond; Recognizances in criminal cases), 3, 671
- Charters, *see infra*, To forfeit charters.
- Classification, 19, 264
- Conclusion:
 - Recognizances in criminal cases, 19, 313
- Continuation of former proceedings, 19, 263, 289
- Corporations, *see infra*, To forfeit charters.
- Costs:
 - Judgment, 19, 288
- County:
 - Recognizances in criminal cases, 19, 308
 - To what county issued, 19, 268
- Courts (*see infra*, Issuance of writ):
 - Amendments, 19, 274
- Criminal procedure, *see infra*, Recognizances in criminal cases.
- Damages:
 - Judgment, 19, 288
- Debt (*see infra*, Demands arising after judgment in debt or on bond):
 - Scire facias and debt concurrent remedies, 11, 1088
- Declaration and complaint, 19, 268
 - Material averment, 19, 268
 - Necessity for declaration, 19, 274
- Defaults, 19, 288
- Defenses, *see infra*, Plea to writ.
- Definiteness and certainty in pleading, 19, 269
 - Recognizances in criminal cases, 19, 315
- Definition, 19, 262
- Demands arising after judgment in debt or on bond, 19, 299
 - Against whom lies, 19, 299
 - In general, 19, 299
 - Judgment, 19, 291
 - Order to show cause why execution should not be awarded, 19, 291
 - Plea, 19, 291
 - Requisites of writ, 19, 290
 - Statutory provisions, 19, 290
 - Style of writ, 19, 291
 - Suggestion of additional breaches, 19, 290

SCIRE FACIAS, *cont'd.*

- Demurrers, 19, 282
 - Defect of parties, 19, 283
- Demurrer searches the record, 19, 284
- Scire facias against bail in civil cases, 19, 304
 - To plea, 19, 283
 - To writ, 19, 282
 - Where writ is both declaration and summons, 19, 282
- Dismissal, discontinuance, and nonsuit, 19, 287, 305
- Elegit:
 - To levy residue of debt after eviction from possession under elegit, 19, 291
- Error, writ of:
 - Alias* scire facias, 7, 898
 - Scire facias *ad audiendum errores*, 7, 895
 - How directed, 7, 895
 - How tested, 7, 895
 - In general, 7, 895
 - Irregular service, 7, 898
 - Necessity for service, 7, 896
 - Notification of time of appearance, 7, 895
 - Of what court a process, 7, 895
 - Served by sheriff, 7, 895
 - Service, 7, 896
 - Signature, 7, 895
 - Time of service, 7, 896
 - Upon whom served, 7, 897
 - When returnable, 7, 895
 - Whence issued, 7, 895
- Executions, *see* EXECUTIONS.
- Foreclosure of mortgages, 19, 320
- Forfeiture, *see* BAIL IN CIVIL CASES; and *see infra*, Recognizances in criminal cases; To forfeit charters.
- Heirs and devisees, 10, 45
 - Examples, 10, 45, 47
 - In general, 10, 45
 - On judgment against ancestor or personal representative, 10, 45
 - Service upon minor heirs, 11, 46
- Indorser of writ, 19, 318
 - In general, 19, 318
- Requisite averments of writ, 19, 319
- Return of writ, 19, 319
- Issuance of writ, 19, 266
 - By what court, 19, 267
 - Effect of issuance by improper court, 19, 267
 - In general, 19, 266
 - Signature of judge or clerk, 19, 266
 - To what county, 19, 268

SCIRE FACIAS, cont'd.

- Joinder of parties:
 - Recognizances, 19, 309
- Judgments, 19, 287
 - Appeals, 19, 289
 - Costs, 19, 288
 - Damages, 19, 288
 - Default, 19, 288
 - Form of judgment, 19, 288
 - In general, 19, 297
 - Quare restitutionem non* on reversal of judgment, 19, 292
 - Recognizances in criminal cases, 19, 318
 - Scire facias and debt concurrent remedies, 11, 1088
 - Time and place of rendition, 19, 287
 - To recover demands arising after judgment in debt or on bond*, see *infra*, Demands arising after judgment in debt or on bond.
 - Upon scire facias to recover demands arising after judgment in debt or on bond, 19, 291
- Judicial writ, 19, 262
- Jurisdiction:
 - Recognizances in criminal cases, 19, 308
- Jury, 19, 287, 304
 - Recognizances in criminal cases, 19, 317
 - Right to trial by jury, 19, 317
 - Waiver of right, 19, 318
- Letters patent, 19, 321
- Lost instruments and records, 19, 280
- Mechanics' liens (see **MECHANICS' LIENS**), 19, 320
- Motion to quash, 19, 284
- Municipal corporations, 19, 320
- Nature of writ, 19, 262
- New action, 19, 263, 264, 293
 - Against indorser of writ*, see *infra*, Indorser of writ.
 - Bail in civil cases*, see *infra*, Bail in civil cases.
 - Defaulting witnesses*, see *infra*, Witnesses.
 - In general, 19, 293
 - Recognizances in criminal cases*, see *infra*, Recognizances in criminal cases.
 - To enforce mechanics' liens, 19, 320
 - To foreclose mortgages, 19, 320
 - To forfeit charters*, see *infra*, To forfeit charters.
 - To repeal letters patent, 19, 321
 - Upon municipal claims, 19, 320
- Nihil*, see *infra*, Return of writ.
- Nil debet*:
 - Recognizances in criminal cases, 19, 315
- Index Pl. & Pr. — 62

SCIRE FACIAS, cont'd.

- Notice to bail, 19, 300
- Nul tiel record*, 19, 285
- Object and use of writ, 19, 265
 - In general, 19, 265
 - Order to show cause, 19, 265
- Original action, whether an, 19, 263
- Parties:
 - Bail in civil cases, 19, 297
- Plea or answer:
 - Recognizances in criminal cases*, see *infra*, Recognizances in criminal cases.
- Plea to writ, 19, 284
 - Affidavit of defense, 19, 286
 - Demands arising after judgment in debt or on bond, 19, 291
 - Demurrer, 19, 283
 - In general, 19, 284
 - Nul tiel record*, 19, 285
 - Question raised by plea, 19, 286
 - Right of defendant to plead to writ, 19, 284
 - Right to file more than one plea, 19, 285
 - Satisfaction or discharge, 19, 286
 - Scire facias against bail in civil cases, 19, 303
 - Want of jurisdiction, 19, 285
 - What defense proper, 19, 285
- Possession, writ of:
 - Effect of issuance without scire facias, 16, 747
- Prayer, 19, 271, 302
- Proceedings by scire facias in particular cases, 19, 289
- Quare restitutionem non* on reversal of judgment, 19, 292
- Real actions, 17, 673
- Recital of former proceedings, 19, 269
 - Definiteness and certainty, 19, 269
 - In general, 19, 269
 - Variance, 19, 270
- Recognizances*, see *infra*, Bail in civil cases.
- Recognizances in criminal cases, 3, 180; 19, 305
 - Amendment, 19, 313
 - Appeal, 19, 318
 - Averment as to indictment, 19, 309
 - Averment as to offense, 19, 310
 - Before whom taken, 19, 311
 - Conclusion, 19, 313
 - Conformity to recognizance, 19, 310
 - County from which issued, 19, 308
 - Court from which issued, 19, 308
 - Criminal or civil proceeding, 19, 307
 - Effect of demurrer, 19, 317

SCIRE FACIAS, *cont'd.*

- Recognizances in criminal cases, *con.*
 - Effect of unnecessary averments, 19, 313
 - Filing of recognizances, 19, 312
 - Forfeiture, 3, 239; 19, 312
 - In general, 19, 305
 - In whose name issued, 19, 308
 - Issuance of warrant and arrest of principal, 19, 310
 - Joinder of several obligors in one writ, 19, 309
 - Judgment, 19, 318
 - Jurisdiction, 19, 308
 - Jury trial, 19, 317
 - Motion to quash, 19, 317
 - Nature of proceeding, 19, 306
 - Necessity for setting out recognizance, 19, 310
 - Order for recognizance, 19, 312
 - Order to show cause, 19, 313
 - Original action, 19, 307
 - Place of taking, 19, 311
 - Plea or answer, 19, 314
 - Definiteness and certainty, 19, 315
 - Nature of defense, 19, 314
 - Nil debet*, 19, 315
 - Nul tiel record*, 19, 316
 - Pleas amounting to general issue, 19, 316
 - Purpose of a scire facias upon a forfeited recognizance, 19, 306
 - Replication, 19, 317
 - Requisites of writ, 19, 309
 - Return of recognizance, 19, 312
 - Return of writ, 19, 314
 - Service of writ, 19, 313
 - Substantial compliance with statutory form, 19, 309
 - Time of taking, 19, 311
 - To take advantage of defects in recognizance, 19, 316
 - Variance between recognizance and conditional judgment, 19, 313
 - Venue, 19, 308
 - Whether civil or criminal proceeding, 19, 307
- Records (see *infra*, Bail in civil cases):
 - Founded upon some matter of record, 19, 265
- Rendition and entry of judgments, 19, 287
- Replications and replies, 19, 287
 - After demurrer withdrawn, 19, 287
 - General replication, 19, 287
- Scire facias against bail in civil cases, 19, 304
- Should traverse or avoid plea, 19, 287

SCIRE FACIAS, *cont'd.*

- Requisites of writ, 19, 268
- Material averment, 19, 268
- Prayer, 19, 271
- Recital of former proceedings*, see *infra*, Recital of former proceedings.
- Substitute for declaration and summons, 19, 268
- Sufficient allegations to show right of recovery, 19, 269
- Summons to defendant to appear and answer, 19, 271
- To whom directed, 19, 271
- Writ demurrable for want of sufficient facts, 19, 269
- Restitution, 18, 892
- Return of writ, 19, 278
 - Alias* writ, 19, 281
 - Effect of return of *nil*, 19, 281
 - Relief from judgment on two returns of *nil*, 19, 282
 - When returnable, 19, 281
- Amendments, 19, 280
- Defective returns, 19, 280
- Form of return, 19, 279
- Indorser of writ, 19, 319
- Necessity for return, 19, 278
- Nihil*, 19, 279
- Recognizances in criminal cases, 19, 312, 314
- Requisites of return, 19, 279
- Scire facias against bail in civil cases, 19, 302
- Scire feci, 19, 279
- Statutory provisions, 19, 279
- Time of return, 19, 278
- To what court, 19, 278
- Two *nihil*s, 19, 281, 282, 303
- Review, 18, 993
- Revival of judgments*, see REVIVAL OF JUDGMENTS.
- Revivor of suits and actions, 18, 1143
 - To introduce new defendant, 18, 1144
 - Effect of failure to appear, 18, 1147
 - Issue raised on return of writ, 18, 1147
 - Necessity for, 18, 1144
 - Return, 18, 1146
 - Suggestion of death on record, 18, 1145
 - To introduce new plaintiff, 18, 1143
- Satisfaction and discharge of judgments, 19, 286
- Vacating satisfaction, 19, 141
- Security for costs, 19, 398
- Service of writ, 19, 275
 - How made, 19, 275

SCIRE FACIAS, cont'd.**Service of writ, cont'd.**

- Necessity for service, 19, 275
- Personal service, 19, 276
- Recognizances in criminal cases, 19, 313
- Sheriff or deputy, 19, 277
- Statutory requirements, 19, 276
- Time of service, 19, 277
- Waiver of defects in service, 19, 278

- Sheriff (see *infra*, Service of writ):
- To whom directed, 19, 271

Shipping, 20, 254**Signature:**

- Judge or clerk, 19, 266
- Stock and stockholders, 20, 705
- Summons and process, 19, 263, 268
- Summons to defendant to appear and answer, 19, 271
- Supersedeas and stay of proceedings, 19, 305

- To forfeit charters, 19, 321
- Averments of writ, 19, 322
- By whom instituted, 19, 322
- Province of jury, 19, 322
- When proper, 19, 321

Turnpikes and tollroads, 22, 225

- Variance, 19, 270
- Recognizance and conditional judgment, 19, 313

Venue:

- Recognizances in criminal cases, 19, 308

Witnesses:

- Against defaulting witnesses, 19, 319
- As to judgment *nisi*, 19, 320
- Averment of issue and service of subpoena, 19, 320
- Averment of time when witness was bound to appear, 19, 320
- In general, 19, 319

SCOLD, see COMMON SCOLD.**SEAL:**

- Affidavits, 1, 320
- Amendments:
 - Affixing seal to process, 1, 670
 - Attachment, 1, 687
 - Executions, 1, 674
- Answers in equity pleading:
 - Corporations, 1, 887
- Appeal bonds and undertakings, 1, 973
- Appeals:
 - Transcript, 2, 283
- Attachment:
 - Bond, 3, 31
 - Officer, 3, 39
- Depositions, 6, 493
 - Certificate, 6, 542
 - Sealing deposition, 6, 534

SEAL, cont'd.**Executions, see EXECUTIONS.****Rescission, cancellation, and reformation of contracts, 18, 779****Search warrants, 19, 334****Statement of facts on appeal, 20, 568, 577****Summons and process, see SUMMONS AND PROCESS.****Variance:**

- Sealed or unsealed instruments, 22, 627

Warrants, see WARRANTS.**SEALING:****Bills of exceptions:**

- Necessity of seal, 3, 457

SEAMEN, see ADMIRALTY.**SEARCHES AND SEIZURES:****See SEARCH WARRANTS.****Admiralty, 1, 261****Gaming, 9, 802****Intoxicating liquors, 11, 580**

- Adopting complaint as part of warrant, 11, 586

Amendment, 11, 687

- Building occupied by defendant and another, 11, 584

Claim to seized liquors, 11, 587

- Complaint, libel, or information after seizure, 11, 582

Description of liquors to be seized, 11, 585

- Description of place in complaint and warrant, 11, 582

Description of vehicle, 11, 584

- Directing search of several places, 11, 587

Direction as to time of service, 11, 587**Kind of liquor, 11, 585****Name, 11, 584****Nature of the proceeding, 11, 580**

- Occupancy, street, and number, 11, 584

Officer's return, 11, 587**Ownership, 11, 584****Proof, 11, 585****Quantity of liquor, 11, 585**

- Repugnant words of description, 11, 584

Requisites of complaint or information, 11, 581

- Requisites of warrant generally, 11, 586

Variance, 11, 585**SEARCH WARRANTS, 19, 323****See SEARCHES AND SEIZURES; WARRANTS.****Affidavits, 19, 325, 328****Affirmation, 19, 325****Constitutional law, 19, 325****Definition, 19, 323**

SEARCH WARRANTS, *cont'd.*

- Description of place, 19, 328
 - In general, 19, 328
 - Misnaming street, 19, 331
 - Occupancy, 19, 329
 - Ownership, 19, 329
 - Property, 19, 332
 - Reasonable certainty, 19, 329
 - Search of several places, 19, 331
 - Suspected place, 19, 329
 - Variance between warrant and complaint, 19, 331
- Disposition of property, 19, 335
- Issuance of warrant, 19, 325
 - Constitutional law, 19, 325
 - Jurisdiction, 19, 325
 - Necessity of strict compliance with statute, 19, 325
 - Oath or affirmation, 19, 325
 - Reasonable time, 19, 325
- Issuance of warrant after seizure, 19, 327
- Jurisdiction, 19, 325
- Lotteries, 19, 399
- Mandate to officer, 19, 332
 - Compliance with statute, 19, 332
 - Time of search, 19, 334
 - To search and make arrest, 19, 333
- Necessity of warrant, 19, 324
- Oath, 19, 325
 - Warrants showing oath, 19, 328
- Officer:
 - Direction to competent officer, 19, 332
 - Mandate to officer, *see infra*, Mandate to officer.
- Origin, 19, 324
- Probable cause:
 - Oath or affirmation, 19, 325
 - Questions of law and fact, 19, 326
 - Showing issuance upon probable cause, 19, 328
- Property, disposition of, 19, 335
- Reasonable time, 19, 325
- Requisites and sufficiency of warrant, 19, 327
 - Description of place, *see infra*, Description of place.
 - Description of property, 19, 332
 - Direction to competent officer, 19, 332
 - In general, 19, 327
 - Mandate to officer, *see infra*, Mandate to officer.
- Seal, 19, 334
- Showing issuance upon probable cause, 19, 328
- Showing oath or affidavit, 19, 328
- Return, 19, 334
- Seal, 19, 334

SEARCH WARRANTS, *cont'd.*

- Statutes:
 - Necessity of strict compliance with statute, 19, 325
 - Oath or affirmation, 19, 325, 327
 - Time of search, 19, 334
- Variance:
 - Between warrant and complaint, 19, 331
- SECONDARY EVIDENCE:**
 - Exceptions and objections, 8, 232
 - New trial*, *see* NEW TRIAL.
- SECOND INDICTMENT**, 10, 395
- SECURITY**, *see* APPEAL BONDS AND UNDERTAKINGS; MUNICIPAL SECURITIES; PLEDGES.
- SECURITY FOR COSTS**, 19, 337
 - Acknowledgment, 19, 388
 - Actions*, *see infra*, Remedies against sureties.
 - Additional security, 19, 343
 - Motions, 19, 371
 - Affidavits, 19, 368
 - Affidavits of defense, 19, 370
 - Aliens (*see infra*, Plaintiffs):
 - Resident aliens, 19, 353
 - Amount of security, 19, 385
 - Application of deposit, 19, 399
 - Approval of security, 19, 388
 - Assignees, 19, 351
 - Assignment for benefit of creditors, 19, 351
 - Attachment, 19, 359
 - Attestation, 19, 388
 - Attorneys:
 - Attorney as surety, 19, 387
 - Liability of attorney when surety, 19, 392
 - Bastardy, 19, 359
 - Bonds, 19, 387, 383
 - Form and contents of bond, 19, 383
 - In general, 19, 381
 - Inoperative bond, 19, 393
 - Must be in writing, 19, 381
 - Penalty of bond, 19, 385
 - Signature, 19, 384
 - Signature by firm, 19, 385
 - Title to bond, 19, 383
 - By whom security may be required, 19, 344
 - Counterclaim, 19, 344
 - In general, 19, 344
 - Nominal plaintiff, 19, 344
 - Plaintiffs in interpleader, 19, 344
 - Change of sureties, 19, 394
 - Corporations, 19, 355
 - Courts:
 - Power to order security, *see infra*, Power to order security.
 - Death of surety, 19, 393
 - Defendants, 19, 360
 - Counterclaimants 19 360

SECURITY FOR COSTS, *cont'd.*

Defendants, *cont'd.*
 In actions to recover land, 19, 361
 In general, 19, 360
 Interpleader defendants, 19, 361
 Voluntary defendants, 19, 361
 Discretion of court, 19, 366, 372, 378
Dismissal, see *infra*, Objections for failure to give security.

Dower:

Assignment of dower, 19, 359
 Ejectment, 19, 358
 Enforcement of writ, 19, 382
Exceptions and objections, see *infra*,
 Objections for failure to give security.

Executors and administrators, 19, 350

Costs of personal representatives, 19, 391

In general, 19, 350

Where representative is non-resident, 19, 350

Failure to give security, see *infra*,
 Objections for failure to give security.

Foreign corporations, 19, 356

Foreign states, 19, 355

Forma pauperis, 19, 353

Effect of leave to sue as poor person, 19, 393

Guardians *ad litem*, 19, 352

Hearing of motion, 19, 371

Indorser of writ:

Scire facias, 19, 399

Information and belief, 19, 369

Insolvency, 19, 353

Action in tort, 19, 354

Insolvency of nominal plaintiff, 19, 354

Motions, 19, 369

Plaintiff, 19, 353

Statutes, 19, 353

Interpleader, 19, 361

Justification of sureties, 19, 387

Kinds of security, 19, 381

Bond, 19, 381

Deposit, 19, 382

Indorsement of writs, 19, 382

Recognizance, 19, 381

Liability of sureties, 19, 389

Costs after amendment, 19, 391

Costs after appeal, 19, 391

Costs after removal to federal court, 19, 391

Costs of personal representative of plaintiff, 19, 391

Court costs, 19, 391

Death of sureties, 19, 393

Effect of change of surety, 19, 394

Effect of death of surety, 19, 393

SECURITY FOR COSTS, *cont'd.*

Liability of sureties, *cont'd.*

Effect of leave to sue as poor person, 19, 393

How discharged, 19, 393

In general, 19, 389

Of attorney when surety, 19, 392

On inoperative bond, 19, 393

Removal of a nonresident plaintiff, 19, 394

Libel and slander, 19, 357

Malicious prosecutions, 19, 357

Motions:

Motion for return of deposit, 19, 399

Remedies against sureties, see *infra*,
Remedies against sureties.

Motions for security, 19, 362

Affidavit in support of motion, 19, 368

As to merits of defense, 19, 370

Burden of proof, 19, 372

Counter-affidavits, 19, 372

Discretionary power of court, 19, 372

Hearing of motion, 19, 371

Information and belief, 19, 369

Insolvency, 19, 369

Laches, 19, 369

Mismanagement by receiver, 19, 370

Necessary allegations, 19, 369

Nonresidence, 19, 369

Notice of motion, 19, 367

Necessity for notice, 19, 367

Notice should be given in

reasonable time, 19, 368

Requisites of motion, 19, 368

Time of making, 19, 362

After answer, 19, 364

After appeal, 19, 366

After appearance, 19, 364

After continuance, 19, 364

After demurrer, 19, 364

After issue, 19, 365

After judgment, 19, 366

After jury has been sworn, 19, 365

After opening judgment by default, 19, 366

After plea, 19, 365

After short notice of trial, 19, 365

After trial, 19, 365

After verdict, 19, 366

Discretionary power of court, 19, 366

Motions for additional security, 19, 363

Necessity of promptitude 19, 362

SECURITY FOR COSTS, *cont'd.*

- Motions for security, *cont'd.*
 - Time of making, *cont'd.*
 - Taking steps in the cause, 19, 363
 - Waiver of right, 19, 363
 - When proper to deny motion, 19, 364
 - Where additional security is sought, 19, 371
 - Where made, 19, 368
 - Where plaintiff is a corporation, 19, 370
- Motion to dismiss, see infra*, Objections for failure to give security.
- Municipal corporations, 19, 357
- Next friend, 19, 352
- Nonresidence:
 - Motions, 19, 369
- Nonresidents, see infra*, Plaintiffs.
- Notice of motion, 19, 367
 - Necessity for notice, 19, 367
 - Notice should be given in reasonable time, 19, 368
- Objections for failure to give security, 19, 375
 - Discretion of court, 19, 378
 - Filing security after objections, 19, 377
 - Discretion of court, 19, 378
 - In general, 19, 377
 - Where language of statute is not preemptory, 19, 379
 - Where preemptory language is used, 19, 377
 - In general, 19, 375
 - Motion to dismiss, 19, 375
 - Motion to dismiss where time is merely directed, 19, 377
 - Motion to dismiss where time is preemptorily fixed, 19, 375
 - Pleas in abatement, 19, 375
 - Reinstatement after dismissal, 19, 381
 - Waiver of motion to dismiss on demurrer, 19, 376
 - Waiver of right to dismissal, 19, 376, 377, 380
 - When motion to dismiss must be made, 19, 376
- Objections to security, 19, 388
- Object of security, 19, 339
- Of whom security may be required, 19, 344
 - Defendants, see infra*, Defendants.
 - Plaintiffs, see infra*, Plaintiffs.
- Penalties and penal actions, 16, 308; 19, 357
- Plaintiffs, 19, 344
 - Assignees, 19, 351
 - Corporations, 19, 355
 - Ejectment, 19, 358

SECURITY FOR COSTS, *cont'd.*

- Plaintiffs, *cont'd.*
 - Executors and administrators, 19, 350
 - Foreign corporations, 19, 356
 - Foreign states, 19, 355
 - Guardian *ad litem*, 19, 352
 - Insolvents, 19, 353
 - Libel and slander, 19, 357
 - Miscellaneous proceedings, 19, 359
 - Municipal corporations, 19, 357
 - Next friends, 19, 352
 - Nonresidents, 19, 344
 - Beneficial and nominal plaintiffs, 19, 349
 - Executors and administrators, 19, 350
 - Husband and wife, 19, 348
 - In general, 19, 344
 - Joint plaintiffs, 19, 348
 - Misdescription of party or residence, 19, 347
 - Possessing property in state, 19, 348
 - Removal of plaintiff from jurisdiction pending suit, 19, 345
 - Undertaking given, 19, 345
 - United States courts, 19, 345
 - Who is a nonresident, 19, 346
- Penal and *qui tam* actions, 19, 357
- Receivers, 19, 351
- Replevin, 19, 358
- Resident aliens, 19, 353
- Sovereign powers, 19, 355
- Statute, 19, 355
- Power to order security, 19, 340
 - Additional security, 19, 343
 - At common law, 19, 340
 - Courts of appeal, 19, 343
 - Inferior courts, 19, 342
 - Under statutes, 19, 341
- Probate and contest of wills, 16, 1049
- Receivers, 17, 846; 19, 351
- Recognizance, 19, 381
- Rehearing, 18, 25
- Remedies against sureties, 19, 395
 - By action, 19, 397
 - Allegations of plea or answer, 19, 398
 - Averments of declaration, 19, 397
 - Parties, 19, 397
 - By motion, 19, 395
 - In general, 19, 395
 - Notice of motion, 19, 396
 - Requisite allegations, 19, 396
 - When motion should be made, 19, 396
 - Where motion should be made, 19, 396

SECURITY FOR COSTS, *cont'd.*Remedies against sureties, *cont'd.*

In general, 19, 395

Scire facias, 19, 398

Replevin, 18, 609; 19, 358, 360

Requisites and sufficiency of security, 19, 382

Acknowledgment, 19, 388

Amount of security, 19, 385

Approval of security, 19, 388

Attestation, 19, 388

Form and contents of bond, 19, 383

Justification of sureties, 19, 387

Objections to security, 19, 388

Requirements of statutes and rules, 19, 382

Sureties, 19, 386

Return of deposit, 19, 399

Rules of court, 18, 1255

Scire facias, 19, 398

Set-off, recoupment, and counterclaim, 19, 360

Sovereign powers, 19, 355

States, 19, 355

Statutes:

Requisites and sufficiency of security, 19, 382

Sufficiency of security, *see infra*, Requisites and sufficiency of security.

Supersedeas and stay of proceedings:

To compel filing of security for costs, 20, 1261

Supplementary proceedings, 19, 359

Suretyship:

Attorneys as sureties, 19, 387

Compliance with statutes as to sureties, 19, 386

Justification of sureties, 19, 387

Liability of sureties, *see infra*,

Liability of sureties.

Number of sureties, 19, 387

Qualifications of sureties, 19, 386

Remedies against sureties, *see infra*, Remedies against sureties.Time of making motion, *see infra*, Motions for security.

Time to give security, 19, 373

Extension of time, 19, 374

Filing security after objections, 19, 377

In general, 19, 373

Motion to dismiss, 19, 375

Waiver by demurrer, 19, 376

Where time is merely directed, 19, 377

Where time is peremptorily fixed, 19, 375

Shortening time prescribed, 19, 374

SECURITY FOR COSTS, *cont'd.*

United States courts, 22, 305

Nonresidents, 19, 345

Waiver of right to dismissal, 19, 376, 380

SEDUCTION (*see* ABDUCTION; ADULTERY; BREACH OF PROMISE OF MARRIAGE; CRIMINAL CONVERSATION; FORNICATION; RAPE):Actions, *see infra*, Civil action.

Age:

Alleging minority of female in civil action, 19, 408

Answer, 19, 411

Bills of particulars, 3, 554

Breach of promise of marriage, 3, 688

Carnal knowledge, 19, 417

Character, 19, 408, 420

Chaste character, 19, 408, 420

Civil action, 19, 401

Declaration, petition, or complaint, *see infra*, Declaration, petition, or complaint.

Form of action, 19, 402

In general, 19, 401

Instructions, *see infra*, Instructions.

Nature of, 19, 401

Parties to action, 19, 401

Plea or answer, 19, 411

Trespass, 19, 403

Trespass on the case, 19, 403

Criminal prosecution, *see infra*, Indictment.

Damages, 5, 745

For separate injuries, 19, 411

Matters in aggravation, 19, 411

Statement of damages, 19, 410

Wounded feelings, 19, 411

Death:

Death of defendant, 5, 828

Death of plaintiff, 5, 809

Declaration, petition, or complaint, 19, 404

Aggravation of damages, 19, 411

Alleging loss of service, 19, 410

Alleging means of seduction, 19, 405

Alleging pregnancy, 19, 407

Alleging relationship, 19, 408

Alleging seduction, 19, 405

Alleging that female was unmarried, 19, 407

Chaste character, 19, 408

Damages, 19, 411

Damages for wounded feelings, 19, 411

In general, 19, 404

Instances of sufficient declaration, 19, 404

Minority of female, 19, 408

Place, 19, 407

SEDUCTION, *cont'd.*

Declaration, petition, or complaint,
cont'd.

Previous chaste character, 19, 408

Statement of damages, 19, 410

Time, 19, 407

Impeachment of witnesses, 10, 311

Indictment, 19, 414

Allegations of age, 19, 419

Allegations of previous chastity,
19, 420

Alleging defilement of female in
person's care, 19, 421

Alleging man or woman un-
married, 19, 420

Alleging seduction, 19, 416

Averment of person seduced, 19,
418

Carnal knowledge, allegation of,
19, 417

Chastity, 19, 420

Conformity with requirements
of statute, 19, 415

Criminal prosecution:

When requests for instruc-
tions granted, 19, 427

Facts constituting means of ac-
complishment, 19, 416

In general, 19, 414

Language of statute, 19, 415

Means of accomplishment, 19, 416

Name, 19, 418

Person seduced, 19, 418

Place, 19, 419

Promise of marriage, 19, 417

Proof of different offense from
that charged, 19, 422

Statute, 19, 415

Time, 19, 419

Infancy of female, 19, 408

Instructions:

Civil action, 19, 412

Defining seduction and
charging generally, 19, 412

Inapplicable or outside of
issue or evidence, 19, 413

Instructions covered by
others, 19, 414

Invading province of jury,
19, 414

Upon evidence, 19, 413

Criminal prosecution, 19, 422

Corroborating evidence, 19,
425

Defining offense and stating
requisites, 19, 422

Evidence, 19, 424

Facts, 19, 424

Inapplicable or outside of
issue or evidence, 19, 426

Omission of material mat-
ters, 19, 422

Omissions cured, 19, 423

SEDUCTION, *cont'd.*

Marriage (see *infra*, Unmarried):

Promise of marriage, 19, 417

Master and servant:

Alleging loss of service, 19, 410

Alleging relationship, 19, 408

Names, 19, 418

Parties to actions, 15, 725; 19, 401

Petition, see *infra*, Declaration, pe-
tition, or complaint.

Place, 19, 407, 419

Plea, 19, 411

Pregnancy, 19, 407

Promise of marriage, 19, 417

Relationship, 19, 408, 421

Survival of actions, 21, 349

Time, 19, 407, 419

Trespass, 19, 403

Trespass on the case, 19, 403

Unmarried:

Alleging that female was un-
married in civil action, 19, 407

Alleging woman or man un-
married in indictment, 19, 420

SEIZIN (see COVENANT):

Dower, see *DOWER*.

Extent, 8, 788

**SEIZURE, see EXECUTIONS; SEARCHES
AND SEIZURES; SEARCH WARRANTS.****SELF-ORIMINATION, 10, 397**

Discovery, see *DISCOVERY*.

SELF-DEFENSE:

Homicide, 10, 172, 173

Instructions:

Requests for instructions, 11,
230

SENIOR, see NAMES.**SENTENCE, 19, 428**

See ARRAIGNMENT AND PLEA; JUDG-
MENTS; RENDITION AND ENTRY OF
JUDGMENTS.

Act of law, 19, 432

Additional punishment, see *infra*,
Punishment.

Aggravation of sentence, 19, 459

Allocutus, 19, 455

Hearing, 19, 460

In general, 19, 455

Mitigation and aggravation of
sentence, 19, 459

Necessity of, 19, 456

Necessity of, in capital cases, 19,
456

Necessity of, in felonies, 19, 457

Necessity of, in misdemeanors,
19, 459

Omission of, 19, 513

Record, 19, 507

Amendments (see *infra*, Revision,
vacation, amendment, and re-
sentence by trial court), 19, 510

Reformation, correction, and
modification, 19, 516

SENTENCE, *cont'd.*

- Appeals, 19, 500
- Affirmance, 19, 510
- Correction, 19, 516
- Election of remedies, 19, 503
- Extent of review, 19, 504
- Judgment on appeal and disposition of cause, 19, 510
- Affirmance, 19, 510
- Reversal or vacation, 19, 511
- Judgments and sentences reviewable, 19, 504
- In general, 19, 504
- Plea of guilty, 19, 505
- Void or unauthorized judgments, 19, 505
- Modification, 19, 516
- Necessity of final judgment or sentence, 19, 500
- Dismissal, 19, 502
- In general, 19, 500
- Necessity of sentence to complete judgment, 19, 501
- Procedendo*, 19, 502
- Record, 19, 505
- Statutes, 19, 502
- Pending appeal, 19, 445
- Presence of defendant, 19, 517
- Proceedings in lower court after appeal, 19, 518
- Upon affirmance of judgment, 19, 518
- Upon alteration or reversal of judgment, 19, 519
- Proper remedies, 19, 503
- Record, see *infra*, Record.
- Reformation, 19, 516
- Reversal or vacation, 19, 511
- Absence of prisoner, 19, 513
- Allocutus*, 19, 513
- Directions as to proper judgment, 19, 514
- Effect of, in general, 19, 115
- Entry of proper judgment, 19, 515
- Nonconformity to indictment, 19, 513
- Omitting requisites or exceeding power, 19, 513
- Presence of defendant, 19, 517
- Reformation, correction, and modification, 19, 516
- Remand for new trial, 19, 514
- Remand for proper judgment, 19, 512
- Statutory provisions, 19, 511
- Arraignment and plea, 19, 435, 473
- Necessity of plea, 19, 435
- Plea of guilty, 19, 436, 437

SENTENCE, *cont'd.*

- Arrest of judgment:
 - Sentence pending motion in arrest or for new trial, 19, 444
 - Asking if prisoner has anything to say, see *infra*, *Allocutus*.
- Assault and battery, 2, 861
- By whom and where rendered, 19, 432
- Capital cases:
 - Asking if prisoner has anything to say, 19, 456
 - Method of inflicting death, 19, 480
 - Record showing *allocutus*, 19, 507
 - Stating time, place, and manner of execution in capital cases, 19, 479
 - Warrant of execution in capital cases, 19, 496
- Carrying weapons, 3, 877
- Certificate of conviction, 19, 496
- Certiorari, 19, 504
- Commitments (see COMMITMENTS), 19, 496
- Complaints:
 - Different indictments of complaints, 19, 461
 - Constitutional law*, see *infra*, *Allocutus*; Presence of defendant.
- Costs (see FINES AND COSTS IN CRIMINAL CASES):
 - Sentence on nonpayment of costs, 19, 452
 - Suspension of sentence on payment of costs, 19, 450
- Counts*, see *infra*, Different counts.
- Courts (see *infra*, Jurisdiction):
 - Further questions and remarks by court, 19, 460
- Cumulative or successive sentences, 19, 463, 484
- Cumulative sentences on different counts, 19, 463
- Describing previous sentence or punishment, 19, 485
- Directing commencement at expiration of previous sentence, 19, 484, 463
- In what judgment or sentence cumulative punishment imposed, 19, 486
- Prescribing order of terms, 19, 485
- Defaults, 19, 440
- Definiteness and certainty in pleading, 19, 476
- Definition, 19, 431
- Demand as to whether prisoner has anything to say*, see *infra*, *Allocutus*.
- Different counts, 19, 461
- Charging distinct offenses, 19, 461

SENTENCE, *cont'd.*Different counts, *cont'd.*

- Charging same offense, 19, 464
- Entire sentence on all counts, 19, 465
- Sentence for highest degree of offense, 19, 464
- Separate sentences on different counts, 19, 464
- Conviction and acquittal on different counts, 19, 467
- Cumulative sentences on different counts, 19, 463
- Finding and judgment referred to good counts, 19, 466
- General verdict of guilty where there are good and bad counts, 19, 466
- Guilty on some counts and not guilty on others, 19, 467
- Sentence on particular count on general verdict, 19, 462
- Specified term under each count, 19, 492
- Verdict silent as to some counts, 19, 467
- Where counts are under different laws, 19, 468
- Where there are good and bad counts, 19, 465

Disabilities, 19, 483

Disfranchisement, 19, 483

Dismissal, discontinuance, and non-suit, 19, 502

Election of remedies, 19, 503

Embezzlement, 7, 459

Entry (see **RENDITION AND ENTRY OF JUDGMENTS**), 19, 488

Appellate court, entry of proper judgment, 19, 515

Effect of omissions, 19, 490

Form and contents, 19, 489

Necessity of, 19, 488

Nunc pro tunc, 19, 489

Presence of judge and defendant, 19, 489

Signature, 19, 490

Time of, 19, 488

Exceptions:

Before settlement of exceptions, 19, 445

Pending frivolous and dilatory exceptions, 19, 445

Execution (see *infra*, Revision, vacation, amendment, and resentence by trial court), 19, 496

Commitment, 19, 496

Failure, 19, 498

Fixing time and place, 19, 497

Specifying mode, 19, 498

Stating time, place, and manner of execution in capital cases, 19, 479

SENTENCE, *cont'd.*Execution, *cont'd.**Suspension*, see *infra*, Suspension.

Warrant of commitment and certificate of conviction, 19, 496

Warrant of execution, 19, 496

Warrant of execution in capital cases, 19, 496

Final judgments and decrees, see *infra*, Appeals.

Findings, 19, 436

Fines and costs in criminal cases, see **FINES AND COSTS IN CRIMINAL CASES**.

Forfeitures, 19, 483

Formalities, 19, 452

Formal parts, 19, 471

Approved formal expression, 19, 474

Facts or reasons, 19, 473

Instances of judgments defective in form, 19, 472

"It is therefore considered," 19, 474

Minutes of court, 19, 472

Offense, 19, 473

Omissions in sentence favorable to defendant, 19, 474

Plea of defendant, 19, 473

Recital by clerk, 19, 475

Two parts, 19, 471

Foundation for, see *infra*, Requisites to support and foundation for.

Guilty, plea of, 19, 436, 437

Habeas corpus, 19, 504

Hard labor:

Directing hard labor or solitary confinement, 19, 483

Hearing (see *infra*, *Allocutus*), 19, 460

After sentence, 19, 460

Homicide, 10, 188

Illegal sentence, 19, 494

Imprisonment:

Stating place of imprisonment, 19, 482

Stating time and term of imprisonment:

Imprisonment to begin in future, 19, 481

Mere statement or duration, 19, 480

Requisite certainty, 19, 481

Increasing punishment on subsequent conviction, 19, 469

Averment or suggestion of prior conviction, 19, 469

Information where indictment for third offense recites former conviction, 19, 470

Recital of former conviction, 19, 487

SENTENCE, *cont'd.*

Increasing punishment on subsequent conviction, *cont'd.*

Requisites of judgment and sentence, 19, 471

Sentence to additional punishment must be sufficient as to form and substance, 19, 487

Sufficiency of sentence as to prior conviction, 19, 487

Verdict and plea, 19, 470

Indictments:

Different indictments or complaints, 19, 461

Insane persons, 19, 500

Suspension of sentence, 19, 450

"It is therefore considered," 19, 474

Joint defendants, 19, 468

Conviction of some and acquittal of others, 19, 469

Several or joint sentence, 19, 468

Judgment (see *infra*, Jurisdiction):

Equitable relief against judgments, 11, 1208

Judgment distinguished from, 19, 432

Jurisdiction, 19, 432

In open court and in banc, 19, 435

Jurisdiction in general, 19, 432

Rendition by other than trial judge, 19, 434

Requisites of court pronouncing sentence, 19, 433

Successor of trial judge, 19, 434

Jury:

Recitals concerning jury and verdict, 19, 478

Larceny, 12, 1018

Maniatus:

To sentence prisoner, 13, 596

Minutes of court, 19, 473

Mitigation of sentence, 19, 459

Mittimus, 19, 496

Nature, 19, 431

Necessity, 19, 432

New trial:

Remand, 19, 514

Sentence pending motion in arrest or for new trial, 19, 444

Notice to accused of proceedings, 19, 454

Notice to prisoner:

Asking if prisoner has anything to say, see *infra*, *Allocutus*.

Nunc pro tunc, 19, 489

Opening, see *infra*, Revision, vacation, amendment, and resentence by trial court.

Opportunity of accused to assert rights, 19, 454

SENTENCE, *cont'd.*

Ordinances, 15, 427

Pardon, 15, 449

Pleading pardon, 19, 459

Place:

Stating time, place, and manner of execution in capital cases, 19, 479

Plea, 19, 473

Plea of guilty:

Appeals, 19, 505

Presence of defendant, 19, 452, 495, 513

Appellate court, 19, 517

Nature of corporal punishment, 19, 453

Record showing, 19, 506

Necessity of record showing, 19, 506

Sufficiency, 19, 506

Remand for proper judgment, 19, 513

Statutory provisions, 19, 453

When codefendant sentenced, 19, 454

When corporal punishment inflicted, 19, 452

When fine only imposed, 19, 454

Procedendo, 19, 502

Public officers, 17, 259

Punishment (see *infra*, Capital cases; Increasing punishment on subsequent conviction):

Cumulative or successive sentences, see *infra*, Cumulative or successive sentences.

Execution:

Capital cases, 19, 496

Failure, 19, 498

Fixing time and place, 19, 497

Specifying mode, 19, 498

Suspension, see *infra*, Suspension.

Warrant of commitment and certificate of conviction, 19, 496

Increasing punishment on subsequent conviction, see *infra*, Increasing punishment on subsequent conviction.

Stating place of imprisonment, 19, 482

Stating time and term of imprisonment, 19, 480

Receiving stolen goods, 17, 898

Recital by clerk, 19, 475

Recital of offense, 19, 477

Offense shown in other parts of record, 19, 478

Recitals concerning jury and verdict, 19, 478

SENTENCE, *cont'd.*

- Record, 19, 505
 - Allocutus*, 19, 507
 - Capital cases, 19, 507
 - Felonies not capital, 19, 508
 - Minor felonies and misdemeanors, 19, 508
 - Necessity of, 19, 507
 - Sufficiency of, 19, 508
 - Amendments, 19, 510
 - Necessity of, in general, 19, 505
 - Nunc pro tunc*, 19, 506
 - Presence of defendant, 19, 506
 - Recital concerning information of proceedings, 19, 507
 - Showing essentials to sustain sentence, 19, 509
 - Showing finality of judgment, 19, 505
 - Showing terms, requisites, etc., of judgment or sentence, 19, 510
- Remand:
 - Remand for new trial, 19, 514
 - Remand for proper judgment, 19, 512
- Rendition and entry*, see *infra*, Entry.
- Requisites to support and foundation for, 19, 435, 471
 - Default, 19, 440
 - Determining degree of offense or punishment, 19, 438
 - Findings, 19, 436
 - Guilty, plea of, 19, 436, 437
 - Independent judgment of court, 19, 436
 - In general, 19, 435
 - Necessity of plea, 19, 435
 - Plea of guilty, 19, 437
 - Verdict of jury, 19, 438
 - Necessity of verdict of conviction, 19, 438
 - Requisites and sufficiency of verdict, 19, 438
 - Responsiveness of sentence to verdict, 19, 439
 - Sentence for lesser offense, 19, 440
 - Sentence for precise offense found, 19, 439
 - Sentence on one or several counts, 19, 439
 - Sentence on verdict not stating grade or degree of offense, 19, 439
 - Variance as to punishment, 19, 439
 - Verdict or plea of guilty, 19, 436
- Resentence*, see *infra*, Revision, vacation, amendment, and resentence by trial court.
- Reversal*, see *infra*, Appeals.
- Review*, see *infra*, Appeals.

SENTENCE, *cont'd.*

- Revision, vacation, amendment, and resentence by trial court, 19, 491
 - After execution of sentence in whole or part, 19, 493
 - Amendments, 19, 510
 - Correction of clerical or formal errors, 19, 495
 - During term when sentence unexecuted, 19, 491
 - Mitigation of punishment, 19, 494
 - On plea of guilty or confession, 19, 495
 - Presence of defendant, 19, 495
 - Sentence failing of execution, 19, 492
 - Sentence irregular, inadvertent, or noncompliant with law, 19, 492
 - Subsequent term, 19, 492
 - Where sentence is illegal or void, 19, 494
- Riot, 18, 1211
- Robbery, 18, 1233
- Second conviction*, see *infra*, Increasing punishment on subsequent conviction.
- Separate trials, 19, 531
- Signature, 19, 490
- Solitary confinement:
 - Directing solitary confinement, 19, 483
- Stating forfeitures, disabilities, disfranchisement, etc., 19, 483
- Statutory requisites, 19, 476
- Stay of proceedings*, see SUPERSEDEAS AND STAY OF PROCEEDINGS.
- Style, 19, 471
- Subsequent conviction*, see *infra*, Increasing punishment on subsequent conviction.
- Successive sentences*, see *infra*, Cumulative or successive sentences.
- Sufficiency, 19, 471
- Summary proceedings*, see SUMMARY PROCEEDINGS.
- Sundays and holidays, 19, 443
 - Pronouncing sentence, 20, 1192
- Supersedeas*, see SUPERSEDEAS AND STAY OF PROCEEDINGS
- Suspension (see SUPERSEDEAS AND STAY OF PROCEEDINGS), 19, 466
 - Good behavior, 19, 448
 - Indefinite suspension or during good behavior, 19, 448
 - In general, 19, 446, 499
 - Insanity, 19, 450, 500
 - Jurisdiction to sentence the defendant, 19, 447
 - On payment of costs, 19, 450
 - Reasons for delay, 19, 446

SENTENCE, *cont'd.*Suspension, *cont'd.*

Sentence after suspension, 19,

449

Term (see *infra*, Time):Revision, vacation, amendment,
and resentence by trial court,
19, 491, 492

Time, 19, 441

During term, 19, 442

Consent or waiver, 19, 444

In general, 19, 442

Motion in arrest and for new
trial, 19, 444

Pending appeal, 19, 445

Pending exceptions or ap-
peal, 19, 445Pending frivolous and dila-
tory exceptions, 19, 445Pending motion in arrest or
for new trial, 19, 444Statutes regulating time
after plea or verdict, 19,

443

Sunday, 19, 443

Fixing time, 19, 441

Parts of judgment at different
terms, 19, 451

Presence of defendant, 19, 442

Stating time, place, and manner
of execution in capital cases,
19, 479

Subsequent term, 19, 446

Suspension, see *infra*, Suspend-
sion.

Time of entry or sentence, 19, 480

Vacation, see *infra*, Appeals; Revi-
sion, vacation, amendment, and
resentence by trial court.Verdict (see *infra*, Requisites to sup-
port and foundation for):Recitals concerning verdict, 19,
478

Void judgments, 19, 505

Void sentence, 19, 494

Warrants:

Warrant of commitment, 19,
496

Warrant of execution, 19, 496

Where rendered, 19, 432

SEPARABLE CONTROVERSIES,
see: REMOVAL OF CAUSES.**SEPARATE PROPERTY OF
MARRIED WOMEN,** see HUS-
BAND AND WIFE.**SEPARATE STATEMENTS,** see
COUNTS, PARAGRAPHS, AND SEPARATE
STATEMENTS.**SEPARATE TRIALS,** 19, 520

See SEVERANCE.

Accessories, see *infra*, Of several de-
fendants jointly indicted.Actions, see *infra*, Civil actions.**SEPARATE TRIALS, *cont'd.***

Appeals:

Severance on appeal, see APPEALS.

By whom separate trial may be de-
manded, 19, 525, 534

Civil actions, 19, 533

By whom separate trial may be
demanded, 19, 534

Grounds, 19, 535

Different causes of action or
distinct issues involved,
19, 535Evidence admissible against
one defendant alone preju-
dicial to codefendant, 19,
536Miscellaneous grounds, 19,
537Testimony of witnesses in-
competent on joint trial,
19, 537That defendants have sev-
ered in their pleas, 19, 537

In general, 19, 533

Practice after separate trials
have been ordered, 19, 538Separate trial obtained otherwise
than by direct application, 19,
538Time of making the application,
19, 535Trial of several actions at same
time, 19, 533Condemnation proceedings, see EMI-
NENT DOMAIN.

Confession:

Confessions of codefendant, 19,
528Criminal procedure, see *infra*, Of sev-
eral defendants jointly indicted.

Evidence:

Evidence admissible against one
defendant alone and preju-
dicial to codefendants, 19, 527,
536Testimony of witness incompe-
tent on joint trial, 19, 528, 537Grounds, see *infra*, Civil actions; Of
several defendants jointly indicted.Indictments (see *infra*, Of several
defendants jointly indicted):

Separate indictments, 19, 532

Issues:

Separate issues raised by the
pleadings, 19, 532

Judgments, 19, 531

Of several defendants jointly in-
dicted, 19, 521By whom separate trial may be
demanded, 19, 525

Grounds, 19, 527

Confessions by codefendant,
19, 528

SEPARATE TRIALS, *cont'd.*

- Of several defendants jointly indicted, *cont'd.*
 - Grounds, *cont'd.*
 - In general, 19, 527
 - Miscellaneous grounds, 19, 529
 - That defendants have severed in their pleas, 19, 529
 - That defenses are antagonistic, 19, 527
 - That evidence admissible against one defendant alone will prejudice co-defendants, 19, 527
 - That testimony of witness incompetent on joint trial is desired, 19, 528
 - Order directing separate trials, 19, 530
 - Practice after separate trials have been ordered, 19, 530
 - Right to separate trials, 19, 521
 - Application, 19, 524
 - At common law, 19, 521
 - By whom separate trial may be demanded, 19, 525
 - Compliance with statute in application, 19, 524
 - Discretion of court, 19, 521
 - In general, 19, 521
 - Joint offenses, 19, 523
 - Particular cases, 19, 522
 - Review on appeal, 19, 522
 - Statutory provisions, 19, 523
 - Time of making application, 19, 526
 - Separate trial obtained otherwise than by direct application, 19, 531
 - Time of making application, 19, 526
- Orders:
 - Orders directing separate trials, 19, 530
- Right to separate trials, see *infra*, Of several defendants jointly indicted.
- Sentence, 19, 531
- Separate indictments, 19, 532
- Separate trial obtained otherwise than by direct application, 19, 531, 538
- Splitting causes of action, see SPLITTING CAUSES OF ACTION.
- Time of making application, 19, 526, 535
- Trespass, 21, 859
- Trespass to try title, 21, 943

SEPARATION (see HUSBAND AND WIFE):

Alimony, 1, 421

SEPARATION, *cont'd.*

- Divorce, 7, 127
 - Decree of separation on suit for divorce, 7, 127
 - Duration of separation, 7, 127
 - Vacation of decree on reconciliation, 7, 127
- SEPULTURE, see CEMETERIES AND BURIALS.
- SEQUESTRATION, 19, 540
 - See ATTACHMENT.
 - Abatement of actions, 19, 547
 - Affidavits (see *infra*, Louisiana; Texas):
 - Equity, 19, 548
 - Agency, 19, 553
 - Alimony, 1, 445
 - Appeals:
 - Final judgments, 2, 60
 - In Louisiana, 19, 557
 - Application for sequestration, see *infra*, Corporations; Equity.
 - Bonds (see *infra*, Louisiana; Texas):
 - Dissolution by bonding, 19, 555
 - Choses in action, 19, 546
 - Claims of third persons, 19, 547, 562
 - Corporations, 19, 550
 - Application, 19, 550
 - At law or in equity, 19, 550
 - Jurisdiction, 19, 550
 - Manner of application, 19, 550
 - Notice of application, 19, 551
 - Questions determinable, 19, 551
 - Costs:
 - Texas, 19, 563
 - On recovery by defendant, 19, 564
 - On recovery by plaintiff, 19, 563
 - Death, 19, 547
 - Definition:
 - Civil law, 19, 542
 - Equity, 19, 542
 - Discharge:
 - Equity, 19, 550
 - Equity, 19, 542
 - Abatement, 19, 547
 - Affidavits, 19, 548
 - Application for sequestration, 19, 544
 - Manner of application, 19, 544
 - Notice, 19, 544
 - Parties to application, 19, 544
 - Requisites of application, 19, 544
 - Choses in action, 19, 546
 - Claims of third persons, 19, 547
 - Corporations, 19, 550
 - Death of defendant, 19, 548
 - Death of party, 19, 547
 - Death of plaintiff, 19, 547

SEQUESTRATION, *cont'd.*Equity, *cont'd.*

- Definition, 19, 542
- Determination, 19, 548
- Discharge of sequestration, 19, 550
- Form of writ, 19, 549
- Hearing, 19, 548
- History of the writ, 19, 542
- Personal property, 19, 545
- Property subject to sequestration, 19, 545
- Questions determinable, 19, 549
- Real property, 19, 545
- Resistance of courts of law, 19, 543
- Return of writ, 19, 550
- Revival, 19, 547
- To whom writ directed, 19, 549
- Use in the United States, 19, 543
- Writ, 19, 549
- Final judgments and decrees, 2, 60
- Intervention:
 - In Louisiana, 19, 554
- Judgment:
 - Texas, 19, 563
- Jurisdiction:
 - Against corporations, 19, 550
 - In Louisiana, 19, 551
 - Texas, 19, 558
- Louisiana, 19, 551
 - Action on bond, 19, 557
 - Conditions precedent, 19, 557
 - Form of remedy, 19, 557
 - Pleading, 19, 558
 - Affidavit, 19, 552
 - Amount of debt, 19, 553
 - By agent, 19, 553
 - In alternative, 19, 553
 - Necessity for affidavit, 19, 552
 - Privilege or ownership, 19, 553
 - Requisites of affidavit, 19, 552
 - Appeal, 19, 557
 - Before maturity of obligation, 19, 552
 - Bond, 19, 554
 - Action on bond, 19, 557
 - Amount of bond, 19, 554
 - Necessity of bond, 19, 554
 - Dissolution of sequestration, 19, 555
 - By bonding, 19, 555
 - Conditions of bond, 19, 556
 - Order to bond, 19, 557
 - Right to bond, 19, 555
 - Who may bond, 19, 556
 - By motion, 19, 555
 - Matters determinable on motion, 19, 555
 - Requisites of motion, 19, 558

SEQUESTRATION, *cont'd.*Louisiana, *cont'd.*

- Intervention, 19, 554
- Jurisdiction, 19, 551
- Petition, 19, 554
- Time of application, 19, 552
- Married women, 19, 545
- Motion:
 - Dissolution, 19, 555
- Notice:
 - Notice of application against corporations, 19, 551
 - Notice of application in equity, 19, 544
- Open and close, 19, 562
- Parties:
 - Parties to application in equity, 19, 544
- Personal property:
 - Equity, 19, 545
- Petition (see *infra*, Corporations; Equity):
 - Louisiana, 19, 554
 - Texas, 19, 560
 - Claims of third persons, 19, 562
- Real property:
 - Equity, 19, 545
- Receivers:
 - Analogy, 17, 683
- Revival of suits and actions, 19, 547
- Right of property, trial of, 19, 562
- Statutes:
 - Corporations, see *infra*, Corporations.
 - Louisiana, see *infra*, Louisiana.
 - Texas, see *infra*, Texas.
- Stock and stockholders, 20, 705
- Texas:
 - Affidavit, 19, 558
 - Description of property, 19, 559
 - Grounds of application, 19, 560
 - Necessity of affidavit, 19, 558
 - Requisites, 19, 559
 - Value of property, 19, 559
 - Bond, 19, 561
 - Replevy bond, 19, 561
 - Sequestration bond, 19, 561
 - Claims of third persons, 19, 562
 - Claimant's bond, 19, 562
 - Petition, 19, 562
 - Right to open and close, 19, 562
 - Costs, 19, 563
 - Custody of property, 19, 564
 - Judgment, 19, 563
 - Jurisdiction, 19, 558
 - Motion to quash, 19, 563
 - Petition, 19, 560
 - Claims of third persons, 19, 562

SEQUESTRATION, *cont'd.*Texas, *cont'd.*

- Writ, 19, 560
 - Amount of debt, 19, 560
 - Description of property, 19, 560
 - Levy of writ, 19, 561
 - Requisites of writ, 19, 560
 - Return of writ, 19, 561
- Wrongful sequestration, 19, 564
 - Action for damages, 19, 565
 - Allegation as to damages, 19, 564
 - Instructions, 19, 565
 - Parties, 19, 565
 - Pleading, 19, 564, 565
 - Reconvening on sequestration bond, 19, 564
- Time of application, 19, 552
- Time of discharge, 19, 550

SEQUESTRACTOR:

Assistance, see ASSISTANCE, WRIT OF.
 SERVANT, see MASTER AND SERVANT.

SERVICE OF PROCESS, 19, 567

See ADMIRALTY; APPEARANCES.

Abatement, plea in, 19, 107

Acceptance or acknowledgment of service, 19, 697

Acceptance outside of jurisdiction, 19, 702

By whom made, 19, 700

Acceptance outside of jurisdiction, 19, 702

Agent, 19, 701

Attorney, 19, 701

Husband and wife, 19, 700-

In general, 19, 700

Effect of acceptance, 19, 703

As waiver of defects, 19, 703

Equivalent to service and return, 19, 703

Fraud, 19, 703

How made, 19, 697

Amendment, 19, 700

Compliance with statute, 19, 697

In general, 19, 697

Necessity to be in writing, 19, 698

Objections, 19, 700

Proof of genuineness, 19, 698

Stating time and place of service, 19, 698

Acknowledgment of service, see *infra*,
 Acceptance or acknowledgment of service.

Actions, 1, 120

Admiralty:

Nonresidents, 1, 259

Affidavits of merits or defense, 1, 311

Affidavits of service, 18, 907

SERVICE OF PROCESS, *cont'd.*

Agency:

Acceptance or acknowledgment of service, 19, 701

Corporations, see *infra*, Corporations.

Foreign corporations, see *infra*, Corporations.

Service on agent, 19, 649

In general, 19, 649

Relation must appear, 19, 651

When not authorized by statute, 19, 650

Who is an agent, 19, 665, 676

Amendments (see AMENDMENTS):

Acceptance or acknowledgment of service, 19, 700

Amended pleadings, 1, 645

Notice of amendment, 1, 494

Service of amended complaint, 1, 630

Service of proposed amendment, 1, 639

Where pleadings amended after service, 19, 573

Ancillary proceedings, 19, 574

Substituted service in federal courts, 19, 623

Answers, 19, 577

Answers in equity pleading, 1, 891, 892

Appeals (see APPEALS), 2, 453

Judgment by default, 2, 456

Presumption as to service, 2, 453

Records, 2, 456

Substituted service, 2, 455

Transcript of record, 2, 291

Appearances:

Admission of service, 2, 638

Attorney admitting service, 2, 682

Right to appear without process being served, 2, 605

Waiver of defects, 2, 646, 649

Waiver of objection to process, 19, 612

Waiver of process, 2, 638

Withdrawal of process, 2, 696

Assignment of errors, see ASSIGNMENT OF ERRORS.

"At," 19, 627

Attorneys:

Acceptance or acknowledgment of service, 19, 701

Service on attorney, 19, 642

Attorney of record, 19, 645

Clerk, 19, 647

Family of attorney, 19, 647

Improper service at office, 19, 648

In general, 19, 642

SERVICE OF PROCESS, *cont'd.*Attorneys, *cont'd.*Service on attorney, *cont'd.*

Leaving at attorney's office,
19, 646

Leaving in conspicuous
place in attorney's office,
19, 647

Manner of service, 19, 646

Motions and orders, 19, 644

Motion to set aside attach-
ment, 19, 644

Returning papers, 19, 649

Service at residence, 19, 648

Service of the original sum-
mons or subpoena, 19, 643

Special attorney, 19, 645

Statutory provisions, 19, 644

Substituted service, 19, 646

Audita querela, 3, 122

Bankruptcy, 22, 351

Bills of exceptions, see **BILLS OF EX-
CEPTIONS**.

Bookkeeper, 19, 666

Briefs, see **BRIEFS**.

By whom served, 19, 577

Appointment of deputy coroner,
19, 588

Authority of coroner, 19, 588

City marshal or police officer, 19,
590

Constable, 19, 588

Courts of record, 19, 588

Deputy constable, 19, 590

Disqualification of con-
stable, 19, 589

Justices' courts, 19, 589

Coroner, 19, 586

Deputy constable, 19, 590

Deputy sheriff, 19, 584

Disqualification by interest,
19, 585

Extent of power, 19, 584

Special deputy, 19, 585

General principles, 19, 577

By person to whom directed,
19, 578

Disqualification by interest,
19, 589

How objections to authority
raised, 19, 578

Interested in suit, 19, 581

Must be by one duly author-
ized, 19, 577

Party to suit, 19, 580

Service by minor, 19, 578

Within territorial jurisdic-
tion of officer, 19, 579

Infant, 19, 578

Interest, 19, 580, 585, 592

Interested in suit, 19, 581

Interest of deputy sheriff, 19, 585

Interest of sheriff, 19, 584

Index Pl. & Pr. — 63

SERVICE OF PROCESS, *cont'd.*By whom served, *cont'd.*

Justices' courts, 19, 589, 596

Must be directed to coroner, 19,
587

Objection to coroner not author-
ized, 19, 588

Party to suit, 19, 580

Sheriff, 19, 581

In general, 19, 581

Interest, 19, 584

Service by outgoing sheriff,
19, 584

Sheriff to whom process di-
rected, 19, 582

Where sheriff disqualified,
19, 583

United States courts, 19, 597

Unofficial person, 19, 590

Age of person serving, 19,
593

Competent person, 19, 591

Dependent upon statute, 19,
590

Interest, 19, 592

When allowed, 19, 590

Who may be appointed, 19,
591

Where deputy is disqualified, 19,
587

Where sheriff is disqualified, 19,
586

Case made on appeal, see **CASE MADE
ON APPEAL**.

Cashier of corporation, 19, 666

Certiorari, 4, 202

Examples, 4, 202

How made, 4, 202

In general, 4, 202

Proceedings without proper no-
tice, 4, 93

Quashal or dismissal of writ for
delay in service, 4, 245

Time of service, 4, 202

Waiver of defects, 4, 203

Citations, see **CITATIONS**.

Clerk, 19, 666

Clubs, see *infra*, **UNINCORPORATED
SOCIETIES**.

Collateral attack:

Defective service, 19, 707

Computation of time (see *infra*, **Time
of service**), 19, 602

Constructive service (see **PUBLICA-
TION**), 19, 632

Contempt, 4, 777

Attachment without prior order,
4, 784

Order to show cause, 4, 784

Continuances:

To perfect service of process, 4,
832

Convicts, 19, 641

SERVICE OF PROCESS, *cont'd.*

Copy (see *infra*, Reading and leaving copy):

Substituted service, see *infra*,
Substituted service.

Coroner, 19, 586

Corporations (see *infra*, Foreign corporations; and see MUNICIPAL CORPORATIONS):

Acceptance of service, 19, 670

Agent, 19, 665

Agent for business out of which action grew, 19, 664

"Agent," to whom term applies, 19, 665

Bookkeeper, 19, 666

Cashier, 19, 666

Chief officer, 19, 660

Clerk, 19, 666

De facto officer, 19, 657

Directors, 19, 661

Fatal irregularities, 19, 671

Foreign corporations, see *infra*,
Foreign corporations.

General or special agent, 19, 665

Inability to find principal officers must appear where there is substituted service, 19, 657

In the absence of statutory provisions, 19, 652

Irregularities, 19, 671

Managing agent, 19, 662

In general, 19, 662

Need not have entire control, 19, 664

Powers analogous to those of executive officers, 19, 662

Who is managing agent, 19, 662

Manner of service, 19, 667

In absence of statute, 19, 667

Necessity to comply with statute, 19, 668

Provisions of general statute and charter, 19, 668

Service in accordance with general provisions, 19, 667

Under statutes, 19, 667

United States courts, 19, 669

Must be upon persons specified by statute, 19, 654

Objections to service, 19, 671

Officer or agent after termination of relation, 19, 658

Officer or agent designated by statute, 19, 653

Officer temporarily in jurisdiction, 19, 660

Person who is plaintiff in suit, 19, 659

Place of service, 19, 669

SERVICE OF PROCESS, *cont'd.*

Corporations, *cont'd.*

President or chief officer, 19, 660

Railroads, see *infra*, Railroad companies.

Receiver, 19, 667

Secretary, 19, 661

Service on whom, 19, 652

Showing agency of person served, 19, 655

Statutory provisions, 19, 665

Stockholder, 19, 667

Substituted service where principal officers not found, 19, 656

Treasurer, 19, 661

Vice-president, 19, 660

Where service cannot be had on chief officer, 19, 652

County, see *infra*, Place of service.

Creditors' bills:

Commencement of suit, 5, 609

Necessity of judgment at law, 5, 487

Criminal procedure:

Copy of indictment, 2, 764

Parties brought within jurisdiction on criminal process, 19, 609

Cross-bills, 5, 658

Improvident order of service set aside, 5, 659

Necessity for, 5, 658

On whom served, 5, 658

Service by publication improper, 5, 659

Cross-complaints, 5, 683

Death:

Death of defendant before service of summons, 5, 821

Declaration and complaint, 19, 575

Decoying parties within jurisdiction, 19, 606

Fraudulent representation, 19, 607

Necessity for showing fraud, 19, 608

Parties brought in on criminal process, 19, 609

Property decoyed within jurisdiction, 19, 608

Service set aside, 19, 606

Decrees:

Decrees *pro confesso*, 5, 975

Opening decrees, 5, 1010

De facto officer, 19, 657

Defaults, 6, 27

Admissions, 6, 120

After quashal of writ, 6, 27

Against joint codefendants, 6, 16

Against portion served, 6, 18

Irregular service of process on portion of defendants, 6, 17

SERVICE OF PROCESS, *cont'd.*Defaults, *cont'd.*

Against joint codefendants, *con.*
Judgment erroneous but
not void, 6, 18

Where a portion of defend-
ants not served, 6, 16

Application for relief from de-
faults, 6, 177

Action to revive judgment
by default, 6, 180

Amendment of return of
service, 6, 180

Conclusiveness of record, 6,
179

Effect of finding on the mo-
tion, 6, 181

Evidence *dehors* record, 6,
180

In general, 6, 177

Judgment regular, 6, 178

Opening judgment, 6, 177

Return of service not con-
clusive, 6, 180

Service a question of fact, 6,
177

Service irregular, 6, 177

Attachment proceedings, 6, 36

At what term default may be
taken, 6, 69

Corporation, 6, 29

Defendants named but not
served, 6, 28

Due proof of service, 6, 29

Effect of irregularity in service
of process, 6, 38

Default on too short a notice,
6, 41

Examples of erroneous serv-
ice, 6, 39

Instances of void service,
6, 38

Process not properly signed,
6, 40

Waiver of process, 6, 42

When judgment by default
is void, 6, 38

When judgment is merely
erroneous, 6, 39

Fictitious name, 6, 28

Foreign judgments, 6, 26

Name, 6, 28

Necessity, 6, 27

Recitals of service in record, 6,
242

Record on appeal, 6, 44, 240

Service by fictitious name, 6,
28

Substantial compliance with stat-
ute, 6, 28

Substituted and personal serv-
ice, 6, 75

Unknown persons, 6, 29

SERVICE OF PROCESS, *cont'd.*Defaults, *cont'd.*

Waiver of process, 6, 42

By general appearance, 6, 42

Effect of general appear-
ance, 6, 42

Special appearance, 6, 44

Unauthorized appearance by
attorney, 6, 44

Withdrawal of appearance,
6, 44

Defective service, 19, 704

Distinction between lack of
service and defective ser-
vice, 19, 704

By whom objection taken,
19, 712

Collateral attack, 19, 707

Definiteness and certainty of
motion to dismiss, 19, 710

Effect of lack of service, 19,
704

How advantage taken of de-
fects, 19, 706

In general, 19, 704

Mere defects or irregularities
in service of process, 19,
705

Motion to dismiss, 19, 709

Objection must appear on
face of record where there
is a motion to dismiss, 19,
710

Objections waived, 19, 706

Plea in abatement, 19, 707

Prohibition, 19, 706

Waiver of irregularities or
of service, 19, 714

When objection taken, 19,
711

Depositions, see DEPOSITIONS.

Deputy, see *infra*, By whom served.

Directors of corporation, 19, 661

Disbarment and suspension of at-
torneys, 6, 715

Dismissal, discontinuance, and non-
suit:

Failure to prosecute, 6, 910

Order of dismissal, 6, 868

Divorce (see DIVORCE), 7, 104, 105

Ejectment:

Service of declaration, 7, 339

Election day, 19, 602

Elections, 7, 392

Eminent, see EMINENT DOMAIN.

Error, writ of, 7, 889

Failure to serve, 7, 889

Generally, 7, 889

How shown, 7, 889

Scire facias *ad audiendum errores*,
7, 896

Irregular service, 7, 898

Necessity for service, 7, 896

SERVICE OF PROCESS, *cont'd.*Error, writ of, *cont'd.*Scire facias *ad audiendum errores*,
cont'd.

Several defendants, 7, 897

Time of service, 7, 896

Upon whom served, 7, 897

Where defendants are part-
ners, 7, 897*Exceptions and objections*, see *infra*,
Defective service.

Executions:

Service of execution, 8, 505

Exemptions from service, see PRIV-
ILEGE.

"Family," 19, 631

Foreclosure of mortgages, see FORE-
CLOSURE OF MORTGAGES.

Foreign corporations, 19, 671

Application of state statutes in

federal courts, 19, 673

Common law, 19, 671

Conditions imposed on foreign

corporations, 19, 672

Managing agent, 19, 680

Agents with limited powers,
19, 681

In general, 19, 680

Meaning of the term, 19, 680

Who is managing agent, 19,
680Necessity for statutory authority,
19, 671

On whom service made, 19, 674

Agent conducting business
out of which action grew,
19, 675Extent of agent's authority,
19, 677Failure to make designation,
19, 679

In general, 19, 674

Local agent, 19, 675

Managing agent, 19, 680

Must in fact represent cor-
poration, 19, 678Officer or agent temporarily
within jurisdiction, 19, 682Person designated to re-
ceive service, 19, 678Person specified in statute,
19, 674

Plaintiff in suit, 19, 684

President, 19, 674

Receiver, 19, 675

Service after termination of
agency, 19, 685Showing agency of person
served, 19, 685Where service was made
upon secretary, 19, 678Whether exclusive of other
methods, 19, 679**SERVICE OF PROCESS, *cont'd.***Foreign corporations, *cont'd.*On whom service made, *cont'd.*Who is agent within mean-
ing of statute, 19, 676Power of state to pass statutes.
19, 672Special provisions in statute ex-
clusive, 19, 673

Statutes, 19, 671, 672

What statutes apply to foreign
corporations, 19, 672Fraud (see *infra*, Decoying parties
within jurisdiction):

Acceptance obtained by, 19, 703

Garnishment, see GARNISHMENT.*Government*, see *infra*, State.

Guardians (see GUARDIANS):

Service on guardian without
service on minor, 10, 602*Guardians ad litem*, see GUARDIANS AD
LITEM.

Habeas corpus, 9, 1029

Holidays, 19, 601

Homicide:

Service of indictment on defend-
ant, 10, 163

Necessity for, 10, 163

Waiver, 10, 163

Husband and wife:

Acceptance or acknowledgment
of service, 19, 701Acknowledgment of service, 19,
641

Leaving copy, 19, 640

Leaving copy with defendant's
wife, 19, 631

Service at common law, 19, 639

In general, 19, 639

Torts of wife, 19, 640

Under married woman's acts, 19,
640

Indictments (see INDICTMENTS):

Copy of indictment, 2, 764

Infants, 10, 599; 19, 578

Actual service, 10, 608

Age of infant as affecting manner
of service, 10, 607Appointment of guardian *ad litem*
by commissioners, 10, 610Chancery rule in absence of stat-
ute, 10, 601

Collateral attack, 10, 615

Constructive service, 10, 608

Effect of failure to personally
serve infant, 10, 601Effect on judgment of failure to
serve infant, 10, 602Infants served in same manner
as adults, 10, 603Jurisdiction without service, 10,
609

Nonresident infants, 10, 609

SERVICE OF PROCESS, *cont'd.***Infants, *cont'd.***

- Parent and child both parties, 10, 607
- Parent or guardian codefendant, 10, 605
- Personal service, 10, 600
- Personal service where infant is very young, 10, 601
- Person served also a party, 10, 607
- Presumptions, 10, 733
- Publication, 10, 609
- Return of service, 10, 611
- Revivor of actions against infants, 10, 614
- Service by minor, 19, 578
- Service on both infant and parent, guardian, or other person in charge, 10, 603
- Service on cross-complaint, 10, 614
- Service on guardian without service on minor, 10, 602
- Service on infant alone, 10, 607
- Service on infant personally, 10, 600
- Service on minor in presence of guardian, 10, 602
- Service on parent or guardian alone, 10, 605
- Strict compliance with statute, 10, 599, 604
- Waiver of process against infants, 10, 612
- Waiver of process by infant himself, 10, 612
- Waiver of process by attorney, 10, 613
- Waiver of process by general guardian, 10, 612
- Waiver of process by guardian *ad litem*, 10, 613

Injunctions, 10, 1024

- Final injunction, 10, 1026
- Knowledge of injunction, 10, 1027
- Method of making service, 10, 1027
- Necessity to serve subpoena, 10, 1024
- Service of copy of affidavit, 10, 1027
- Service of copy of writ, 10, 1026
- Service of writ of injunction, 10, 1025
- Waiver of irregularities, 10, 1025
- Waiver of service, 10, 1026
- Whether the writ of injunction should be served, 10, 1025

Insane persons, 10, 1227

- On committee or on lunatic and committee, 10, 1228

SERVICE OF PROCESS, *cont'd.***Insane persons, *cont'd.***

- On lunatic personally, 10, 1227
 - Where personal notice is required, 10, 1227
 - Where personal service cannot be effected, 10, 1228
- Insurance, 11, 404**
- Agents, 11, 405
 - Constructive service, 11, 410
 - On whom service may be made, 11, 404
 - Public officers, 11, 408
 - Revocation or cessation of agency, 11, 409
 - Statutory appointees, 11, 407
 - Statutory mode exclusive, 11, 404
 - Withdrawal from the state, 11, 409

Interest, 19, 592**Interested in suit, 19, 581****Interest of deputy sheriff, 19, 585****Interest of sheriff, 19, 584****Interstate commerce, 11, 487****Intervention, 11, 507*****Irregularities, see infra, Defective service.*****Judgments:**

- Actions on judgments, 11, 1108
 - Appearance as conferring jurisdiction, 11, 1108
 - Effect of want of service, 11, 1108
 - Judgments against common right, 11, 1109
 - One or more joint defendants not served, 11, 1109
 - Personal service out of state, 11, 1108
 - Service by publication, 11, 1108
 - Confession of judgment, 11, 976
 - Confession of judgment after action brought, 11, 974
 - Opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.*
 - Several defendants, 19, 632, 634, 636
- Jurisdiction (see *infra*, Place of service):**
- Acceptance or acknowledgment of service outside of jurisdiction, 19, 702
 - Decoying parties within jurisdiction, see infra, Decoying parties within jurisdiction.*
 - Necessity of personal service, 12, 144

Jury, see JURY.**Justices of the peace, 19, 589, 596****Notice of appeal, 12, 769**

SERVICE OF PROCESS, *cont'd.*

Lack of service, see *infra*, Defective service.

Landlord and tenant:

Summary proceedings under statutes, 12, 885

"Last or usual place of abode," 19, 627

Leaving copy:

Substituted service, see *infra*, Substituted service.

Logs and lumber:

Attachment to enforce lien, 13, 341

Mails, see *infra*, Service by mail.

Managing agent (see *infra*, Corporations; Foreign corporations):

Railroads, 19, 688

Mandamus (see MANDAMUS), 13, 543

To compel giving notice, 13, 543

To issue process, 13, 543

To vacate service, 13, 543

Mechanics' liens, 13, 947

Personal judgment, 13, 1040

Scire facias, 13, 1018

Showing service of process, 13, 990

Motions, see MOTIONS.

Motion to dismiss, 19, 709

Municipal corporations, see MUNICIPAL CORPORATIONS.

Necessity for service, 19, 572

Answer, 19, 577

Declaration and complaint, 19, 575

Original process, 19, 572

Ancillary proceedings, 19, 574

Appearing of record, 19, 572

Formal amendments, 19, 573

In general, 19, 572

Second service, 19, 575

Where pleadings amended after service, 19, 573

Nonresidents (see *infra*, Place of service):

Decoying parties within jurisdiction, see *infra*, Decoying parties within jurisdiction.

Substituted service, see *infra*, Substituted service.

Obstructing justice, see OBSTRUCTING JUSTICE.

Offer of judgment, see OFFER OF JUDGMENT.

Officers, see *infra*, By whom served.

Officers of private corporations (see *infra*, Corporations):

Foreign corporations, see *infra*, Foreign corporations.

Railroads, see *infra*, Railroad companies.

SERVICE OF PROCESS, *cont'd.*

Opening, amending, and vacating judgments, see OPENING, AMENDING, AND VACATING JUDGMENTS.

Orders, see ORDERS.

Original process, see *infra*, Necessity for service.

Partition, 15, 798

Partnership (see PARTNERSHIP):

Garnishment of partnerships, 15, 983

Suits in equity between partners and third persons, 15, 995

Party to suit, 19, 580

Patents:

Commissioner, 16, 21

Personal judgment (see PUBLICATION):

Service against nonresidents in another state, 19, 611

Several defendants, 19, 632

Substituted service, 19, 623

Personal service (see *infra*, Substituted service), 19, 613

By reading and leaving copy, see *infra*, Reading and leaving copy.

Method of making, regulated by statute, 19, 614

Statute must be complied with, 19, 615

What constitutes, 19, 613

When required, 19, 614

Persons in confinement, 19, 641

"Place of abode," 19, 627

"Place of business," 19, 626

Place of service, 19, 603

Corporations, 19, 669

Railroads, 19, 694

Service on nonresidents within jurisdiction, 19, 605

Decoying parties within jurisdiction, 19, 606

Fraudulent representation to decoy persons within jurisdiction, 19, 607

Parties brought into jurisdiction on criminal process, 19, 609

Parties decoyed, 19, 606

Parties voluntarily present, 19, 605

Presence equivalent to residence, 19, 606

Property decoyed within jurisdiction, 19, 608

What must be shown where persons are decoyed, 19, 608

Service outside of jurisdiction, 19, 609

Appearance by a nonresident defendant is a waiver of objection, 19, 612

SERVICE OF PROCESS, *cont'd.*Place of service, *cont'd.*Service outside of jurisdiction,
*cont'd.*Effect in proceedings *in personam*, 19, 611Effect in proceedings *in rem*,
19, 612

How made, 19, 610

In general, 19, 609

Publication, 19, 610

Statutes must be followed,
19, 611Within territorial jurisdiction of
court, 19, 603

In general, 19, 603

In what county where there
are several defendants, 19,
605

Necessity for, 19, 603

Service in what county, 19,
604Service in wrong county, 19,
604

Plea in abatement, 19, 707

Poor and poor laws:

Order of removal, 16, 668

Poor debtor acts, see **POOR DEBTOR
ACTS.***Post*, see *infra*, Service by mail.

President of corporation, 19, 660

Prisoners, 19, 641

Private persons, 19, 613

Agents, 19, 649

Attorney at law, see *infra*, At-
torneys.

Constructive service, 19, 632

Husband and wife, see *infra*,
Husband and wife.

Infants, 19, 641

Personal service, see *infra*, Per-
sonal service.

Persons in confinement, 19, 641

Service on several defendants, see
infra, Several defendants.*Substituted service*, see *infra*,
Substituted service.*Privilege*, see **PRIVILEGE.**

Prohibition:

Defective service, 19, 706

Insufficiency of service, 16, 1113

Want of service of process, 16,
1113*Publication*, see **PUBLICATION.**Public officers (see *infra*, By whom
served), 17, 178

Quieting title, 17, 324

Proceedings under Massachu-
setts, Maine, Missouri, and
Pennsylvania statutes, 17, 378

Railroad companies, 19, 686

Common agent of several com-
panies, 19, 691**SERVICE OF PROCESS, *cont'd.***Railroad companies, *cont'd.*

Conductor, 19, 691

Director, 19, 691

Federal receivers, 19, 693

Freight or passenger agent, 19,
690

Local agent, 19, 690

Managing agent, 19, 688

Place of service, 19, 694

President or other chief officer,
19, 688Service on agents where in hands
of receiver, 19, 692

Service on whom, 19, 687

Service regulated by statute, 19,
686

Station agent, 19, 689

Ticket agent, 19, 688

Traveling solicitor of passenger
business, 19, 691Where railroad in hands of re-
ceiver, 19, 692Where railroad operating leased
lines, 19, 693

Reading and leaving copy, 19, 616

Defendant may waive reading,
19, 617

Delivery of copy, 19, 617

Generally, 19, 616

Refusal to accept, 19, 617

Service by force improper, 19, 618

Substituted service, see *infra*, Sub-
stituted service.What is sufficient reading, 19,
617Where both reading and leaving
copy required, 19, 619Where leaving copy alone suffi-
cient, 19, 619Where reading alone sufficient,
19, 619**Receivers, 17, 770**Actions against federal receivers,
17, 771Actions against receivers gen-
erally, 17, 770

Corporations, 17, 722

Foreign corporations, 19, 675

Railroad in hands of receiver,
19, 692

Service by notice, 17, 722

References, 17, 1024

Rehearing, 18, 59

Religious societies, 18, 105

Replevin, 18, 526

Appraisement, 18, 528

Assistance in service, 18, 526

By whom made, 18, 526

Manner of service, 18, 526

Place of service, 18, 526

Property taken from whom, 18,
528

SERVICE OF PROCESS, *cont'd.*Replevin, *cont'd.*

Reasonable retention of property
by officer, 18, 528

Time of service, 18, 528

Residents, see *infra*, Place of service;
Substituted service.

Return day, see *infra*, Time of
service.

Returns, see RETURNS.

Review, 18, 997

Revivor of suits and actions, 18,
1109, 1138

Scire facias, see SCIRE FACIAS.

Second service, 19, 575

Secretary or treasurer of corporation,
19, 661

Service by mail, 19, 694

Compliance with statute, 19, 695
How made, 19, 695

Mailing on last day for service,
19, 696

What constitutes mailing, 19,
695

When allowed, 19, 694

When complete, 19, 696

Where mailed, 19, 696

Several defendants, 19, 632

Defendants residing in different
counties, 19, 637

Necessity for separate service on
each, 19, 637

Necessity for service on all, 19,
632

Compliance with statute, 19,
635

In general, 19, 632

Judgment against those
served, 19, 634

Judgment in form against
all, 19, 636

No personal judgment
against defendants not
served, 19, 632

Objection for want of serv-
ice, 19, 636

Service on defendants found
within the state, 19, 635

Service in what county, 19, 605

Sheriffs and constables (see *infra*,
By whom served):

Service on sheriffs, 20, 131

Societies and clubs, see UNINCOR-
PORATED SOCIETIES.

Specific performance, 20, 409

State, 20, 590

Service on state, 19, 651

Federal practice, 19, 651

Proceedings in name of offi-
cer, 19, 652

Subpoena in equity against
state, 19, 598

Stipulations, 20, 610

SERVICE OF PROCESS, *cont'd.*

Stockholder:

Service on corporation, 19, 667

Substituted service, 19, 620

Attorney, 19, 646

Corporations, 19, 656

Effect of substituted service, 19,
624

How made, 19, 624

Compliance with statute, 19,
625

Copy left at place specified
in statute, 19, 625

"Family," 19, 631

Hotel or boarding house, 19,
629

Husband, 19, 631

In general, 19, 624

Last or usual place of abode.
19, 627

Leaving copy at place of
business, 19, 626

Leaving copy in conspicuous
place at residence, 19, 631

Leaving with intention not
to return, 19, 650

Leaving with intention to
return, 19, 629

Member of defendant's
family, 19, 631

Person with whom copy left
must be of sufficient age
and understanding, 19, 630

Statutory provisions, 19, 624

Temporary residence, 19, 628

What is "at" place of resi-
dence, 19, 627

Where copy left, 19, 625

Wife, 19, 631

With whom copy left, 19, 630

Officers of corporation, 19, 657

When permissible, 19, 620

Ancillary proceedings in
federal courts, 19, 623

In New York, 19, 621

Only where authorized by
statute, 19, 620

Order directing substituted
service, 19, 621

Sufficient showing, 19, 622

When judge is satisfied, 19,
622

Where defendant is absent
from state, 19, 623

Where personal service im-
possible, 19, 622

Substitution of parties, 20, 1060

Summary proceedings, 20, 1086

Sundays and holidays, 19, 600; 20, 1192

Supplementary proceedings, 21, 105

Service of order of examination,
21, 135

Service of orders, 21, 196

SERVICE OF PROCESS, *cont'd.*

- Territories, 21, 645
- Time of service, 19, 597
 - After filing petition or complaint, 19, 599
 - After return day, 19, 600
 - Certain number of days before return day, 19, 597
 - Computing time, 19, 602
 - Continuance to perfect service, 19, 603
 - Date of filing fixed in notice, 19, 599
 - Effect of insufficiency in point of time, 19, 598
 - Election day, 19, 602
 - Holidays, 19, 601
 - Return day, 19, 599
 - Subpoena in equity against a state, 19, 598
 - Sundays, 19, 600
 - Whether Sunday included in computation, 19, 603
- Time to plead, 21, 682
 - Orders of extension, 21, 697
- Trial:
 - Service of notice of trial, see TRIAL.*
 - Unincorporated societies, see UNINCORPORATED SOCIETIES.*
- United States courts, 19, 597; 22, 295
 - Corporations, 19, 669
 - Following state practice, 19, 669
 - Officer or agent of foreign corporation temporarily within jurisdiction, 19, 682
 - Service on state, 19, 651
 - Substituted service in ancillary proceedings, 19, 623
- Unofficial person:
 - How authority conferred, 19, 593
 - Indorsing authority on process, 19, 594
 - In general, 19, 593
 - Signing writ, 29, 593
 - What indorsement must contain, 19, 595
- "Usual place of abode," 19, 627
- Venue, see infra, Place of service.*
- Vice-president of corporation, 19, 660
- Waiver of irregularities or of service, 19, 714
- Winding up corporations, 22, 1305
- Witnesses, see WITNESSES.*
- SERVICES, see MASTER AND SERVANT: WORK AND LABOR.**
- SESSIONS (see ADJOURNMENTS: CHAMBERS AND VACATION; TERMS AND SESSIONS OF COURT.**
- Adjournments, see ADJOURNMENTS.*
- SET-OFF, RECOUPMENT, AND COUNTERCLAIM, 19, 715**
 - Actions, see infra, Election to plead or reserve for cross-action.*

SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.*

- Additional allowances of costs, 1, 226
- Amount of counterclaim, 1, 233
- Admiralty, 1, 272
- Admission of plaintiff's claim, 19, 795
- Allegations, see infra, Requisites and sufficiency of allegations.*
- Allowability of defendant's claim, 19, 755
 - Counterclaims must originate out of same transaction, 19, 756
 - In general, 19, 755
 - Liquidated demand, 19, 756
 - Mutuality of counterclaim, 19, 757
 - Showing as to statutory right, 19, 755
 - Unliquidated damages, 19, 756
- Amendments, 19, 778
 - Addition of plea of set-off by amendment, 19, 779
 - Alteration of counterclaim from tort to contract, 19, 779
 - Discretion of court, 19, 779
 - Imposition of terms, 19, 779
 - In general, 19, 778
 - On appeal, 19, 780
 - On new trial, 19, 780
- Amount in controversy, 1, 704, 709, 734; 19, 727
 - Appeal by defendant where no counterclaim is filed, 1, 734
 - Appeal by plaintiff where no counterclaim is filed, 1, 734
- Appellate courts, 19, 728
- Counterclaim disregarded, 19, 729
- Courts of original jurisdiction, 19, 727
 - Defendant's appeal, 19, 729
 - Defendant's claim, 19, 765
 - Defendant's claim below jurisdiction, 19, 728
 - Fictitious, 1, 711, 712
 - Judgment and counterclaim consolidated, 1, 724
 - Plaintiff's appeal, 19, 729
 - Remittitur of excess, 19, 728
- Another suit pending:
 - Identity of parties, 1, 759
- Appeals, 19, 816
 - Amendments, 19, 780
 - Appellate courts, 19, 728
 - Amount, in controversy, 19, 728
 - When trial is *de novo*, 19, 728
 - From ruling on demurrer, 19, 817
 - In general, 19, 816
 - Objections taken for first time on appeal, 19, 818
- Arrest of judgment, 2, 817

SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.***Attachment:**

Negativizing existence of counter-

claims, 3, 20

"Over and above all counter-

claims," 3, 23

Averments as in declaration and

complaint, 19, 753

Cause of action against plaintiff,

19, 754

In general, 19, 753

Awards, 3, 142

Bill of particulars, 19, 768

Account, 19, 768

Effect of failure to furnish bill,

19, 769

Necessity for, 19, 768

Sufficiency of bill, 19, 769

Burden of proof, 19, 800

Chattel mortgages, 4, 509

Connected demands, 19, 725

Contract, see *infra*, Where defend-

ant's claim is in contract.

Costs, 19, 811

Costs of proving set-off, 19, 814

Failure to set off claims after

sued on, 5, 142

In equity, 19, 816

On writ of review, 19, 816

Prevailing party, 5, 124

Set-off of costs, 5, 264

When allowed to defendant, 19,

813

When set-off equalizes

claim, 19, 813

When set-off exceeds claim,

19, 814

When allowed to plaintiff, 19, 811

In cases of exclusive juris-

diction, 19, 813

Necessity to show cause of

reduction, 19, 812

Recovery below court's

jurisdiction, 19, 812

Recovery below limited

amount, 19, 811

Where cross-demand is with-

drawn or dismissed, 19, 815

Where set-off is joined with other

defenses, 19, 815

Where suits have been consoli-

dated, 19, 816

Where tender is made, 19, 816

Counterclaim:

Allegations that counterclaim

originated out of same trans-

action, 19, 756

Demand by defendant against

stranger, 19, 758

Demand in favor of stranger, 19,

759

Joint defendants, 19, 758

SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.***Counterclaim, *cont'd.***

Manner of pleading, 19, 745

Mutuality, 19, 757

Originated out of same transac-

tion, 19, 756

Where plaintiff or defendant is

an assignee, 19, 759

Courts, see *infra*, Jurisdiction.**Covenant:**

Plea, 5, 385

Cross-bills:

Equitable set-off, 5, 631

Damages:

Averment of damages for breach

of contract, 19, 764

Declaration and complaint, see *infra*,

Averments as in declaration and

complaint.

Defaults:

Meritorious defense, 6, 189

Res adjudicata, 6, 142**Defendant's claim:**

Liquidated, 19, 756

Defendant's demand (see *infra*,

Allowability of defendant's

claim; Maturity of demand;

Requisites and sufficiency of

allegations);

Contract, see *infra*, Where def-

endant's claim is in contract.

Definiteness and certainty in plead-

ing, 6, 253; 19, 751

In general, 19, 751

Motion to make more definite

and certain, 19, 777

Requisites of notice, 19, 751

Sufficient certainty, 19, 752

Demurrer or other objection, 19,

771

Appeal from ruling on demurrer,

19, 817

Counterclaim set up with de-

fensive matter, 19, 774

Demurrer reaching back, 19, 775

Demurrer to whole plea, 6, 306

Effect of demurrer, 19, 775

Effect of overruling or sustaining

demurrer, 19, 776

Form of demurrer, 19, 775

Motion to make more definite

and certain, 19, 777

Motion to strike out, 19, 776

Objection taken for first time on

appeal, 19, 818

Replications and replies, 19, 790

Reply and demurrer at same

time, 19, 776

Specifying objections, 19, 776

Waiver of objection to inadmis-

sible counterclaim, 6, 372

When it lies, 19, 772

SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.*Demurrer or other objection, *cont'd.*

When objection to be taken, 19, 771

Whether available after judgment, 19, 772

Dismissal, discontinuance, and non-suit, 6, 848

After set-off filed, 6, 866

Dismissal of plea by defendant when regarded as plaintiff, 6, 866

Duc. see *infra*, Maturity of demand.

Election to plead or reserve for cross-action, 19, 731

Conclusiveness of election when made, 19, 734

Effect of partial satisfaction of demand, 19, 737

Former adjudication as bar to use of cross-demand, 19, 736

Interposition of same set-off or counterclaim in different actions, 19, 736

Pendency of action as bar to cross-demand, 19, 734

Pendency of cross-demand as bar to independent action, 19, 736

Exceptions created by statute, 19, 733

General rule, 19, 731

Reasons for and against separate action, 19, 732

Equitable grounds for set-off, 19, 764

In general, 19, 764

Insolvency, 19, 765

Equity jurisdiction, 19, 718

Adequate remedy at law, 19, 721

Agreement to set off debts, 19, 725

Connected demands, 19, 725

Demands *ex delicto*, 19, 720

Grounds for equitable jurisdiction, 19, 719

In general, 19, 718

Insolvency, 19, 722

Judgment, 19, 726

Laches, 19, 722

Manner of pleading, 19, 742

Mere existence of mutual demands, 19, 719

Mutual credit and connected demands, 19, 725

Nonresidence, 19, 724

Party against whom set-off is asserted, 19, 721

Unliquidated demands, 19, 720

Whether demands need be due, 19, 720

SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.**Exceptions and objections.* see *infra*, Demurrer or other objection, 19, 771*Ex delicto*, see *infra*, Torts.

Exhibits, 19, 750

Extent, 8, 786

False representations and deceit, 8, 889

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.*Former adjudication*, see *infra*, Election to plead or reserve for cross-action.

Fraud:

Averment of fraud, 19, 764

Garnishment, 9, 835

General issue:

Admissibility of evidence of recoupment under general issue, 19, 744

Admissibility of evidence under general issue, 19, 740

Counterclaim, 19, 745

Guardians, 9, 992

Insolvency:

Equitable jurisdiction, 19, 722

Necessity to allege, 19, 765

Requisite averments, 19, 765

Instructions, 19, 804

Interest, 19, 810

Intervention:

Against intervener, 19, 730

Issues to jury, 11, 623; 19, 798

Joinder of other defenses, 19, 766

Necessity to plead separately, 19, 768

Right to join, 19, 766

Same facts pleaded as defense and counterclaim, 19, 768

Judgment, 19, 807

Excess, 19, 808, 811

For defendant for excess, 19, 808

For difference between claims, 19, 807

In general, 19, 807

Interest, 19, 810

Judgment against judgment, 19, 154

Judgments as contracts, 11, 834

Justice of the peace, 19, 809

When defendant recoups, 19, 810

When no judgment can be rendered for excess, 19, 809

When plaintiff is defeated, 19, 810

Jurisdiction (see *infra*, Equity jurisdiction), 19, 726

Amount in controversy, 19, 727

Amount in controversy in appellate courts, 19, 728

Appellate courts, 19, 728

- SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.***
- Jurisdiction, *cont'd.*
 - Courts of original jurisdiction, 19, 726
 - Defendant's claim below jurisdiction, 19, 728
 - Remittitur of excess of amount in controversy, 19, 728
 - Trial *de novo* in appellate courts, 19, 728
 - Jury*, see *infra*, Trial.
 - Justices of the peace, 12, 724
 - Judgment, 19, 809
 - Must be set up at trial, 12, 724
 - Must plead specially or give notice, 12, 724
 - New trial on appeal, 12, 812
 - Replications and replies, 19, 782
 - Sufficiency, 12, 725
 - Laches, 19, 722
 - Laches, waiver of, 19, 749
 - Landlord and tenant:
 - Summary proceedings, 12, 893
 - Under the codes, 12, 867
 - Legal conclusions, 19, 752
 - Libel and slander, 13, 89
 - Liens, 13, 137
 - Set-off in trover against lien claimant, 13, 140
 - Limitations, 13, 190
 - Liquidated damages, 19, 720
 - Liquidated demands, 19, 756
 - Manner of pleading, 19, 739
 - Counterclaim, 19, 745
 - Admissibility under general issue, 19, 745
 - Denomination of answer, 19, 745
 - In general, 19, 745
 - Prima facie* matter is pleaded as a defense only, 19, 747
 - Waiver of failure to denominate counterclaim, 19, 746
 - Recoupment, 19, 743
 - Admissibility of evidence under general issue, 19, 744
 - In general, 19, 743
 - Requisites and sufficiency of allegations*, see *infra*, Requisites and sufficiency of allegations.
 - Set-off at law, 19, 739
 - Admissibility of evidence under general issue, 19, 740
 - Denomination of plea or answer, 19, 742
 - In England, 19, 739
 - In general, 19, 739
 - In United States, 19, 739
 - Set-off in equity, 19, 742
- SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.***
- Maturity of demand, 19, 760
 - Objections waived, 19, 761
 - That defendant's claim is due and subsisting, 19, 760
 - Where defendant is an assignee, 19, 761
 - Where defendant's claim is unpaid, 19, 761
 - Whether demands need be due in equity, 19, 720
 - Mechanics' liens, 13, 997
 - Money counts, 14, 49
 - Motion to make more definite and certain, 19, 777
 - Motion to strike out, 19, 776
 - Mutual credit, 19, 725
 - Mutual demands, 19, 719
 - Mutuality:
 - Counterclaim, 19, 757
 - Necessity to plead, 19, 738
 - In general, 19, 738
 - In trial court, 19, 739
 - New trial:
 - Amendments, 19, 780
 - Nonresidence:
 - Equitable jurisdiction, 19, 724
 - Notice:
 - Requisites of notice, 19, 751
 - Objections*, see *infra*, Demurrer or other objection.
 - Offer of judgment, 15, 56
 - Official bonds, 15, 151
 - Opening, amending, and vacating judgments, 15, 244
 - Operation and effect of plea, 19, 795
 - Order of proof, 19, 802
 - Partnership*, see PARTNERSHIP.
 - Payment, 19, 789
 - Evidence under plea of payment, 16, 212
 - Reduction of debt by payment below jurisdictional limit, 16, 223
 - Penalties and penal actions, 16, 240
 - Equitable set-off, 16, 241
 - In general, 16, 240
 - Usury exacted by national bank, 16, 240
 - Pledges, 16, 633, 638, 648
 - Prayer for relief, 19, 770
 - Production of documents, 6, 789
 - Public officers, 17, 197
 - Actions against officers, 17, 197
 - Actions by officers, 17, 197
 - In general, 17, 197
 - Quietting title*, see QUIETING TITLE.
 - Railroads:
 - Injuries to animals, 17, 591
 - Recoupment:
 - Manner of pleading, 19, 743
 - References, 17, 1001; 19, 799

SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.*

Remedy at law, 19, 721

Removal of causes, see REMOVAL OF CAUSES.

Replications and replies, 19, 780

Necessity for, 19, 780

Demurrer to reply, 19, 790

Denial of allegations of counterclaim, 19, 790

Effect of failure to reply, 19, 785

Effect of failure to reply where claim unliquidated, 19, 786

Effect of reply, 19, 787

Form and sufficiency, 19, 788

General denial, 19, 790

In general, 19, 780

Justice of the peace, 19, 782

Leave to reply at trial, 19, 787

Payment, 19, 789

Proof under general denial, 19, 791

Reply stricken out, 19, 785

Statute of limitations, 19, 782, 789

Statutes, 19, 781

Waiver of failure to reply, 19, 787

When reply not necessary, 19, 783

Reply and demurrer at same time, 19, 776

Setting up new matter, 19, 792

Consistency with complaint, 19, 792

In general, 19, 792

Permissibility of pleading to reply, 19, 795

Set-off or counterclaim, 19, 794

Requisites and sufficiency of allegations, 19, 749

Amount in controversy, 19, 765

Application of ordinary rules of pleading, 19, 749

As to allowability of defendant's claim, see infra, Allowability of defendant's claim.

Averment of facts, 19, 752

*Averments as in declaration and complaint, see infra, Averments as in declaration and complaint.**Bill of particulars, see infra, Bill of particulars.*

Definiteness and certainty, 19, 751

*Equitable grounds for set-off, see infra, Equitable grounds for set-off.***SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.*****Requisites and sufficiency of allegations, *cont'd.***

Exhibits, 19, 750

Formal defects, 19, 750

*Joinder of other defenses, see infra,**Joinder of other defenses.*

Jurisdictional amount, 19, 765

Legal conclusions, 19, 752

Nature and origin of defendant's claim, 19, 753

Prayer for relief, 19, 770

Reference from one part of answer to another, 19, 750

Reference to allegations of complaint, 19, 750

Responsiveness of answer to whole cause of action, 19, 766

Surplusage, 19, 750

That defendant's claim is due and subsisting, see infra, Maturity of demand.

Verification, 19, 770

*Where defendant's claim is in contract, see infra, Where defendant's claim is in contract.**Where defendant's claim is in tort, see infra, Torts.**Res judicata, see infra, Election to plead or reserve for cross-action.*

Responsiveness of answer to whole cause of action, 19, 766

Review, 18, 1039

Right to plead, 19, 730

Satisfaction and discharge of judgments:

Judgment against judgment, 19, 170

Security for costs, 19, 360

Sham and frivolous pleadings, 20, 31, 49

*Sufficiency of allegations, see infra, Requisites and sufficiency of allegations.***Supersedeas and stay of proceedings:**

Staying proceedings until party claiming benefit of set-off can get judgment, 19, 159

Supplemental pleadings, 21, 48

Surplusage, 19, 750

Time of pleading, 19, 748

In general, 19, 748

Waiver of laches, 19, 749

Tolls, 21, 746

Torts:Averment of matters *ex delicto*, 19, 762

Equity jurisdiction, 19, 720

Waiver of tort, 19, 762

SET-OFF, RECOUPMENT, AND COUNTERCLAIM, *cont'd.***Torts, *cont'd.***

Where defendant's claim is in tort, 19, 764

Averment of fraud, 19, 764

In general, 19, 764

Trial, 19, 798

Burden of proof, 19, 800

By court or jury, 19, 798

Evidence of set-off under plea of recoupment, 19, 804

In general, 19, 798

Instructions, 19, 804

Issues to jury, 19, 798

Notice accompanying general issue, 19, 803

Order of proof, 19, 802

Pleading and proof, 19, 802

Reference, 19, 799

Time of moving for issues, 19, 799

Variance, 19, 802

Trover and conversion, 21, 1106

Trusts and trustees, 22, 196

Actions between trustees and beneficiaries or their representatives, 22, 148

United States courts, 22, 301

Unliquidated damages, 19, 756

Equity, 19, 720

Replications and replies, 19, 786

Usury, *see* USURY.

Variance, 19, 802

Verdict, 19, 806; 22, 871

Failure to show establishment of plaintiff's claim, 19, 807

Failure to show that defendant's claim was passed upon, 19, 807

Special or general verdict, 19, 806

Verification, 19, 770

Where defendant's claim is in contract, 19, 761

Averment of damages, 19, 764

Averment of matters *ex delicto*, 19, 762

Description of breach, 19, 763

Description of contract, 19, 763

Implied contract, 19, 762

In general, 19, 761

Waiver of tort, 19, 762

Withdrawal of plea, 19, 796

Effect of withdrawal, 19, 798

In general, 19, 796

Work and labor, 22, 1382

SETTLED CASE, *see* CASE MADE ON APPEAL.**SETTLEMENT:**

Bills of exceptions, *see* BILLS OF EXCEPTIONS.

Case made on appeal, *see* CASE MADE ON APPEAL.

Guardians, *see* GUARDIANS.

SETTLEMENT OF DECEDENTS' ESTATES (*see* CREDITORS' BILLS, EXECUTORS AND ADMINISTRATORS; HEIRS AND DEVISEES; LEGACIES; PROBATE; PROBATE AND CONTEST OF WILLS; WILLS):

Accounting in probate court, 19, 1018
Appeal, 19, 1077
Appealable orders and decrees, 19, 1077
Review and judgment on appeal, 19, 1079
Who may appeal, 19, 1078

Attachment, 19, 1030

Compulsory accounting, 19, 1020

Co-executor, 19, 1021

Form and contents of application, 19, 1021

Heir of an heir, 19, 1021

Interest, 19, 1020, 1021

Notice or citation, 19, 1023

Order to account and attachment, 19, 1030

Parties, 19, 1027

Petition showing interest of petitioner, 19, 1021

Pleadings to petition, 19, 1028

Prima facie right to account, 19, 1022

Probate court of its own motion, 19, 1021

Remainderman, 19, 1020

Signature and verification of petition, 19, 1023

Who may compel, 19, 1020

Costs, 19, 1052

Notice, 19, 1018

Notice of citation, 19, 1023

Appearing of record, 19, 1024

Effect, 19, 1027

Form and sufficiency, 19, 1025

Necessity, 19, 1023

Notice in further proceedings, 19, 1025

Service, 19, 1026

Surety on bond, 19, 1025

Waiver by appearance, 19, 1027

Objections to account, and proceedings thereon, *see infra*, *Objections to account and proceedings thereon*.

Opening and setting aside settlements, *see infra*, *Opening and setting aside settlements*.

Order or decree allowing account, 19, 1051

Order to account, 19, 1030

Pleadings to petition, 19, 1028

Rendering account, 19, 1031

Amendments, 19, 1033

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*Accounting in probate court, *cont'd.*Rendering account, *cont'd.*

Contents, 19, 1032

Form, contents, and verification of account, 19, 1032

In general, 19, 1031

List of heirs and legatees, 19, 1031

Verification, 19, 1033

Settlement in voluntary accounting, 19, 1019

Voluntary accounting, 19, 1018

Accounts and accounting:

Common-law action of account, 1, 85

Actions (see *infra*, Settlements in chancery at suit of personal representatives, creditors, legatees, or distributees):

Action at law against personal representative, 19, 984

Adjournments:

Sales of realty, 19, 898

Administration, see *infra*, Application for letters of administration; Proceedings to obtain letters of administration; Sales of realty under order of court.

Advancements:

Distribution, 19, 1087

Affidavit, 19, 954, 955

Allowance to widow or family, 19, 931

Actions to enforce right to allowance, 19, 947

In general, 19, 947

Pleadings, 19, 948

Appeal from order granting or refusing allowance, 19, 943

Amendment of caveat, 19, 946

Bond or undertaking on appeal, 19, 945

Costs, 19, 946

Hearing in appellate court, 19, 945

In general, 19, 943

Time of taking appeal, 19, 945

Who may appeal, 19, 944

Appraisement, 19, 939

Determination of right to allowance in collateral proceedings, 19, 948

Discontinuance, 19, 950

Enforcement of order, 19, 942

Excuses for delay, 19, 936

Foreign judgment, 19, 942

Form and contents of petition, 19, 937

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*Allowance to widow or family, *cont'd.*

Hearing on petition or appraiser's report, 19, 939

Increase, 19, 950

In general, 19, 931

Injunction to prevent sale of property pending application, 19, 948

Jurisdiction, 19, 933

Notice of application, 19, 938

Order granting or refusing allowance, 19, 940

Apportionment between widow and children, 19, 940

Collateral attack, 19, 941

Conclusiveness of order, 19, 941

Enforcement of order, 19, 942

In general, 19, 940

Order directing payment in instalments, 19, 940

Order setting aside appraiser's report, 19, 940

Signature and entry of order, 19, 941

Parties by whom application should be made, 19, 934

Payment of allowance, 19, 942

Petition, form, and contents of, 19, 937

Proceedings to obtain allowance, 19, 931

Reduction, 19, 950

Removal to federal court, 19, 933

Report, 19, 939

Sale or partition of property, 19, 949

Selection or appraisement, 19, 931

Subsequent allowances, 19, 950

Survival of right on death of widow, 19, 934

Time of application, 19, 935

Title to property set apart, 19, 948

Various methods of procedure, 19, 931

Amendments:

Accounts, 19, 1033

Objections to account of personal representative, 19, 1039

Order of sale, 19, 903

Petition for letters of administration, 19, 830

Revocation or removal, 19, 856

Statement of claim, 19, 954

Summary proceedings to obtain delivery or discovery of assets, 19, 866

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.***Amendments, *cont'd.***

Vacating and amending order or decree, 19, 1094

Ancillary letters testamentary:

Application for, 19, 843

Appeals:

Accounting in probate court, see *infra*, Accounting in probate court.

Appointment of administrator, 19, 832

Bill in equity for discovery or recovery of assets, 19, 868

Discharge of executors and administrators, 19, 1105

Distribution, 19, 1097

Establishment of claims by statutory proceedings in chancery, 19, 984

Insolvent estates, see *infra*, Settlement of insolvent estates in probate courts.

Opening and setting aside settlements, 19, 1065

Order confirming or vacating sale, 19, 913

Order granting or refusing allowance, see *infra*, Allowance to widow or family.

Order of sale, 19, 904

Order or decree appointing administrator, 19, 836

Appealability of order, 19, 836

Interest of appellant, 19, 837

Review of exercise of discretion, 19, 837

Orders allowing or disallowing claims, see *infra*, Collection of claims against estates.

Proceedings for further or counter security or discharge of sureties, 19, 849

Proceedings to require bond of executor, 19, 848

Revocation or removal, 19, 858

Application for letters of administration, 19, 827

Amendment of petition, 19, 830

Ancillary letters testamentary, 19, 829

Appeal, 19, 832, 836

Character of administration granted, 19, 835

Collateral attack, 19, 831

Collateral attack on validity of administration, 19, 838

Concurrent administrations, 19, 841

For irregularities, 19, 843

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Application for letters of administration, *cont'd.*

Collateral attack on validity of administration, *cont'd.*

For jurisdictional defects, 19, 838

Necessity of administration, 19, 840

Presumptions of jurisdiction, 19, 838

Presumption that decedent died intestate, 19, 840

Residence of deceased in the state, 19, 840

Residence of decedent within county, 19, 839

Where record affirmatively discloses a want of jurisdiction, 19, 841

Contingent appointment, 19, 834

Findings, 19, 835

Form of application, 19, 827

Guardian *ad litem*, 19, 832

Mandamus, 19, 832

Necessity of order, 19, 834

Notice of proceeding, 19, 830

Nunc pro tunc entry, 19, 835

Order of appointment, 19, 834

Prayer, 19, 829

Preferences, 19, 832

Priorities, 19, 832

Recitals, 19, 835

Signature, 19, 830

Substance of allegation, 19, 828

Supersedeas, 19, 836

Verification, 19, 830

Who may make, 19, 827

Who may or may not oppose application, 19, 831

Appraisal, 19, 863

Attachment:

Failure to account, 19, 1030

Attorneys:

Petition for removal, 19, 953

Bills in equity (see *infra*, Settlements in chancery at suit of personal representatives, creditors, legatees, or distributees):

Bill in equity for discovery or recovery of assets, 19, 863

Bills in equity to set aside sales, 19, 919

Allegations of constructive fraud, 19, 923

Constructive fraud, 19, 921

For fraud in fact, 19, 920

For fraud in law, 19, 921

For irregularities or want of jurisdiction, 19, 919

Parties, 19, 923

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*Bills in equity to set aside sales, *con.*

Probate judge interested in purchase, 19, 921

Purchase by executor or administrator, 19, 921

Ratification where executor or administrator purchases, 19, 921

Bills of discovery:

Bill in equity for discovery or recovery of assets, 19, 863

Bond and oath, 19, 846

Appeal from order granting or refusing allowance, 19, 945

Appellate review, 19, 848, 850

As requisite to validity of appointment, 19, 846

Collateral attack for omission, 19, 847

Power to release sureties statutory, 19, 849

Proceedings for further or counter security or discharge of sureties, 19, 849

Proceedings to require bond of executor, 19, 848

Sales of realty, 19, 906, 907

Burden of proof:

Objections to account, 19, 1044

Certiorari:

Opening and setting aside settlements, 19, 1065

Chancery, see *infra*, Equity.

Change of venue, 4, 387

Claims against estates, see *infra*, Collection of claims against estates.

Collateral attack:

Failure to give bond or take oath, 19, 847

Mortgage, 19, 930

Necessity of notice of application for sale of realty under order of court, 19, 886

Conflicting doctrines, 19, 887

In general, 19, 887

Recitals and presumption of notice, 19, 890

State doctrine as rule of decision in federal court 19, 889

Where some are notified and others are not, 19, 889

Order granting allowance to widow or family, 19, 941

Order of sale, 19, 899

Sales of realty under order of court:

Collateral attack for want of proof or interest, 19, 897

Collateral attack on ground of delay, 19, 873

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Collateral attack on validity of administration, 19, 838

Concurrent administrations, 19, 841

For irregularities, 19, 843

For jurisdictional defects, 19, 838

Necessity of administration, 19, 840

Presumptions of jurisdiction, 19, 838

Presumption that decedent died intestate, 19, 840

Residence of deceased in the state, 19, 840

Residence of decedent within the county, 19, 839

Service of notice, 19, 831

Where the record affirmatively discloses a want of jurisdiction, 19, 841

Collateral attack on validity of sale, 19, 623

Curative statutes, 19, 928

Errors or irregularities, 19, 925

Errors or irregularities in execution of order of sale, 19, 926

Limitation of action, 19, 928

Want of jurisdiction, 19, 923

What constitutes collateral attack, 19, 927

Collection of claims against estates, 19, 950

Action against personal representative, 19, 984

Affidavit, 19, 594, 955

Allowance confined to amount of claim, 19, 959

Appeal from order allowing or disallowing claim, 19, 960

Determination of appeal, 19, 963

Filing of bond and transcript, 19, 962

Form of pleadings in appellate court, 19, 962

Hearing in appellate court, 19, 962

In general, 19, 960

Notice of appeal, 19, 962

Time of taking appeal, 19, 962

Who may appeal, 19, 961

By proceedings in probate courts generally, 19, 950

Circumstances excusing delay in filing and docketing claims, 19, 952

Conclusiveness of judgment or order, 19, 957

Entry on record, 19, 958

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

- Collection of claims against estates, *cont'd.*
 - Establishment of claims by statutory proceedings in chancery, 19, 979
 - Appeal, 19, 984
 - Claims not due, 19, 982
 - Claims not set out in insolvent bill, 19, 983
 - Claims set out in insolvent bill, 19, 982
 - In general, 19, 979
 - Method of filing claims, 19, 980
 - Objections to master's report, 19, 983
 - Proof of claims, 19, 982
 - Time of filing claims, 19, 980
- Establishment of claims of personal representatives, 19, 971
- Execution in favor of judgment creditor, 19, 976
- Executors and administrators, 19, 971
- Filing and docketing claims, 19, 951
- Filing and docketing equitable claims, 19, 951
- Insolvent estates*, see *infra*, Settlement of insolvent estates in probate court.
- Jury trial, 19, 957
- Notice for presentation of claims, 19, 950
- Notice of filing of claim, 19, 956
 - Necessity, 19, 956
 - Sufficiency, 19, 956
 - Waiver of notice, 19, 956
- Order allowing claim of representative, 19, 973
- Order for payment, 19, 973
- Order for payment and enforcement of order, 19, 973
- Pleadings, 19, 956
- Preferences, 19, 957
- Presentation of claims to executor or administrator, 19, 950
- Reference to disputed claims, 19, 966
 - Agreement to refer, 19, 968
 - Amendment of claim, 19, 970
 - Approval of agreement to refer, 19, 969
 - Bill of particulars, 19, 970
 - Costs, 19, 971
 - In general, 19, 966
 - In New York, 19, 967
 - New trial, 19, 971
 - Offer to refer, 19, 968
 - Order of reference, 19, 969

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

- Collection of claims against estates, *cont'd.*
 - Reference to disputed claims, *con.*
 - Pleadings, 19, 969
 - Proof, 19, 970
 - Set-off or counterclaim, 19, 970
 - Settlement of insolvent estates*, see *infra*, Settlement of insolvent estates in probate court.
 - Special application by creditor for payment of claim, 19, 964
 - Answer, 19, 965
 - Citation, 19, 965
 - Decree directing payment, 19, 966
 - In general, 19, 964
 - New York Code of Civil Procedure, 19, 964
 - Petition, 19, 964
 - Who are creditors, 19, 964
- Statement of claim, 19, 952
 - Account, 19, 954
 - Affidavit, 19, 955
 - Aider by affidavit, 19, 954
 - Amended statement, 19, 954
 - Entitling claim, 19, 952
 - Formal pleading not necessary, 19, 952
 - Judgment, 19, 953
 - Prima facie* cause of action, 19, 953
 - Promissory note, 19, 953
 - Sufficiency of statement, 19, 952
 - Variance, 19, 954
 - Verification of statement, 19, 955
- Technical or formal precision, 19, 958
- Vacating order of allowance, 19, 959
 - Appeal from order allowing or disallowing claim, 19, 960
 - By bill in equity, 19, 959
 - In probate court, 19, 959
 - Various orders pronounced sufficient, 19, 959
- Withdrawal of claim after filing, 19, 955
- Conditions precedent:
 - Presentation of claim, 4, 657
- Confirmation or vacation of sale (see *infra*, Bills in equity to set aside sales), 19, 908
- Appeals, 19, 913
- Confirmation of sales under testamentary power, 19, 930
- Discretion to confirm or vacate, 19, 910

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Confirmation or vacation of sale, *con.*
Grounds for vacating or refusing
confirmation, 19, 910

Hearing, 19, 909

Necessity of confirmation, 19,
908

Notice, 19, 909

Nunc pro tunc order, 19, 912

Order confirming or vacating, 19,
912

Premature approval, 19, 912

Continuances:

Sales of realty, 19, 898

Costs:

Accounting in probate court, 19,
1052

Appeal, 19, 1005

Appeal from order granting or
refusing allowance of costs,
19, 946

Distribution, 19, 1097

Reference to disputed claims, 19,
971

Settlements in chancery at suit
of personal representatives,
creditors, legatees, or dis-
tributees, 19, 1017

Creditors, see *infra*, Settlements in
chancery at suit of personal rep-
resentatives, creditors, legatees, or
distributees.

Creditors' bills, see CREDITORS' BILLS.

Decrees (see *infra*, Discharge of ex-
ecutors and administrators;
Order or decree of distribu-
tion):

Allowing account, 19, 1051

Enforcement of decree, 19, 1018

Opening and setting aside settle-
ments, 19, 1065

Settlements in chancery at suit
of personal representatives,
creditors, legatees, or dis-
tributees, 19, 1017

Devises, see *infra*, Distribution to
legatees, distributees, heirs, and
devises; and see HEIRS AND DEV-
ISEES.

Discharge of executors and adminis-
trators, 19, 1100

Appeal, 19, 1105

Common law, 19, 1100

Decree essential to valid dis-
charge, 19, 1100

Effect of discharge, 19, 1103

Effect on conditional decree, 19,
1105

Effect on heirs and distributees,
19, 1105

Effect on liability of personal
representative, 19, 1103

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Discharge of executors and adminis-
trators, *cont'd.*

Effect on powers of personal rep-
resentative, 19, 1104

Hearing of petition, 19, 1102

How discharge obtained, 19,
1102

In general, 19, 1100

Notice of discharge, 19, 1102

Setting aside order of discharge,
19, 1105

Statutes, 19, 1100

Discovery of assets, see *infra*, Pro-
ceedings for discovery of assets.

Distributees, see *infra*, Distribution
to legatees, distributees, heirs, and
devises; Settlements in chancery
at suit of personal representatives,
creditors, legatees, or distributees.
Distribution to legatees, distributees,
heirs, and devises, 19, 1079

Advancements, 19, 1087

Appeals, 19, 1097

Application for final distribution,
19, 1082

Application for partial distribu-
tion, 19, 1082

Appointment of guardian *ad*
litem, 19, 1085

Assignee of a legatee or dis-
tributee, 19, 1082

At what stage of proceedings,
19, 1080

Collateral attack, 19, 1093

Conclusiveness of order or de-
cree, 19, 1093

Construction of statutes, 19, 1081

Contents of application, 19, 1083

Costs, 19, 1097

Distribution and partition of real
estate, 19, 1099

Enforcement of order or decree,
19, 1095

Final distribution, 19, 1082

Form and contents of applica-
tion, 19, 1083

Hearing and determination, 19,
1085

Advancements, 19, 1087

Construction of will and as-
certainment of distribu-
tees, 19, 1086

Determination of incidental
questions, 19, 1086

In general, 19, 1086

Set-off, 19, 1087

Necessity of obtaining order of
court, 19, 1079

Next of kin of a deceased legatee
or distributee, 19, 1082

Notice of application, 19, 1084

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

- Distribution to legatees, distributees, heirs, and devisees, *cont'd.*
 - Order or decree of distribution, 19, 1088
 - Conclusiveness of order or decree, 19, 1093
 - Against personal representative alone, 19, 1090
 - Assignees, 19, 1090
 - Balances against legatees or distributees, 19, 1090
 - Deceased legatees or distributees, 19, 1090
 - General requisites, 19, 1088
 - Immediate and absolute, 19, 1089
 - Infant, 19, 1089
 - Refunding bonds, 19, 1091
 - Necessity of order, 19, 1079
 - Partial distribution, 19, 1080, 1082
 - Pleadings to petition, 19, 1085
 - Report of distribution, 19, 1096
 - Set-off, 19, 1087
 - Vacating and amending order or decree, 19, 1094
 - Verification, 19, 1084
 - Who may apply for distribution, 19, 1082

Equity:

- Establishment of claims by statutory proceedings in chancery, 19, 979
- Appeal, 19, 984
- Claims not due, 19, 982
- Claims not set out in insolvent bill, 19, 983
- Claims set out in insolvent bill, 19, 982
- In general, 19, 979
- Method of filing claims, 19, 980
- Objections to master's report, 19, 983
- Proof of claims, 19, 982
- Time of filing claims, 19, 980

Opening and setting aside settlements, see infra, Opening and setting aside settlements.

Settlement in chancery at suit of personal representatives, creditors, legatees, or distributees, see infra, Settlements in chancery at suit of personal representatives, creditors, legatees, or distributees.

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

- Exceptions, see infra, Objections to account and proceedings thereon.*
- Executors and administrators (see *infra, Discharge of executors and administrators*):
 - Action at law against personal representatives, 19, 984
 - Establishment of claims of personal representatives, 19, 971
- Family, see infra, Allowance to widow or family.*
- Findings, 19, 835
- Former adjudication:
 - Sales of realty, 19, 898
- Fraud:
 - Executor or administrator purchasing, 19, 921
 - Opening and setting aside settlements, 19, 1057, 1061, 1064, 1068
 - Setting aside sale for fraud, 19, 920
- Frauds, statute of:
 - Sales of realty, 19, 909
- Guardian, 19, 853
- Guardian *ad litem*, 19, 832
 - Appointment of guardian *ad litem* for infants where it is sought to sell realty, 19, 894
 - Distribution, 19, 1085
 - Objections to personal representative's account, 19, 1040
- Hearing (see *infra, Sales of realty under order of court*):
 - Confirmation or vacation of sale, 19, 909
- Heirs, see infra, Distribution to legatees, distributees, heirs, and devisees; and see HEIRS AND DEVISEES.*
- Infants (see *infra, Guardian ad litem*):
 - Notice of application for sale of realty, 19, 893
 - Petition for removal, 19, 853
- Injunctions:
 - To prevent sale of property pending application, 19, 948
- Insolvency, see infra, Settlement of insolvent estates in probate court.*
- Interrogatories, 19, 867
- Inventory, 19, 860
 - Conclusiveness of inventory, 19, 862
 - Duty to make and file, 19, 860
 - Form of inventory, 19, 862
 - Verification, 19, 862
- Judgments:
 - Appeal, 11, 1070
- Jurisdiction (see *infra, Equity*):
 - Opening and setting aside settlements, see infra, Opening and setting aside settlements.*

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.* **SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.***

Jury:

Right to trial by jury where objections are taken on account of representative, 19, 1042

Laches:

Excuse for laches in making application, 19, 880

Larceny, 12, 971**Legal conclusions:**

Sales of realty under order of court, 19, 880

Legatees, see *infra*, Distribution to legatees, distributees, heirs, and devisees; Settlements in chancery at suit of personal representatives, creditors, legatees, or distributees.

Letters testamentary or of administration:

Application for, 19, 843, 844

Limitation of actions:

Accounts, 19, 1039

Opening and setting aside settlements, 19, 1073

Sale, 19, 928

Mandamus:

To compel a legal appointment of administrator, 19, 832

Mistake:

Opening and setting aside settlements, 19, 1057, 1061, 1064, 1067, 1070

Next friend:

Removal, 19, 853

Notice:

Accounting, see *infra*, Accounting in probate court.

Appeal, 19, 962

Application for administration, 19, 830

Collateral attack, 19, 831

Necessity of notice, 19, 830

Waiver of objection, 19, 831

Application for distribution, 19, 1084

Application of widow or family for allowance, 19, 938

Confirmation or vacation of sale, 19, 909

Discharge of executors and administrators, 19, 1102

Filing claims, see *infra*, Collection of claims against estates.

Insolvent estates in probate court:

Notice of meetings of commissioners, 19, 989

Notice to present claims, 19, 989

Opening and setting aside settlements for want of notice, 19, 1064

Notice, *cont'd.*

Revocation or removal, 19, 856

Sales of realty under order of court:

Address, 19, 892

Necessity of notice on collateral attack, 19, 886

Conflicting doctrines, 19, 887

Inaugural, 19, 887

Recitals and presumption of notice, 19, 890

State doctrine as rule of decision in federal courts, 19, 889

Where some are notified and others are not, 19, 889

Necessity of notice on direct attack, 19, 890

Service of notice, 19, 893

Substantive part of notice, 19, 892

Sufficiency of notice, 19, 891

Waiver of irregularities, 19, 89

Who are entitled to notice, 19, 891

Nunc pro tunc:

Appointment of administrator, 19, 835

Confirmation of sale, 19, 912

Order of sale, 19, 903

Oath, see *infra*, Bond and oath.

Objections to account, and proceedings thereon, 19, 1034

Amended objections, 19, 1039

Burden of proof on contestant, 14, 1045

Burden of proof on executor or administrator, 19, 1044

Burden of proof where claims are made by or against personal representative, 19, 1044

Burden of proof where voucher is lost, 19, 1045

Compliance with statute, 19, 1038

Examination of executor or administrator, 19, 1047

Executor as plaintiff, 19, 1041

Failure to raise objection, 19, 1034

Falsifying, 19, 1045

Findings of jury merely advisory, 19, 1043

Form of objections, 19, 1037

Further objections, 19, 1039

Guardian *ad litem* for infants, 19, 1040

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Objections to account, and proceedings thereon, *cont'd.*

Hearing and trial of objections, 19, 1041

Issues triable, 19, 1040

Jury trial, 19, 1042

Limitation of action, 19, 1039

Nature of procedure, 19, 1042

Necessity for objections, 19, 1034

References, 19, 1047

Action of court on referee's report, 19, 1049

Exceptions to report, 19, 1050

Order or decree allowing account, 19, 1051

Proceedings before referee, 19, 1048

Qualification by taking oath, 19, 1048

Weight of referee's report, 19, 1050

When authorized, 19, 1047

Showing interest in settlement, 19, 1038

Sufficiency of proof, 19, 1046

Surcharging, 19, 1045

Vouchers or other proof of items, 19, 1045

Who may object, 19, 1035

Creditors, 19, 1037

Devisees, 19, 1036

Distributees, 19, 1036

Heirs, 19, 1036

In general, 19, 1035

Interest must be direct, 19, 1035

Legatees, 19, 1036

Showing interest, 19, 1036

Opening and setting aside settlements, 19, 1053

Final settlement by suit in equity, 19, 1066

Answer, 19, 1075

Averments of bill, 19, 1073

Costs, 19, 1076

Distinction between opening settlement and surcharging or falsifying, 19, 1075

Evidence under pleadings, 19, 1075

Excuse for delay, 19, 1074

Fraud, 19, 1067, 1068

Grounds for relief, 19, 1067

Inherent power, 19, 1066

Jurisdiction, 19, 1066

Limitation of action, 19, 1073

Mistake, 19, 1070

Negativating fault or neglect, 19, 1074

Parties to bill, 19, 1071

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Opening and setting aside settlements, *cont'd.*

Final settlement by suit in equity, *cont'd.*

Pleadings, 19, 1073

Relief granted, 19, 1075

Statutory authority, 19, 1067

Time of instituting suit, 19, 1072

Final settlements by proceedings in probate court, 19, 1054

After appeal from decree, 19, 1063

Appeal, 19, 1065

Application based on statutory grounds, 19, 1060

Averments of diligence, 19, 1065

Averments of petition, 19, 1063

By whom application may be made, 19, 1059

Certiorari, 19, 1065

Decree or order, 19, 1065

Equitable grounds for relief, 19, 1057

Fraud, 19, 1061, 1064

Grounds, 19, 1060

Grounds for relief, 19, 1057

Inherent power, 19, 1054

Jurisdiction, 19, 1054

Mistake, 19, 1061, 1064

Statutory authority, 19, 1056

Statutory grounds for relief, 19, 1057

Time of making application, 19, 1060

Void decrees, 19, 1056

Want of notice, 19, 1064

Intermediate settlements, 19, 1053

Partial settlements, 19, 1053

Settlements out of court, 19, 1076

Order of sales, see infra, Sales of realty under order of court.

Order or decree of distribution, 19, 1088

Conclusiveness of order or decree, 19, 1093

Against personal representative alone, 19, 1090

Assignees, 19, 1090

Balances against legatees or distributees, 19, 1090

Deceased legatees or distributees, 19, 1090

General requisites, 19, 1088

Immediate and absolute, 19, 1089

Infant, 19, 1089

Refunding bonds, 19, 1091

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Order or decree of distribution, *cont'd.*
Enforcement of order or decree,

19, 1095

Necessity of obtaining order, 19,
1079

Vacating and amending order or
decree, 19, 1094

Orders (see *infra*, Sales of realty
under order of court):

Accounting, 19, 1030

Allowance to widow or family, see
infra, Allowance to widow or
family.

Collection of claims against estates,
see *infra*, Collection of claims
against estates.

Insolvent estates, see *infra*, Settle-
ment of insolvent estates in
probate court.

Lease of real property, 19, 929

Mortgage of real property, 19,
929

Opening and setting aside settle-
ments, 19, 1065

Order allowing count, 19, 1051

Resale, 19, 914

Sales of personal property under
order of court, 19, 930

Parties (see *infra*, Settlements in
chancery at suit of personal
representatives, creditors, lega-
tees, or distributees):

Accounting, 19, 1027

Names and condition of parties
interested where sale of realty
is sought, 19, 884

*Objections to account and proceed-
ings thereon*, see *infra*, Objec-
tions to account and proceed-
ings thereon.

Opening and setting aside settle-
ments, 19, 1059, 1071

Summary proceedings to obtain
delivery or discovery of assets,
19, 865

Who may apply for order of sale,
see *infra*, Sales of realty under
order of court.

Partnership:

*Actions to charge estate of deceased
partner*, see PARTNERSHIP.

Personal property:

Sales of personal property under
order of court, 19, 930

Petition, see *infra*, Distribution to
legatees, distributees, heirs, and
devisees; Sales of realty under
order of court.

Presumption, see *infra*, Collateral
attack on validity of administra-
tion.

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Proceedings for discovery of assets,
19, 863

Amendments to petition, 19, 866

Answers, 19, 867

Answer to petition, 19, 866

Appeals, 19, 868

Bill in equity for discovery or
recovery of assets, 19, 863

Enforcement of order, 19, 868

Examination, 19, 867

Hearing, 19, 867

Interrogatories, 19, 867

Nature and scope of remedy, 19,
864

Order, 19, 868

Parties, 19, 865

Petition, 19, 866

Petitioners, 19, 865

Respondents, 19, 865

Summary proceedings to obtain
delivery or discovery of assets,
19, 864

Proceedings to obtain letters of ad-
ministration, 19, 827

*Application for letters of adminis-
tration*, see *infra*, Application
for letters of administration.

Application for original or an-
cillary letters testamentary,
19, 843

Letters testamentary or of ad-
ministration, 19, 844

Real property (see *infra*, Sales of
realty under order of court):

Distribution, 19, 1099

Lease of real property under
order of court, 19, 929

Mortgage of real property under
order of court, 19, 929

Receivers:

Averments in bill or appoint-
ment of receiver, 19, 1015

Equitable jurisdiction, 19, 1010

References (see *infra*, Settlement of
insolvent estates in probate
court):

Disputed claims, 19, 966

Amendment of claim, 19, 970

Approval of agreement to
refer, 19, 969

Bill of particulars, 19, 970

Costs, 19, 971

In general, 19, 966

In New York, 19, 967

New trial, 19, 971

Offer to refer, 19, 968

Order of reference, 19, 969

Pleadings, 19, 969

Proof, 19, 970

Set-off or counterclaim, 19,
970

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.***References, *cont'd.***

- Objections to account of representative, 19, 1047
- Action of court on referee's report, 19, 1049
- Exceptions to report, 19, 1050
- Order or decree allowing account, 19, 1051
- Proceedings before referee, 19, 1048
- Qualification by taking oath, 19, 1048
- Weight of referee's report, 19, 1050
- When authorized, 19, 1047
- Settlements in chancery at suit of personal representatives, creditors, legatees, or distributees, 19, 1016

Refunding bonds, 19, 1091

Removal, see infra, Revocation of appointment or removal from office.

Report (see *infra*, Settlement of insolvent estates in probate court):

- Sales of realty, 19, 907**
 - Amendment of report, 19, 908
 - Contents of report, 19, 908
 - Effect of irregularities, 19, 908
 - Necessity of report and enforcing duty, 19, 907

Resale, 19, 914

Residence, see infra, Collateral attack on validity of administration.

Revocation of appointment or removal from office, 19, 850

- Amendment, 19, 856
- Appeal, 19, 858
- Application, 19, 851
- Attorney, petition by, 19, 853
- Bill in equity to set aside appointment or revoke letters, 19, 860
- Collateral attack on order of revocation or removal, 19, 859
- Contents, 19, 854
- Form of application, 19, 854
- Infant's petition, 19, 853
- Interest necessary to application, 19, 851
- Interest of appellant, 19, 858
- Notice of application, 19, 856
- Nunc pro tunc* amendment, 19, 858
- Order of revocation or removal, 19, 857
- Power of court, 19, 850
- Signature, 19, 854

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Revocation of appointment or removal from office, *cont'd.*

- Supersedeas, 19, 859
- Verification, 19, 855
- Who may make application, 19, 851

Sales of personal property under order of court, 19, 930

Sales of realty under order of court, 19, 869

Amendment of petition, 19, 886

Averments of petition, 19, 878

Averment of legal conclusions, 19, 880

Condition of estate, 19, 884

Debts, 19, 884

Description of applicant, 19, 880

Description of land to be sold, 19, 881

Disjunctive averments, 19, 879

Excuse for laches in making application, 19, 880

Following language of statute, 19, 880

In general, 19, 878

Names and condition of parties interested, 19, 884

Necessity of proper averments, 19, 878

Negating testamentary power, 19, 879

Personal assets, 19, 884

Rules of construction, 19, 879

Bills in equity to set aside sales, 19, 919

Bills in equity to set aside sales for fraud in fact, 19, 920

Bills in equity to set aside sales for fraud in law, 19, 921

Bills in equity to set aside sales for irregularities or want of jurisdiction, 19, 919

Bond, 19, 906

Collateral attack for errors or irregularities, 19, 925

Collateral attack on order, 19, 899

Collateral attack on validity of sale, 19, 923

Collateral attack on validity of sale for want of jurisdiction, 19, 923

Condition of estate, debts, and personal assets, 19, 884

Confirmation or vacation of sale, see infra, Confirmation or vacation of sale.

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*Sales of realty under order of court, *cont'd.*

Curative statutes and statutes of limitations, 19, 928

Description of applicant, 19, 880

Description of land to be sold, 19, 881

Description of property to be sold, 19, 901

Directing who may sell, 19, 902

Disposition of proceeds of sale, 19, 918

Execution of deed under order of court, 19, 917

Findings and recitals, 19, 899

Form of application, 19, 877

Frauds, statute of, 19, 909

Hearing on application, 18, 893

Adjournments, 19, 898

Appointment of guardian *ad litem* for infants, 19, 894

Collateral attack for want of proof of necessity of sale, 19, 897

Continuances, 19, 898

Defenses, 19, 898

Defenses on merits, 19, 898

Former adjudication, 19, 898

Pendency of prior application, 19, 898

Pleadings subsequent to application, 19, 894

Proof of claims and of necessity of sale, 19, 895

Voluntary dismissal of application, 19, 899

Who may and who may not contest application, 19, 893

Limitation of action, 19, 928

Names and condition of parties interested, 19, 884

Necessity of application, 19, 869

Notice of application:

Address, 19, 892

Necessity of notice on collateral attack, 19, 886

Conflicting doctrines, 19, 887

In general, 19, 887

Recitals and presumption of notice, 19, 890

State doctrine as rule of decision in federal courts, 19, 889

Where some are notified and others are not, 19, 889

Necessity of notice on direct attack, 19, 890

Service of notice, 19, 893

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*Sales of realty under order of court, *cont'd.*Notice of application, *cont'd.*

Substantive part of notice, 19, 892

Sufficiency of notice, 19, 891

Waiver of irregularities, 19, 893

Who are entitled to notice, 19, 891

Oath, 19, 907

Order of resale, 19, 914

Order of sale, 19, 899

Action to review, 19, 906

Amendment, 19, 903

Appeals, 19, 904

Certiorari, 19, 906

Collateral attack, 19, 899

Conduct of sale, 19, 902

Conformity to prayer in petition, 19, 899

Contents of order, 19, 899

Description of property to be sold, 19, 901

Directing who may sell, 19, 902

Entry of order, 19, 903

Findings, 19, 899

Necessity of order, 19, 899

Nunc pro tunc, 19, 903

Place of sale, 19, 902

Public or private sale, 19, 902

Recitals, 19, 899

Recital showing absence of jurisdiction, 19, 900

Record impeaching recitals, 19, 900

Terms of sale, 19, 902

Vacation or modification, 19, 903

Parties, 19, 893

Personal representative purchasing at his own sale, 19, 921

Place of sale, 19, 902

Prayer for petition, 19, 886

Public or private sale, 19, 902

Purchase by executor or administrator, 19, 921

Remedy against delinquent purchaser, 19, 914

Action for deficiency, 19, 916

Action or summary proceeding, 19, 917

Declaration and complaint, 19, 916

Resale and action for deficiency, 19, 914

Resale at bidder's risk, 19, 914

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

- Sales of realty under order of court, *cont'd.*
 - Remedy against delinquent purchaser, *cont'd.*
 - Resale without further order, 19, 915
 - Specific performance, 19, 917
 - Summary proceeding, 19, 917
- Report of sale, 19, 907
- Resale, 19, 914
- Setting aside sale*, see *infra*, Bills in equity to set aside sales.
- Terms of sale, 19, 903
- Time for making application, 19, 869
 - By statute, 19, 869
 - Collateral attack on ground of delay, 19, 873
 - In absence of statutory provision, 19, 870
- Vacation of sale*, see *infra*, Confirmation or vacation of sale.
- What constitutes collateral attack, 19, 927
- Who may apply for order of sale, 19, 873
 - Creditors, 19, 876
 - Personal representative of decedent, 19, 873
 - Where there are several executors or administrators, 19, 875
- Service of process:
 - Accounting, 19, 1026
- Set-off, recoupment, and counterclaim:
 - Distribution, 19, 1087
- Setting aside settlements*, see *infra*, Opening and setting aside settlements.
- Settlement of insolvent estates in probate court, 19, 986
 - Appeal, 19, 999
 - Allowance or disallowance of claims, 19, 1000
 - Allowance or disallowance of claims by commissioners, 19, 1000
 - Appealable interest, 19, 999
 - Appealable orders and decrees, 19, 999
 - Appeal bond, 19, 1003
 - Costs, 19, 1005
 - Filing declaration, 19, 1004
 - Judgment of appellate court, 19, 1005
 - Notice of appeal, 19, 1003
 - Order accepting or rejecting commissioners' report, 19, 1002

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

- Settlement of insolvent estates in probate court, *cont'd.*
 - Appeal, *cont'd.*
 - Order on application to open commission and extend time, 19, 1003
 - Order on application to settle estate as insolvent, 19, 1000
 - Taking and perfecting appeal and proceedings in appellate court, 19, 1003
- Appointment and qualification of commissioners, 19, 989
- Decree on representation of insolvency, 19, 989
- Enforcement of order to pay dividends, 19, 998
- Extension of time for presenting claims, 19, 997
- Filing, 19, 990, 991
- Filing or presentation of claims, 19, 990
- Hearing before commissioners, 19, 993
- Hearing before court, 19, 992
- Judgment of court or commissioners, 19, 993
- Notice of meetings of commissioners, 19, 989
- Notice to present claims, 19, 989
- Opening commission, 19, 997
- Order to pay dividends, 19, 998
- Pleadings, 19, 992
- Proceedings on report of insolvency, 19, 988
- Report of commissioners and disposition thereof, 19, 994
 - Acceptance, 19, 995
 - Contents of report, 19, 995
 - Duty to report, 19, 994
 - Recommittal, 19, 995
 - Rejection, 19, 995
 - Report, 19, 994
 - Signature, 19, 995
 - Time for report, 19, 994
 - Verification, 19, 995
- Report, representation, or suggestion of insolvency, 19, 986
- Schedule of assets, 19, 987
- Verification, 19, 991
- Settlements in chancery at suit of personal representatives, creditors, legatees, or distributees, 19, 1005
- Bill, 19, 1014
 - Averments in bill for appointment of receiver, 19, 1015
 - Demand for legacy, 19, 1014

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Settlements in chancery at suit of personal representatives, etc., *cont'd.*

Bill, *cont'd.*

Essential allegations, 19, 1014

Multifariousness, 19, 1015

Precedents in averments, 19, 1014

Retention of bill for complete settlement, 19, 1016

Costs, 19, 1017

Decree, 19, 1017

Enforcement of decree, 19, 1018

Inherent chancery jurisdiction, 19, 1005

Jurisdiction in the United States, 19, 1006

Jurisdiction to appoint receiver of assets, 19, 1010

Parties, 19, 1010

Administrator of decedent, 19, 1012

Bill by assignee of legatee, 19, 1013

Bill by personal representative, 19, 1011

Bill by residuary legatee, 19, 1013

Bills for distribution, 19, 1011

Bills for legacies, 19, 1012

Creditors' bills, 19, 1011

Debtors of estate, 19, 1010

In general, 19, 1010

Joinder of legatees, 19, 1012

Personal representative of deceased legatee, 19, 1013

Personal representative of decedent, 19, 1010

Sureties on administration bond, 19, 1011

Surviving partner of decedent, 19, 1011

References, 19, 1016

Retention of bill for complete relief, 19, 1016

Special circumstances held sufficient, 19, 1009

Statutory jurisdiction, 19, 1010

What are special circumstances justifying resort to court of equity, 19, 1007

Settlements out of court:

Opening and setting aside settlements, 19, 1076

Specific performance (see **SPECIFIC PERFORMANCE**):

Sale, 19, 917

Substitution of parties, 20, 1027

SETTLEMENT OF DECEDENTS' ESTATES, *cont'd.*

Supersedes and stay of proceedings:

Appeal from order of appointment of administrator, 19, 837

Surcharging and falsifying, 19, 1045, 1075

Sureties:

Proceedings for discovery of assets, see *infra*, *Proceedings for discovery of assets*.

Vacating order of allowance, see *infra*, *Collection of claims against estates*.

Vacating sale, see *infra*, *Bills in equity to set aside sales; Confirmation or vacation of sale*.

Vacating settlements, see *infra*, *Opening and setting aside settlements*.

Vacation of sale, see *infra*, *Confirmation or vacation of sale*.

Verification, 19, 991, 1084

Accounts, 19, 1033

Application for letters of administration, 19, 855

Claims against insolvent estates, 19, 991

Inventory, 19, 862

Petition for accounting, 19, 1023

Revocation or removal, 19, 854

Verification of statement of claim, 19, 955

Widow, see *infra*, *Allowance to widow or family*.

SEVERANCE, 19, 1108

See **SEPARATE TRIALS; SPLITTING CAUSES OF ACTION**.

Cause of action not within court's jurisdiction, 19, 1113

Death, 19, 1115

Distinct issue arising in joint action, 19, 1109

General right of plaintiff to severance, 19, 1108

Joint actions where liability is found to be several, 19, 1109

Legal and equitable causes in petition, 19, 1113

Part of defendants not served or appearing, 19, 1110

Several causes of action indefinitely stated, 19, 1113

Where causes of action are improperly united, 19, 1111

Where one of several parties dies, 19, 1115

Where part of claim is admitted, 19, 1114

SEWER, see DRAINAGE.

SHAM AND FRIVOLOUS PLEADINGS, 20, 1

See **SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER**.

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Admissions, 20, 71
- Affidavit, 20, 75
- Affidavits of merits, 20, 48, 84
- Amendments, 20, 83
 - Amended pleadings, 20, 46
 - Amendment of course, 20, 85
 - Appeal, 20, 99
 - Conditions, 20, 84
 - Rejected pleadings, 20, 101
- Appeal and error, 20, 90
 - Allowance of pleas, 20, 99
 - At common law, 20, 90
 - Effect of amended pleadings, 20, 99
 - Issues at trial, 20, 99
 - Issues on appeal, 20, 97
 - Motion for judgment on frivolous pleading, 20, 96
 - Order having no prejudicial results, 20, 98
 - Order overruling motion for judgment on frivolous pleading, 20, 96
 - Order refusing to strike out, 20, 95
 - Order striking out, 20, 90
 - Appeals from interlocutory order, 20, 94
 - Exceptions and bills of exceptions, 20, 92
 - Final judgment, 20, 90
 - Judgment after trial on other issues, 20, 91
 - On striking out plea or answer in equity, 20, 93
 - Review on appeal from final judgment, 20, 90
 - Waiver of right to review, 20, 94
 - Order sustaining motion for judgment on frivolous pleadings, 20, 96
 - Prevailing modern practice, 20, 90
- At and after trial, 20, 104
 - Frivolous pleadings, 20, 104
 - At common law before issue joined, 20, 104
 - Character of judgment on pleadings, 20, 106
 - Disregarding issues, 20, 108
 - Instructions, 20, 108
 - Judgment *non obstante veredicto*, 20, 109
 - Judgment on pleadings, 20, 105
 - Repleader, 20, 109
 - When application for judgment made, 20, 107
 - Writ of inquiry, 20, 106
- Sham pleadings, 20, 103

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Bad faith of pleader, 20, 29
- Bills in equity, 20, 44
- Bills of exceptions, 20, 92
- Canada, 20, 6
- Certified cases, 20, 31
- Chambers and vacation:
 - Judgment, 20, 86
- Code denials (see *infra*, Frivolous pleadings):
 - Specific denials, 20, 14
 - Verification of denials, 20, 15
 - View that code denials not sham, 20, 14
- Code provisions, see *infra*, Statutory provisions.
- Code replies, 20, 48
- Common law:
 - Definition, history, and nature, 20, 54
 - Form and scope of summary remedy, 20, 54
 - Parties, 20, 63
- Conditions, 20, 84
- Contempt, 20, 89
- Costs, 20, 87
 - Hearing on motion not trial of issue of law, 20, 88
 - Successful application, 20, 87
 - Unsuccessful application, 20, 88
- Courts:
 - Inherent power of courts, 20, 44, 51
- Declaration, 20, 44
- Definitions (see *infra*, Statutory provisions), 20, 4
 - At common law, 20, 4
 - Frivolous pleadings, 20, 4
 - Sham pleadings, 20, 4
- Statutory provisions, see *infra*, Statutory provisions.
- Delay (see *infra*, Statutory provisions):
 - Pleadings filed for delay, 20, 50
- Demurrers, 6, 385; 20, 49, 101
 - Default, 6, 388
 - Demurrer for cause not provided by code, 6, 386
 - Frivolous pleadings, 20, 101
 - Incapacity to sue, 6, 386
 - In general, 6, 385
 - Nature of, 6, 385
 - Nature of motion after judgment, 6, 388
 - Notice of motion to strike out, 6, 388
 - Pleading over, 6, 388
 - Remedy, 6, 387
 - Sham pleadings, 20, 103
 - Unsupported by authority, 6, 386
- Dismissal, discontinuance, and nonsuit, 6, 886

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Equitable defenses, 20, 30
- Evidence on application:
 - Degree of proof required, 20, 181
 - Frivolous pleadings, 20, 69
 - Issues on information and belief, 20, 77
 - Facts only presumptively known to pleader, 20, 79
 - Foreign statute, 20, 79
 - Illustrations, 20, 79
 - Jurisdiction not recognizing sham denials, 20, 81
 - Of facts necessarily known to pleader, 20, 77
 - Pleading of corporation, 20, 79
 - Quibbling and evasive affidavits, 20, 78
- Sham pleadings, 20, 70
 - Admissions, 20, 71, 73
 - Affidavit, 20, 75, 76
 - Confession and avoidance, 20, 72
 - Defense of fraud, 20, 75
 - Evidence *aliunde*, 20, 74
 - Examination of parties or witnesses, 20, 75
 - Express admissions, 20, 73
 - Inconsistency alone, 20, 74
 - Inconsistent pleas or defenses, 20, 71
 - Information and belief, 20, 77
 - Modern statutes, 20, 76
 - Oyer, 20, 75
 - Plea or defense necessarily false, 20, 73
 - Presumptions, 20, 75
 - Record evidence, 20, 70
 - Scope of rule, 20, 72
 - Striking out as sham, 20, 72
 - Verification, 20, 76
- Exceptions (see: *infra*, At and after trial), 20, 92
- False pleadings, 20, 8
 - Sham synonymous with false, 20, 13
- Frivolous pleadings (see *infra*, At and after trial; Statutory provisions), 20, 18
 - Affirmative defenses, 20, 43
 - Bad faith of pleader, 20, 29
 - Capacity for amendment, 20, 23
 - Character of insufficiency, 20, 21
 - Character of various issues in these particulars, 20, 29
 - Clearly and palpably bad, 20, 20
 - Code answers and defenses, 20, 28

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Frivolous pleadings, *cont'd.*
 - Code denials, 20, 31
 - Action by indorsee against maker, 20, 40
 - Denial of partnership or corporate capacity, 20, 32
 - Denials not frivolous, 20, 37
 - Denials raising immaterial issues, 20, 41
 - Denials upon information and belief, 20, 33
 - In actions on negotiable instruments, 20, 40
 - Information and belief, 20, 33
 - In form expressly authorized, 20, 31
 - In respect of form, 20, 31
 - Instances of denials not frivolous, 20, 32
 - Instances of insufficient denials, 20, 36
 - Pleadings containing denial in which all material allegations are admitted, 20, 37
 - Proper remedies, 20, 38
 - Specification of allegations thus denied, 20, 35
 - Verified answers, 20, 39
 - View that certain other forms are sufficient, 20, 33
 - Compared with pleadings otherwise defective, 20, 22
 - Definitions, 20, 4
 - Demurrer, answer, or reply, 20, 10
 - Demurrers, 20, 101
 - Evasive and indefinite pleadings, 20, 44
 - General nature of insufficiency, 20, 18
 - Irrelevant pleadings, 20, 26
 - Issues of which insufficiency is well established, 20, 44
 - Legal conclusions, 20, 43
 - No argument required to convince court, 20, 20
 - Pleadings unauthorized and inapplicable, 20, 26, 29
 - Actions involving title certified from inferior to superior trial courts, 20, 31
 - Common law general issue, 20, 29
 - Equitable defenses, 20, 30
 - Illustrations, 20, 30
 - Partial defenses, 20, 31
 - Pleadings held unauthorized and inapplicable, 20, 30
 - Set-off, 20, 31
 - Short pleas, 20, 31
 - Special pleas, 20, 31

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Frivolous pleadings, *cont'd.*
 - Rejected pleadings, 20, 100
 - Semblance of an issue, 20, 27
 - Summary remedy, *see infra*, Summary remedy.
 - Supplemental pleadings, 20, 21
 - Various remedies, 20, 25
 - What are frivolous pleadings, 20, 18
- General issue, 20, 29
- History, 20, 4
- Information and belief, 20, 77
 - In jurisdictions not recognizing sham denials 20, 81
 - Of facts necessarily known to pleader, 20, 77
 - Of facts only presumptively known to pleader, 20, 79
 - View that issues are sham, 20, 79
- Instructions, 20, 108
- Irrelevant pleadings, 20, 26
 - Distinction between irrelevant and frivolous, 20, 26
 - Legal meaning of term, 20, 27
 - Semblance of an issue, 20, 27
 - Statutory provisions, 20, 26
- Judgments:
 - Character of judgment and manner of entering, 20, 86
 - Final judgment at chambers, 20, 86
 - Judgment at chambers, 20, 86
 - Judgment on frivolous pleadings, 11, 1036
 - Answer, 11, 1036
 - Answer assumed to be true, 11, 1038
 - Denial of fact not alleged, 11, 1037
 - Effect of former decision, 11, 1038
 - Form of judgment on frivolous pleading, 11, 1048
 - Frivolousness must be manifest, 11, 1038
 - Frivolous only in part, 11, 1038
 - In general, 11, 1036
 - Test of frivolous pleading, 11, 1036
 - Where complaint is insufficient, 11, 1036
 - Rendering judgment in cause, 20, 85
- Motions, 20, 50
- Motion to strike out*, *see infra*, Appeal and error; Evidence on application; Summary remedy.
- Non obstante veredicto*, 20, 109
- Notice:
 - Application to strike out, 20, 64

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Open and close, 15, 190
- Orders*, *see infra*, Appeal and error.
- Oyer, 20, 75
- Partial defenses, 20, 31
- Parties to application, 20, 63
- Performance, plea of, 20, 30
- Perjury, 20, 89
- Petition, 20, 44
- Pleas in abatement, 20, 46
- Prejudice*, *see infra*, Statutory provisions.
- Puis darrein continuance*, 20, 47
- Punishments, 20, 89
- Records:
 - Evidence, 20, 70
- Rejected pleadings, 20, 100
 - Application for leave to file amended pleading, 20, 101
 - Effect of leave to file pleadings, 20, 101
 - Frivolous pleadings, 20, 100
 - Plea good in form, 20, 102
 - Sham pleadings, 20, 100
 - Supplemental pleading, 20, 101
- Rejoinder, 20, 47
- Remedies (*see infra*, Summary remedy):
 - At and after trial*, *see infra*, At and after trial.
 - Demurrers, 20, 101
 - Rejected pleadings, 20, 100
 - Repleader, 20, 103
 - Summary remedy, *see infra*, Summary remedy.
- Repleader, 20, 103, 109
- Replications and replies, 18, 705; 20, 47
 - Code replies, 20, 48
- Set-off, recoupment, and counterclaim, 20, 31, 49
- Sham pleadings (*see infra*, Statutory provisions), 20, 4
 - At and after trial, 20, 103
 - Code and statutory provisions, *see infra*, Statutory provisions.
 - Common law, 20, 5
 - Definition, 20, 4
 - Demurrers, 20, 103
 - Different modes of trial, 20, 5
 - Rejected pleadings, 20, 100
 - Scope of common-law practice, 20, 5
 - Summary remedy, *see infra*, Summary remedy.
 - What are sham pleadings, 20, 4
 - What are statutory sham pleadings, *see infra*, Statutory provisions.
- Short pleas, 20, 31
- Special pleas, 20, 31
- Statutory provisions:
 - False pleadings, 20, 8

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Statutory provisions, *cont'd.*
 - Frivolous pleadings, 20, 8
 - Pleadings framed to prejudice, embarrass, or delay, 20, 6
 - Canada, 20, 6
 - England, 20, 6
 - Judicature act, 20, 6
 - Scope of English acts, 20, 6
 - Supreme court rules, 20, 7
 - United States, 20, 8
- Sham and frivolous pleadings, 20, 9
 - Miscellaneous provisions, 20, 10
 - Sham and irrelevant, 20, 10
 - Usual provisions, 20, 9
- Summary remedy*, see *infra*, Summary remedy.
- To what pleadings applicable, 20, 48
 - Counterclaims, 20, 49
 - Demurrers, 20, 49
 - In general, 20, 48
- Vexatious pleadings, 20, 8
- What are statutory sham pleadings, 20, 11
 - Code provisions, 20, 14
 - Compared with common-law doctrine, 20, 17
 - Definitions, 20, 12, 17
 - Nature of statutory provisions, 20, 11
 - Pleas proved false by matter of record, 20, 13
 - Sham synonymous with false, 20, 13
 - Specific denials, 20, 14
 - Verification of denials, 20, 15
 - View following common law, 20, 12
 - View that code denial not sham, 20, 14
 - View that statutes apply to all issues alike, 20, 13
- Striking out*, see *infra*, Summary remedy.
- Subsequent pleadings, 20, 45
- Summary remedy, 20, 51
 - Appeal and error*, see *infra*, Appeal and error.
 - Application compared with demurrer, 20, 57
 - At common law, 20, 54
 - At what stage in cause invoked, 20, 60
 - After demurring or moving to make more definite and certain, 20, 61
 - After joinder of issue or order for time to plead, 20, 62

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*

- Summary remedy, *cont'd.*
 - At what stage in cause invoked, *cont'd.*
 - After notice of trial, 20, 61
 - Application at trial, 20, 62
 - At any time before trial, 20, 61
 - Effect of treating issues as valid, 20, 60
 - In general, 20, 60
 - On demurrer to pleading joining frivolous issues, 20, 63
 - Withdrawing pleadings, 20, 63
- Character of judgment and manner of entering, 20, 86
- Contempt of court, 20, 89
- Contents of application, 20, 64
- Costs on application, 20, 87
- Demurrer, 20, 23
- Evidence on application*, see *infra*, Evidence on application.
- Form and scope of remedy, 20, 54
- Frivolous pleadings, 20, 66
- General prayer for relief, 20, 65
- Inherent power of courts, 20, 51
 - Courts of inferior jurisdiction, 20, 53
 - Frivolous pleadings, 20, 51, 53
 - In general, 20, 51
 - Power cautiously exercised, 20, 53
 - Rules of court, 20, 53
 - Scope of inherent power, 20, 52
- Sham and frivolous answers, 20, 51
 - Sham pleadings, 20, 51, 54
- Issues made by application, 20, 66
- Joinder of objections, 20, 65
- Motion for judgment, 20, 57
- Motion to strike out, 20, 58
 - Frivolous answers or defenses, 20, 58
 - Irrelevant and immaterial matter, 20, 59
 - Irrelevant answers or defenses, 20, 58
 - Issues not stricken out, 20, 60
 - Sham and irrelevant answers or defenses, 20, 59
- Notice of application, 20, 64
- Parties at common law, 20, 63
- Parties to application, 20, 63
- Perjury, 20, 89

SHAM AND FRIVOLOUS PLEADINGS, *cont'd.*Summary remedy, *cont'd.*

- Pleading *de novo*, 20, 82
- Amendment of pleadings, 20, 83
- Imposing conditions, 20, 84
- In general, 20, 82
- Showing of merits and excuses, 20, 84

Punishments, 20, 89

Rendering judgment in cause, 20, 85

Sham pleadings, 20, 68

Statutory provisions, 20, 55

- In general, 20, 55
- Motion for judgment, 20, 57
- Motion to strike out, 20, 58
- Pleadings in part sham and frivolous, 20, 57

Signing judgment as at common law, 20, 57

Various applications construed, 20, 65

Supplemental pleadings:

- Frivolous, 20, 21
- Rejected pleadings, 20, 101

Surrejoinders, 20, 47

Terminology, 20, 4

To what pleadings applicable, 20, 44

- Amended pleadings, 20, 46
- Code replies, 20, 48
- Counterclaims, 20, 49
- Declaration, bill, or petition, 20, 44
- Demurrers, 20, 49
- Motions, 20, 50
- Notice or affidavit of defense, 20, 48
- Pleadings filed for delay, 20, 50
- Statutory provisions, 20, 48
- Subsequent pleadings, 20, 45
- Under inherent power of court, 20, 44

Trial, see *infra*, At and after trial.

Verification, 20, 15

Affidavit of truth of plea, 20, 76

Verified answers, 20, 39

Vexatious pleadings, 20, 8

Witnesses:

- Examination of parties or witnesses, 20, 75

SHERIFFS AND CONSTABLES, 20, 111

Abatement, 20, 168

Actions (see *infra*, Summary proceedings):

- Action for money in officer's hands, 20, 129
- Action on bond, 20, 131
- Assumpsit, 20, 129
- Property lawfully sold under mesne process, 20, 130
- Trespass on case, 20, 129

SHERIFFS AND CONSTABLES, *cont'd.*Actions, *cont'd.*

Action in aid of process, 20, 115

Action on official bond, 20, 120

Money collected by officer, 20, 131

Wrongful levy, 20, 127

Collection of fees and costs, 20, 117

Deputy, 20, 116

Indemnity bond, 20, 116

Actions against, 20, 119

Action for money in officer's hands, see *infra*, Action for money in officer's hands.

Common-law remedy, 20, 120

Criminal cases, 20, 157

Declaration and complaint, see *infra*, Declaration and complaint.

Failure to execute and return, 20, 122

False return, 20, 128

Final process, 20, 123

Findings, 20, 158

Indictment, 20, 157

In general, 20, 119

Joinder of causes, 20, 131

Judgment, 20, 158

Jurisdiction, 20, 131

Official bond, 20, 120

Parties, see *infra*, Parties.

Penal actions, 20, 122

Plea or answer, see *infra*, Plea or answer.

Prior judgment and leave to sue under statute, 20, 121

Process, see *infra*, Summons and process.

Rejoinder, 20, 157

Replication, 20, 156

Venue, 20, 131

Verdict, 20, 158

Wrongful taking of or levy upon property, see *infra*, Wrongful taking of or levy upon property.

Actions dependent upon right of possession, 20, 113

In general, 20, 113

In whose name brought, 20, 115

Replevin, 20, 114

Trove and conversion, 20, 113

Amendments:

Declaration and complaint, 20, 150

Appeal, 20, 179

Assault and battery, 2, 846

Assumpsit:

Action for money in officer's hands, 20, 129

Attachment for contempt, 20, 118

Bail and recognizance, 3, 169, 178

Power of sheriff to take bail, 3, 198

SHERIFFS AND CONSTABLES, SHERIFFS AND CONSTABLES,
cont'd.

Change of venue, 4, 419
Contempt, 20, 118
 Defense, 4, 790
Costs, 20, 179
 Action for collection, 20, 117
Criminal procedure, 20, 157
Death:
 Death of defendant in actions
 against sheriffs, 5, 834
 Death of plaintiff, 5, 811
Declaration and complaint, 20, 140
 Amendment, 20, 150
 Anticipating defense, 20, 142
 Cause of action, 20, 140
 Damage, 20, 147
 Evidence of title, 20, 142
 Exception of penal statute, 20,
 143
 False return, 20, 148
 Official character and acts under
 process, 20, 143
 Acts of deputy, 20, 143
 Individual liability, 20, 143
 Official character, 20, 144
 Right dependent upon offi-
 cial act or default, 20, 144
 Refusal on demand to surrender
 property seized, 20, 142
 Right of property or possession,
 20, 141
 Seizure of exempt property, 20,
 142
 Title, 20, 140
 Trespass, 20, 141
 Trove, 20, 141
*Delivery bonds, see FORTHCOMING AND
DELIVERY BONDS.*
Deputy:
 Action by sheriff against deputy,
 20, 116
 Amendment, 20, 150
 Declaration and complaint, 20,
 143
 Joinder of parties, 20, 135
 Parties defendant, 20, 134
 Summary proceedings against,
 20, 160
Detinue:
 Wrongful taking of or levy upon
 property, 20, 126
Distringas, writ of, 7, 36
Escape, 7, 932, 933
 Officer's remedies, 7, 939
Exceptions and objections, 8, 302
*Executions, see EXECUTIONS; and see
infra, Wrongful taking of or levy
upon property.*
False return, 20, 128, 146, 148
Fees:
 Action for collection, 20, 117
Findings, 20, 158
Index Pl. & Pr. — 65

cont'd.
*Forthcoming and delivery bonds, see
FORTHCOMING AND DELIVERY
BONDS.*

General issue, 20, 151
Indemnity, 20, 125
 Action upon indemnity bond, 20,
 116
 Bringing in and substituting in-
 demnitors, 20, 137
 Cause of action stated, 20,
 140
 Discretion of court, 20, 139
 Indemnitor's bond executed
 after levy and action
 against sheriff, 20, 139
 Opportunity to defend, 20,
 138
 Statutory provisions, 20, 137
 Strict construction, 20, 138
 Summary proceedings against
 indemnitors, 20, 160
Indictments, 20, 157
Interpleader:
 Bill by sheriff, 11, 450
Issues to the jury, 20, 176
Joinder of counts and causes, 20, 131,
 174
Joinder of parties:
 Defendant, 20, 135
 Indemnitors, 20, 137
 In general, 20, 135
 Joint trespassers, 20, 135
 Principal and surety, 20, 136
 Sheriff and deputy, 20, 135
 Plaintiff, 20, 133
Judgments, 20, 159, 177
Judicial sales (see JUDICIAL SALES),
 12, 49
Jurisdiction (see *infra*, Summary
 proceedings), 20, 131
*Justification, see infra, Plea or an-
swer.*
*Levy, see infra, Wrongful taking of
or levy upon property.*
Limitation of actions, 20, 156
Mandamus, 20, 119
*Money, see infra, Action for money
in officer's hands.*
*Motion, see infra, Summary proceed-
ings.*
Names:
 In whose name action depend-
 ent upon right of possession
 brought, 20, 115
*Notice, see infra, Summary proceed-
ings.*
*Obstructing justice, see OBSTRUCTING
JUSTICE.*
Official bonds (see *infra*, Action on
 official bond):
 Action on official bond, 20, 120

SHERIFFS AND CONSTABLES, SHERIFFS AND CONSTABLES.

cont'd.

Official character, see infra, Declaration and complaint.

Parties, 20, 132

Defendant, 20, 134

Acts of deputy, 20, 134

Indemnitors, 20, 137

Joinder, 20, 135

Joinder of principal and surety, 20, 136

Joinder of sheriff and deputy, 20, 135

Opportunity to defend, 20, 138.

Principal and agent, 20, 135

Strict construction of statute providing for substitution of indemnitors, 20, 138

Plaintiff, 20, 132

Action on official bond, 20, 132

Institution of proceedings by public authority, 20, 132

Joinder, 20, 133

Party aggrieved, 20, 133

Substitution of parties, see SUBSTITUTION OF PARTIES.

Summary proceedings, see infra, Summary proceedings.

Party aggrieved, 20, 133

Penalties and penal actions, 20, 122

Plea or answer, 20, 151

General denial or general issue, 20, 151

Justification under process, 20, 151

Assumpsit for money paid under void judgment, 20, 152

Fraud, 20, 153

Identity of writ, 20, 152

In general, 20, 151

One having no control over the process, 20, 155

Property claimed by stranger, 20, 152

Showing property subject to process, 20, 152

Showing return, 20, 154

Suit by stranger, 20, 153

Valid judgment for execution or debt for attachment, 20, 153

Matters occurring after issuance of attachment, 20, 156

Statute of limitations, 20, 156

Summary proceedings, 20, 175

Possession, see infra, Actions dependent upon right of possession.

Proceedings against, 20, 118

Proceedings by, 20, 113

cont'd.

Process:

Justification under process, see infra, Plea or answer.

Records, 20, 178

Rejoinder, 20, 157

Replevin:

Actions dependent upon right of possession, 20, 114

Wrongful taking of or levy upon property, 20, 126

Replications and replies, 20, 156

Resistance to officer, see OBSTRUCTING JUSTICE.

Returns, see RETURNS.

False return, 20, 128, 146, 148

Showing return, 20, 154

Revival of judgments.

Summary proceedings, 20, 168

Rule against, 20, 118

Service of process (see SERVICE OF PROCESS).

Service on sheriff or constable, 20, 131

Substitution of parties, see SUBSTITUTION OF PARTIES.

Summary proceedings, 20, 159

Abatement and revival, 20, 168

Appeal, 20, 179

Costs, 20, 179

Cumulative remedy, 20, 163

Issues, 20, 176

Judgment, 20, 177

Jurisdictional facts, 20, 176

Jurisdiction and venue, 20, 164

Amount in controversy, 20, 164

Court having control of process, 20, 164

Execution directed to sheriff of another county, 20, 164

Jurisdiction expressly conferred, 20, 164

Notice and motion, 20, 168

Certainty to a common intent, 20, 172

Credits indorsed on execution, 20, 173

Joinder of causes, 20, 174

Limitation of remedy, 20, 170

Motion confined to time designated in notice, 20, 171

Nature, 20, 169

Necessity of notice, 20, 168

Objection, 20, 172

Pleading, 20, 172

Showing election as to penalties, 20, 174

Statement of cause in general, 20, 171

Sufficiency of notice, 20, 171

SHERIFFS AND CONSTABLES,

cont'd.

- Summary proceedings, *cont'd.*
 - Notice and motion, *cont'd.*
 - Summons and declaration, 20, 169
 - Time, 20, 170
 - Time prescribed by statute, 20, 170
 - Variance, 20, 172
 - Waiver of notice by appearance, 20, 170
- Parties, 20, 165
 - Defendant, 20, 166
 - Plaintiff, 20, 165
 - Principal and sureties, 20, 165
- Plea or answer, 20, 175
- Provisions of statute, 20, 159
 - Actual damages, 20, 160
 - Against indemnitors, 20, 160
 - By sheriff against deputy, 20, 160
 - Construction of statutes, 20, 161
 - Continuance of original proceedings, 20, 160
 - Cumulative remedy, 20, 163
 - In general, 20, 159
 - Particular process, 20, 162
 - Penalty, 20, 160
- Record, 20, 178
- Review, 20, 179
- Trial, 20, 176
- Verdict, 20, 177
- Summons and process (see SUMMONS AND PROCESS):
 - Action in aid of process, 20, 115
 - Service upon sheriff, 20, 131
- Survival of actions, 21, 354
 - For their own misfeasance, 21, 354
 - For the misfeasance of their deputies, 21, 355
- Trespass:
 - Declaration and complaint, 20, 141
 - Wrongful taking of or levy upon property, 20, 125
- Trespass on the case:
 - Action for money in officer's hands, 20, 129
- Trover and conversion:
 - Actions dependent upon right of possession, 20, 113
 - Declaration and complaint, 20, 141
 - Wrongful taking of or levy upon property, 20, 125
- United States courts, 20, 131
- Variance, 20, 172
- Venire facias, 12, 334

SHERIFFS AND CONSTABLES,

cont'd.

- Venue (see *infra*, Summary proceedings), 20, 131
- Verdict, 20, 159, 177
- Wrongful taking of or levy upon property, 20, 123
 - Abuse of authority after taking, 20, 125
 - Action after return, 20, 124
 - Action on bond, 20, 127
 - Detinue, 20, 126
 - Effect of statutory remedy, 20, 125
 - Indemnity bond, 20, 125
 - Replevin, 20, 126
 - Trespass, 20, 123
 - Trover, 20, 123
- SHERIFFS' SALES,** 20, 180
 - See JUDICIAL SALES.
 - Acknowledgment:
 - Certificate, 20, 224
 - Actions, see *infra*, Remedies against purchaser; Remedies of purchaser.
 - Adjournment, 20, 208
 - At instance of plaintiff, 20, 209
 - Change of place of sale, 20, 209
 - Discretion of officer, 20, 208
 - Effect of adjournment, 20, 210
 - Notice of adjournment, 20, 210
 - Fulness of original notice, 20, 210
 - Public proclamation, 20, 210
 - Power to adjourn, 20, 208
 - Return of sale, 20, 226
 - When sale should be adjourned, 20, 209
 - Withdrawal of bid, 20, 210
 - Advertisements, see *infra*, Notice of sale.
 - Amendments:
 - Certificate, 20, 224
 - Deed, 20, 228
 - Appeals:
 - Confirmation, 20, 227
 - Appraisement, 20, 190
 - Amendment, 20, 193
 - Manner of making appraisement, 20, 192
 - Necessity of appraisement, 20, 190
 - Oath of appraisers, 20, 191
 - Objections to appraisement, 20, 193
 - Qualifications of appraisers, 20, 191
 - Return of appraisement, 20, 192
 - Time of making, 20, 193
 - Upon what writ, 20, 192
 - Waiver of appraisement, 20, 190
 - Auction, 20, 214
 - Auctioneer, 20, 212

SHERIFFS' SALES, *cont'd.*

- Bids (see *infra*, Withdrawal of bid):
 - Nonpayment of highest bid, 20, 219
 - Sale to highest bidder, 20, 218
- Bills in equity (see *infra*, Vacating and setting aside sale), 20, 230
- Bills of interpleader, 20, 230
- By whom made, 20, 210
 - Employment of auctioneer, 20, 212
 - Expiration of term of office, 20, 212
 - Officer of county, 20, 210
 - Officer or deputy, 20, 211
 - Where sheriff is a party, 20, 211
- Cash or credit, 20, 219
- Certificate of sale, 20, 223
 - Acknowledgment, 20, 224
 - Amendment, 20, 224
 - Effect, 20, 225
 - Necessity of certificate, 20, 223
 - Recording, 20, 224
 - Requisites of certificate, 20, 223
- Conduct of sale, 20, 213
 - Auction, 20, 214
 - Bid*, see *infra*, Bids.
 - Cash or credit, 20, 219
 - Discretion of officer, 20, 214
 - Division of tract into parcels, 20, 214
 - Following direction of execution, 20, 213
 - Imposition of sale, 20, 214
 - In general, 20, 213
 - Interest sold, 20, 220
 - Order of offering, 20, 220
 - Public auction, 20, 214
 - Sale in parcels or en masse*, see *infra*, Sale in parcels or *en masse*.
 - Statutory requirements, 20, 213
 - Withdrawal of bid*, see *infra*, Withdrawal of bid.
- Confirmation of sale, 20, 226
 - Appeal, 20, 227
 - Matters determinable, 20, 227
 - Motion to confirm, 20, 226
 - Necessity of confirmation, 20, 226
 - Notice of motion, 20, 227
 - Time of confirmation, 20, 227
 - Who may make motion, 20, 226
 - Who may object, 20, 227
- Conflicting claims to proceeds, 20, 229
 - Appeal from order of distribution, 20, 231
 - Bill in equity, 20, 230
 - Bill of interpleader, 20, 230
 - Distribution of surplus, 20, 231
 - Motion or rule against officer, 20, 230

SHERIFFS' SALES, *cont'd.*

- Conflicting claims to proceeds, *cont'd.*
 - Notice of application for distribution, 20, 230
 - Parties to application for distribution, 20, 231
 - Power of court to adjust, 20, 229
 - Remedies of claimant, 20, 230
 - Return asking order of distribution, 20, 229
- Costs, 20, 242
- Creditors' bills:
 - Suits by purchasers at execution sale to have fraudulent conveyance set aside, 5, 405
- Death of party, 20, 186
 - Death of defendant, 20, 186
 - Death of plaintiff, 20, 186
 - Validity of sale under execution issued after death, 20, 187
- Deed, 20, 227
 - Amendment of deed, 20, 228
 - Compelling execution of, 20, 227
- Definition, 20, 184
- Deputy, 20, 211
- Distribution of proceeds, 20, 228
 - Conflicting claims to proceeds*, see *infra*, Conflicting claims to proceeds.
 - Distribution of surplus, 20, 231
 - Payment into court, 20, 228
- Ejectment, 20, 231
 - Purchasers at execution sales, 7, 294
- En masse*, see *infra*, Sale in parcels or *en masse*.
- Failure of title*, see *infra*, Remedies of purchaser.
- Fraud*, see *infra*, Vacating and setting aside sale.
- Funds and deposits in court, 20, 229
- Hour of sale, 20, 207
- Impediments to sale, 20, 185
 - Appointment of receiver, 20, 186
 - Death of party*, see *infra*, Death of party.
 - Rule to open judgment, 20, 185
 - Satisfaction of judgment, 20, 185
- Injunction against sale, 20, 187
 - Jurisdiction, 20, 187
 - Parties, 20, 189
 - Pleading, 20, 189
 - Relief to strangers, 20, 188
- Insane persons*, see INSANE PERSONS.
- Interest sold, 20, 220
- Judgments:
 - Rule to open judgment, 20, 185
 - Satisfaction of judgment, 20, 185
- Judicial sale distinguished from, 20, 184
- Motions*, see *infra*, Redemption from sale; Remedies against purchaser; Vacating and setting aside sale.

SHERIFFS' SALES, *cont'd.*

- Necessity of making sale, 20, 185
- Notice of adjournment, *see infra*, Adjournment.
- Notice of application for distribution, 20, 231
- Notice of motion for vacating and setting aside sale, 20, 239
- Notice of motion to confirm sale, 20, 227
- Notice of resale, 20, 222
- Notice of sale, 20, 193
 - Designating place of sale, 20, 196
 - Designating time of sale, 20, 196
 - Effect of want of notice, 20, 200
 - Necessity of description of property, 20, 195
 - Necessity of notice in general, 20, 193
 - Necessity of notice to defendant, 20, 194
 - Newspaper advertisements, 20, 197
 - Objections to notice, 20, 199
 - Posting notice, 20, 197
 - Requisites of description, 20, 195
 - Requisites of notice, 20, 195
 - Setting out terms of sale, 20, 197
 - Waiver of notice, 20, 199
- Oath of appraisers, 20, 191
- Officers, *see infra*, By whom made; Conduct of sale.
- Official bonds:
 - Failure to sell property levied on, 15, 141
- Opening judgment, 20, 185
- Parcels, *see infra*, Sale in parcels or *en masse*.
- Payment into court, 20, 228
- Place of sale:
 - Adjournment, 20, 209
 - Changing place of sale by adjournment, 20, 209
- Place of sale of personalty, 20, 202
- Place of sale of realty, 20, 201
 - Discretion of officer, 20, 201
 - Door of county court house, 20, 201
 - Presence of chattels, 20, 202
 - Validity of sale at improper place, 20, 202
 - Validity of sale in absence of chattels, 20, 203
- Possession, *see infra*, Remedies of purchaser.
- Public officers, *see infra*, By whom made.
- Purchasers, *see infra*, Remedies of purchaser.
- Receivers:
 - Appointment of receiver, 20, 186
- Recording certificate, 20, 224

SHERIFFS' SALES, *cont'd.*

- Redemption from sale, 20, 235
 - Condition precedent, 20, 235
 - Decree, 20, 237
 - Extending time, 20, 236
 - Jurisdiction of equity, 20, 235
 - Parties, 20, 236
 - Pleading, 20, 237
 - Time of redemption, 20, 236
- Remedies against purchaser, 20, 234
 - By action, 20, 234
 - In general, 20, 234
 - Parties, 20, 234
 - Pleading, 20, 235
 - By motion, 20, 235
 - In general, 20, 235
 - Requisites of motion, 20, 235
- Remedies of purchaser, 20, 231
 - On failure of title, 20, 232
 - Against defendant in execution, 20, 233
 - Against officer, 20, 233
 - Against plaintiff in execution, 20, 233
 - In general, 20, 232
 - Procuring new execution, 20, 233
 - To obtain possession, 20, 231
 - Ejectment, 20, 231
 - Habere facias possessionem*, 20, 232
 - Statutory remedy, 20, 232
- Resale, 20, 221
 - Notice of resale, 20, 222
 - Power to resell, 20, 221
 - Time of resale, 20, 222
- Return of appraisement, 20, 192
- Return of sale, 20, 225
 - Asking order of distribution, 20, 229
 - Description of property, 20, 226
 - Necessity of return, 20, 225
 - Requisites of return, 20, 226
 - Showing adjournment, 20, 226
 - Showing election between sale and extent, 20, 226
- Sale in parcels or *en masse*, 20, 215
 - Failure to bid on separate parcels, 20, 217
 - Necessity of sale in parcels, 20, 215
 - Pleading, 20, 244
 - Property subject to mortgage, 20, 217
 - Sale in parcels impracticable, 20, 216
 - Validity of sale *en masse*, 20, 217
 - Waiver of right to sale in parcels, 20, 217
- Satisfaction of judgment, 20, 185
- Setting aside sale, *see infra*, Vacating and setting aside sale.
- Sundays and holidays, 20, 205

SHERIFFS' SALES, *cont'd.*

- Surplus, distribution, 20, 231
- Surplus money*, see **SURPLUS MONEY**.
- Time of motion for vacating and setting aside sale, 20, 238
- Time of redemption, 20, 236
- Time of resale, 20, 222
- Time of sale, 20, 204
 - Advertised time, 20, 205
 - After return day, 20, 206
 - Designation by statute, 20, 204
 - Hour of sale, 20, 207
 - Notice of sale, 20, 196
 - Sundays and holidays, 20, 205
- Title*, see *infra*, Remedies of purchaser.
- Vacating and setting aside sale, 20, 237
 - By bill in equity, 20, 242
 - Appeal, 20, 245
 - Concurrent jurisdiction of law and equity, 20, 243
 - Fraud, accident, or mistake, 20, 243
 - Fraud in selection of appraisers, 20, 244
 - Inadequate remedy at law, 20, 242
 - Irregularity in process or execution thereof, 20, 242
 - Jurisdiction, 20, 242
 - Laches, 20, 243
 - Parties, 20, 243
 - Pleading, 20, 244
 - Pleading and proof, 20, 245
 - Sale *en masse*, 20, 244
 - Want of service of execution, 20, 244
 - By motion, 20, 237
 - At or before return term of writ, 20, 239
 - Before acknowledgment of deed, 20, 239
 - Before expiration of period of redemption, 20, 239
 - Conditions precedent, 20, 238
 - Costs, 20, 242
 - Defendants to motion, 20, 241
 - Hearing of motion, 20, 242
 - Notice of motion in general, 20, 239
 - Notice of motion to execution defendant, 20, 240
 - Notice of motion to execution plaintiff, 20, 240
 - Notice of motion to purchaser, 20, 240
 - Reasonable time, 20, 238
 - Requisites of application in writing, 20, 241
 - Right to jury trial, 20, 242

SHERIFFS' SALES, *cont'd.*

- Vacating and setting aside sale, *con.*
 - By motion, *cont'd.*
 - Time of motion in general, 20, 238
 - To what court made, 20, 237
 - Who may make motion, 20, 240

- Power to vacate, 20, 237
- Withdrawal of bid, 20, 219
- Adjournment, 20, 210

SHIPPING, 20, 246

See **CARRIERS**.

- Attachment in state courts, 20, 249
- Amendment of declaration and complaint, 20, 251
- Bond for attachment, 20, 251
- Bond for discharge of vessel, 20, 252
- In general, 20, 249
- Notice of issuance and service of warrant, 20, 252
- Order to show cause, 20, 251
- Plea or answer, 20, 253
- Proceeds of sale, 20, 252
- Requisites of declaration or complaint, 20, 250
- Venue, 20, 250
- Warrant or writ, 20, 251
- Collision, 20, 254
 - Declaration in trespass on the case, 20, 255
 - Identification of goods, 20, 254
 - Jurisdiction of admiralty courts, 20, 254
 - Jurisdiction of state courts, 20, 254
 - Libel in admiralty, 20, 254
 - Petition of defendant under admiralty rule 59, 20, 254
- Liens*, see *infra*, Attachment in state courts; Scire facias.
- Pilotage, 20, 255
 - Form of action, 20, 256
 - Jurisdiction, 20, 255
- Salvage*, see **SALVAGE**.
- Scire facias, 20, 254
- Towage, 20, 259
 - Action in state court, 20, 260
 - Suits in admiralty courts, 20, 259
- United States courts:
 - Jurisdiction of state and federal courts, 20, 247
 - Building contracts and contracts for supplies, 20, 248
 - Contracts relating to vessels wholly engaged in internal commerce, 20, 249
 - In general, 20, 247
 - Mortgages, 20, 249
 - Non-maritime contracts or torts, 20, 248

SHIPPING, *cont'd.*

- Wharfage, 20, 260
- Actions in state courts to recover, 20, 260
- Suits in admiralty to recover, 20, 260

SHOP:

- Burglary, 3, 748

SHORT CAUSES, see CALENDARS AND TRIAL DOCKETS.**SHORT PLEAS, see PLEAS AT LAW.****SHOWING CAUSE, see ORDERS.****SHOWS, see THEATRES AND SHOWS.****SICKNESS:**

- Assumpsit, 2, 1011
- Contempt, 4, 790

SIDEWALKS, see STREETS AND HIGHWAYS.**SIGNATURE (see SUBSCRIBING PLEADINGS):**

- Abatement in pleading, 1, 28
- Affidavits (see AFFIDAVITS), 1, 321
- Amendments:

- Amended pleadings, 1, 644
- Attachments, 1, 687
- District attorney, 1, 692
- Executions, 1, 674
- Process, 1, 669

Answers in equity pleading, 1, 868

- Striking answer from the file, 1, 893

Appeal bonds and undertakings, 1, 973

- Joint appellees, 1, 974

Assignment of errors, 2, 960**Attachment, 3, 13**

- Officer, 3, 39

Bills in equity, see BILLS IN EQUITY.***Bills of exceptions, see BILLS OF EXCEPTIONS.*****Exceptions and objections, 8, 205****Final judgments and decrees, 2, 62*****Indictments, see INDICTMENTS.*****Revivor of suits and actions, 18, 1108****Statement of claim, 20, 584****Statement of facts on appeal, 20, 567, 569, 570, 577****Stipulations, 20, 652*****Summons and process, see SUMMONS AND PROCESS.*****Variance, 22, 608****Verdict, 22, 808**

- General rule as to signing verdict, 22, 898

- Rule by statute as to signing verdict, 22, 899

Verification, 22, 1046**Warrants, 22, 1088**

- In general, 22, 1088

- Place of signature, 22, 1089

- Signature in lead pencil, 22, 1089

- Warrants signed by clerk of court or city attorney, 22, 1089

SIMILITER, 20, 262**Addition of similiter, 20, 266**

- At what time, 20, 266

- By whom, 20, 266

- Criminal practice, 20, 267.

Arrest of judgment, 20, 264**Criminal procedure, 20, 265****Definition, 20, 263****Language, 20, 268****Nature, 20, 263****Necessity, 20, 263**

- In general, 20, 263

- Omission in civil cases, 20, 264

- Omission in criminal procedure, 20, 265

Payment, 16, 220**Refusal to add similiter, 20, 268****Requisites, 20, 268****Signature, 20, 269****Striking out, 20, 269****Sufficiency, 20, 268****Withdrawal, 20, 269****SIMILITUDE:**

- Counterfeiting, 5, 271

SIMULTANEOUS ACTION, 20, 270**See ANOTHER SUIT PENDING.****Actions in equity and at law, 20, 270****Election of remedies (see ELECTION OF REMEDIES), 7, 374****Right to pursue consistent remedies simultaneously, 20, 270****Suits simultaneously commenced, 20, 270****Two states, 20, 271****SISTER STATE JUDGMENTS, see JUDGMENTS.****SLANDER OF TITLE (see LIBEL AND SLANDER):**

- Damages, 5, 772

SOCIETIES AND CLUBS, 20, 272**See PARTNERSHIP; RELIGIOUS SOCIETIES; UNINCORPORATED SOCIETIES; WINDING UP.****Action against trustees before exhausting remedy against club, 20, 272****Actions by or against, 20, 272****Dissolution, 20, 273****Expulsion of members, 20, 273**

- Jurisdiction of courts, 20, 273

- Mandamus, 20, 273

Injunctions, 20, 272**Larceny, 12, 971****Mandamus, 20, 273**

- Illegality of expulsion, 13, 687

- Relator's petition in actions seeking reinstatement, 13, 687

Objection of want of capacity to sue as corporation, 20, 272***Religious societies, see RELIGIOUS SOCIETIES.*****Remedy for refusal to admit to membership, 20, 273**

SODOMY, 20, 274

Attempt:

Indictment for sodomy and conviction of attempt, 20 276

Bestiality, 20, 277

Charging offense, 20, 277

Description of animal, 20, 277

Indictment for sodomy and conviction of attempt, 20, 276

Indicement, information, or complaint, 20, 274

Averment of assault, 20, 276

Averment that act was felonious, 20, 276

Carnaliter cognovit, 20, 275

Conclusion, 20, 276

Description of offense, 20, 274

Name and description of person with whom committed, 20, 275

Time and place, 20, 275

Instructions, 20 276

Sentence, 20, 276

Several verdict and judgment, 20, 276

SOLICITING TO CRIME, see ATTEMPTS.**SPECIAL AND STRUCK JURIES**, 20, 278

Affidavit, 20, 285

Allowance, 20, 281

Allowance as of right, 20, 281

Discretion of court, 20, 282

In England, 20, 281

Under state statutes, 20, 281

Certification and delivery of list, 20, 292

Challenge, 20, 294

Before striking, 20, 294

Challenge for cause, 20, 294

Peremptory challenge, 20, 294

Civil cases, 20, 280

Costs, 20, 295

Court, discretion of, 20, 282

Court, order of, 20, 286

Criminal procedure, 20, 280

Definition, 20, 279

Demand, 20, 284

By whom made, 20, 285

Necessity for, 20, 284

When to be made under English practice, 20, 284

When to be made under statutory provisions, 20, 284

Discretion of court, 20, 282, 306

Formation of jury (see *infra*, Manner of selecting), 20, 293

Challenge, see *infra*, Challenge.

In general, 20, 293

Right to summon talesmen, 20, 294

History, 20, 279

Manner of selecting, 20, 286

In England, 20, 286

SPECIAL AND STRUCK JURIES,

cont'd.

Manner of selecting, *cont'd.*

In the United States, 20, 287

In general, 20, 287

Manner of striking, see *infra*,

Manner of striking.

Notice, 20, 287

Selection of list for striking, 20, 287

Manner of striking, 20, 290

Absence of party or failure to strike, 20, 291

In general, 20, 290

Number to be struck, 20, 291

Right of court to order striking of new jury, 20, 291

Notice, 20, 287

Number, 20, 288, 291

Orders, 20, 286

Origin, 20, 279

Purpose, 20, 280

Selection of list for striking, 20, 287

By whom selected, 20, 287

From what names selection made, 20, 288

Necessity for selection in presence of parties, 20, 288

Number to be selected, 20, 288

Right of each party to full panel, 20, 289

Summoning, 20, 292

Effect of failure to summon, 20, 293

Manner, 20, 292

Right to summon talesmen, 20, 294

Talesmen, 12, 394

SPECIAL APPEARANCE, see APPEARANCES.**SPECIAL ASSESSMENTS**, see LOCAL IMPROVEMENTS.**SPECIAL BAIL**, see BAIL AND RECOGNIZANCE.**SPECIAL CASE**, see AGREED CASE.**SPECIAL DAMAGES**, see DAMAGES.**SPECIAL FINDINGS**, see FINDINGS OF COURT; SPECIAL INTERROGATORIES TO JURIES; VERDICT.**SPECIAL INJUNCTIONS**, see INJUNCTIONS.**SPECIAL INTERROGATORIES TO JURIES**, 20, 296

Additional, 20, 317

Answers to interrogatories, 20, 335

Construction of answers, see *infra*,

Construction of answers.

Form and sufficiency, 20, 342

Conclusions, 20, 347

Definiteness and certainty, 20, 343

"Don't know," 20, 345

Responsiveness, 20, 342

SPECIAL INTERROGATORIES TO JURIES, *cont'd.* **SPECIAL INTERROGATORIES TO JURIES, *cont'd.***

Answers to interrogatories, *cont'd.*
 Form and sufficiency, *cont'd.*
 Signing by jury or foreman, 20, 346
 Written answers, 20, 346
 Necessity of answering, see *infra*, Necessity of answering.
 New trial for insufficient or evasive answer, 20, 371
 Remedy for insufficiency or want of answer, see *infra*, Remedy for insufficiency or want of answer.
 Repugnancy of answers, see *infra*, Repugnancy of answers.
 Appellate review, 20, 378
 Appealable orders, 20, 378
 Bill of exceptions, 20, 379
 Directing judgment or new trial, 20, 382
 Harmless error, 20, 380
 Motion for new trial, 20, 380
 Record, 20, 378
 Rules of decision, 20, 380
 Bills of exceptions, 20, 379
 Conclusions of answers, 20, 347
 Conditional, 20, 317, 320
 Construction of answers, 20, 366
 As a whole, 20, 369
 Entire record considered, 20, 368
 Presumption in favor of general verdict, 20, 367
 To support verdict, 20, 366
 Criminal procedure, 20, 314
 Definiteness and certainty, 20, 317, 343
 Definition, 20, 299
 Demurrers, 20, 303
 Directing verdict, 20, 382
 Discretion of court, 20, 308, 313, 316
 "Don't know," 20, 345
 Effect to cure errors, 20, 302
 Demurrer, 20, 303
 In general, 20, 302
 Instructions, 20, 304
 Form of interrogatories, 20, 317
 Alternative or disjunctive, 20, 319
 Assumption of facts, 20, 322
 Conditional on finding general verdict, 20, 320
 Interrogatories covered by others, 20, 322
 Leading questions, 20, 320
 Misleading, obscure, or ambiguous questions, 20, 319
 Number of interrogatories, 20, 323
 Objections to form, 20, 322
 Oral or written, 20, 321

Form of interrogatories, *cont'd.*
 Questions answerable by yes or no, 20, 318
 Rephrasing by court, 20, 320
 Sealed interrogatories, 20, 321
 Single, direct, and certain, 20, 317
 Uncertainty and indefiniteness, 20, 319
 Harmless error, 20, 340, 380
 Instructions, 20, 304
 Instructions as to interrogatories, 20, 332
 As to consistency of answers, 20, 334
 As to duty to answer, 20, 332
 As to what answers shall be given, 20, 333
 In general, 20, 332
 Instructing in writing, 20, 333
 Issue out of chancery distinguished, 20, 302
 Issues to the jury, 20, 302
 Judgments, see *infra*, Motion for judgment on special findings.
 Legal conclusions, 20, 326
 Materiality, 20, 327, 339
 Motion for judgment on special findings, 20, 375
 Form of motion, 20, 376
 Hearing and determination, 20, 377
 Necessity of moving, 20, 375
 Nature and object, 20, 299
 Necessity of answering, 20, 335
 Equivalent of negative finding, 20, 338
 General rule, 20, 335
 Harmless error, 20, 340
 Jurors not able to agree, 20, 336
 No evidence upon the subject, 20, 338
 Where evidence is insufficient, 20, 336
 Where no general verdict is returned, 20, 340
 Where question is immaterial, 20, 339
 Where special verdict is returned, 20, 342
 New trial, 20, 370
 Appellate review, 20, 380, 382
 Consistency of motions for new trial and for judgment, 20, 373
 Grounds, 20, 370
 Failure to submit interrogatories, 20, 370
 Inconsistency of answers, 20, 371
 Insufficiency of evidence to support finding, 20, 370

SPECIAL INTERROGATORIES TO JURIES, *cont'd.*

- New trial, *cont'd.*
 - Grounds, *cont'd.*
 - Insufficient or evasive answer, 20, 371
 - Motion should apply to general verdict, 20, 272
- Non obstante veredicto* (see *infra*, When judgment *non obstante veredicto* is proper), 20, 379
- Number of interrogatories, 20, 323
- Oral, 20, 317, 321
- Records, 20, 378, 379
- Remedy for insufficiency or want of answer, 20, 347
 - Compelling further answer, 20, 347
 - Compelling further answer after discharge or separation of jurors, 20, 348
 - Duty to court to compel proper answer, 20, 349
 - Reconsideration of whole case, 20, 351
 - Waiver of objections, 20, 352
 - Who may object, 20, 351
- Repugnancy of answers, 20, 354
 - To each other, 20, 354
 - To general verdict, 20, 354
 - General verdict remains, 20, 356
 - Special findings control, 20, 354
 - When judgment *non obstante veredicto* is proper, see *infra*, When judgment *non obstante veredicto* is proper.
- Requests for interrogatories, 20, 314
 - Additional interrogatories, 20, 317
 - Apt and proper time, 20, 315
 - Conditional or unconditional, 20, 317
 - Discretion of court, 20, 316
 - Form of request, 20, 317
 - Submission to adverse party, 20, 316
 - Time of request, 20, 314
 - Written, 20, 317
- Responsiveness to answer, 20, 342
- Right and duty to submit, 20, 304
 - At common law, 20, 304
 - Consent of parties, 20, 306
 - Discretion of court, 20, 306
 - In England, 20, 304
 - In United States, 20, 305
 - Necessity of general verdict, 20, 307
 - Under statutes, 20, 307
 - At request of parties, 20, 308
 - By court *sua sponte*, 20, 313

SPECIAL INTERROGATORIES TO JURIES, *cont'd.*

- Right and duty to submit, *cont'd.*
 - Under statutes, *cont'd.*
 - Court determines propriety of request, 20, 311
 - Criminal cases, 20, 314
 - In general, 20, 307
 - Submission discretionary, 20, 308
 - Submission mandatory, 20, 310
 - Where special verdict has been demanded, 20, 311
 - Withdrawing interrogatories, 20, 313
 - Sealed interrogatories, 20, 321
 - Signing of answers by jury or foreman, 20, 346
 - Special verdict*, see **VERDICT**.
 - Special verdicts and special findings distinguished, 20, 300
 - Substance of interrogatories, 20, 324
 - Conclusions of law, 20, 326
 - Controverted facts, 20, 326
 - Evidentiary facts, 20, 330
 - Facts not in evidence, 20, 331
 - Facts not involved in issue, 20, 331
 - Materiality of facts, 20, 327
 - Particular questions of fact, 20, 324
 - What questions are material, 20, 328
 - Venire de novo*, 20, 374
 - When judgment *non obstante veredicto* is proper, 20, 357
 - Absolute irreconcilability necessary, 20, 359
 - Affirmative showing of inconsistency on record, 20, 357
 - All facts to authorize adverse conclusion must appear, 20, 361
 - Conclusions, 20, 365
 - Contradictory findings, 20, 364
 - Evidentiary facts, 20, 363
 - Findings and verdict for same party, 20, 365
 - Immaterial findings, 20, 363
 - Meaning of inconsistency, 20, 357
 - Special findings which cannot be reconciled, 20, 358
 - Sufficiency of findings to support judgment *non obstante*, 20, 361
 - Uncertain findings, 20, 364
 - Written answers, 20, 346
 - Written or oral, 20, 317, 321
- SPECIAL ORDERS**, see **ORDERS**.
- SPECIAL PLEAS** (see **PLEAS AT LAW**):
- Release*, see **RELEASE**.

SPECIAL PROCEEDINGS:

- Actions, 1, 112
 - Actions distinguished from, 1, 112
 - Alimony, 1, 114
 - Attorneys, 1, 113
 - Bastardy, 1, 114
 - Certiorari, 1, 113
 - Condemnation of land, 1, 114
 - Divorce, 1, 114
 - Dower, 1, 114
 - Drainage proceedings, 1, 114
 - Drains and sewers, 1, 114
 - Example, 1, 115
 - Executors and administrators, 1, 112
 - Guardians, 1, 114
 - Habeas corpus, 1, 114
 - Highway proceedings, 1, 113
 - Impeachment of judgments, 1, 114
 - Insanity, 1, 114
 - Judgments, 1, 114
 - Judgments and impeachment of judgments, 1, 114
 - Mandamus, 1, 113
 - Miscellaneous cases, 1, 115
 - Partition, 1, 113
 - Probate proceedings, 1, 112
 - Proceedings to charge stockholders, 1, 115
 - Prohibition, 1, 113
 - Stockholders, 1, 114
 - Street proceedings, 1, 113
 - Trusts and trustees, 1, 114
 - Vacation and setting aside of judgments, 1, 114
- Additional allowances of costs, 1, 225
- Boundaries and fences, 3, 674
- Certiorari, 4, 10, 87, 323
- Contempt, 4, 771
- Costs, 5, 224
- Defaults:
 - Discretion of court to open default, 6, 202
- Dismissal, discontinuance, and nonsuit, 6, 866
- Eminent domain, 7, 467
- Mandamus:
 - Whether a special proceeding, 13, 492

SPECIAL RELIEF, see PRAYERS FOR RELIEF.

SPECIAL REPLICATIONS, see REPLICATIONS AND REPLIES.

SPECIAL TERM, see ADJOURNMENTS; TERMS AND SESSIONS OF COURT.

SPECIALTIES, see COVENANT.

SPECIAL TRAVERSE, see PLEAS AT LAW.

SPECIAL VERDICT, see VERDICT.

SPECIFICATIONS, see ASSIGNMENT OF ERRORS; BILLS OF PARTICULARS; NOTICE OR BRIEF STATEMENT OF DEFENSE; STATEMENT OF FACTS ON APPEAL.

SPECIFIC PERFORMANCE, 20, 385

- Accounts and accounting, 20, 496
- Adequate remedy at law, 20, 400
 - Bills for damages, 20, 403
 - Bills for possession, 20, 403
 - Damages uncertain, 20, 402
 - Examples, 20, 402
 - General rules, 20, 400
 - Objection on ground of adequate remedy at law, 20, 404
- Agency:
 - Execution of contract, 20, 440
 - Parties, 20, 418
 - Who may maintain suit, 20, 429
- Alteration of instruments*, see *infra*, Reformation of instruments.
- Amendments, 20, 463
- Answers*, see *infra*, Plea or answer.
- Appellate review, 20, 521
 - Appealable orders or decrees, 20, 521
- Common-law remedies in Pennsylvania, 20, 541
- Failure to object below, 20, 522
- Findings of law and fact, 20, 522
- In general, 20, 521
- Statutory proceedings to enforce contracts of decedents, 20, 549
- Theory of the case, 20, 522
- Arbitration and award*, see *infra*, Awards.
- Assignments:
 - Parties, 20, 417
 - Who may maintain suit, 20, 426
- Awards, 3, 150
 - Acquiescence in award necessary, 3, 153
 - Agreement to arbitrate, 3, 151
 - Allegations, 3, 153
 - Award concerning land, 3, 152
 - Award for payment of money, 3, 151
 - Bill, 3, 153
 - Court of equity, 3, 151
 - Demurrer, 3, 154
 - In general, 3, 150
 - Jurisdiction, 3, 150
 - Parties, 3, 153
 - Time to institute suit, 3, 153
- Bill, petition, or complaint, 20, 434
 - Amendments, 20, 463
 - Averments as to contract, 20, 439
 - Averments as to equity jurisdiction, 20, 438
 - Averments to charge heirs or devisees, 20, 460

SPECIFIC PERFORMANCE, *con.*

- Bill, petition, or complaint, *cont'd.*
 - Averments to charge subsequent purchaser, 20, 460
 - Consideration of contract, 20, 445
 - Cross-bill or cross-complaint, 20, 464
 - Defendant's ability to perform, 20, 457
 - Defendant's title, 20, 451
 - Definiteness and certainty, 20, 435
 - Demand, 20, 456
 - Description of parties, 20, 437
 - Description of property, 20, 449
 - Execution of contract, 20, 439
 - Execution of contract by agent, 20, 440
 - Exhibits, 20, 460
 - In general, 20, 434
 - Laches, 20, 449
 - Limitations, 20, 449
 - Miscellaneous averments in special cases, 20, 460
 - Multifariousness, 20, 436
 - Name of parties, 20, 437
 - Nonperformance or breach by defendant, 20, 457
 - Offer to do equity, 20, 458
 - Particular averments, 20, 437
 - Performance or tender by plaintiff, 20, 452
 - Plaintiff's title, 20, 450
 - Prayer for relief, 20, 461
 - Statute of frauds, 20, 446
 - Tender by plaintiff, 20, 452
 - Terms of contract in general, 20, 440
 - Validity of contract, 20, 445
 - Variance, 20, 442, 462
 - Variance as to description of property, 20, 450
 - Varying terms of contract, 20, 444
 - Verification, 20, 462
- Bills of particulars, 3, 549
- Bona fide* purchaser, 20, 471
- Common-law remedies in Pennsylvania, 20, 527
 - Action substantially equitable in character, 20, 530
 - Adaptation and use of common-law remedies, 20, 527
 - Against whom maintainable, 20, 535
 - Aided by verdict, 20, 536
 - Appeal, 20, 541
 - Bringing deed or purchase money into court, 20, 537
 - Costs, 20, 542
 - Effect of grant of equity jurisdiction, 20, 532
 - Ejectment as a remedy, 20, 529

SPECIFIC PERFORMANCE, *con.*

- Common-law remedies in Pennsylvania, *cont'd.*
 - Enforcement of judgment or decree, 20, 540
 - Judgment or decree, 20, 540
 - Parties, 20, 533
 - Pleading, 20, 536
 - Process, 20, 536
 - Province of court and jury, 20, 537
 - Scope of section, 20, 527
 - Verdict, 20, 539
 - Who may maintain, 20, 533
- Complaint*, see *infra*, Bill, petition, or complaint.
- Conflict of law, 20, 405
- Consideration:
 - Recovery of, 20, 499
 - Return of, 20, 494
- Contempt, 20, 519
- Contracts (see *infra*, Bill, petition, or complaint):
 - Decree conforming with, 20, 508
 - Statutory proceedings to enforce contracts of decedents, see *infra*.
 - Statutory proceedings to enforce contracts of decedents.
- Costs, 20, 523
 - Common-law remedies in Pennsylvania, 20, 542
 - Decree without costs, 20, 525
 - Discretion of court, 20, 523
 - Dismissal without costs, 20, 526
 - Extra allowance, 20, 527
 - Heirs or devisees, 20, 527
 - Necessary and proper parties, 20, 526
 - Party at fault, 20, 525
 - Statutory proceedings to enforce contracts of decedents, 20, 549
 - Successful party, 20, 524
 - Time of imposing costs, 20, 527
- Courts*, see *infra*, Discretionary character.
- Creditors:
 - Who may maintain suit, 20, 426
- Cross-bills, 5, 634, 643; 20, 464
 - Necessity of, 20, 502
- Damages, 20, 505
- Damages in addition to specific performance, 20, 490
- Death, 20, 433
- Decedents*, see *infra*, Statutory proceedings to enforce contracts of decedents.
- Decree, 20, 478
 - Accounts, 20, 496
 - Affirmative relief to defendant, 20, 496
 - Consideration recovered, 20, 499

SPECIFIC PERFORMANCE, *con.*Decree, *cont'd.*Affirmative relief to defendant, *cont'd.*

Conveyance by plaintiff, 20, 496

Imposition of terms on plaintiff, 20, 500

In general, 20, 496

Necessity of cross-bill, 20, 502

Payment by plaintiff, 20, 497

Allowance for improvements, 20, 495

Alternative decrees, 20, 506

Cancellation of instruments, 20, 480

Common-law remedies in Pennsylvania, 20, 540

Conditional decrees, 20, 506

Conformity to pleadings and proof, 20, 506

Conformity to contract, 20, 508

Decree against strangers, 20, 511

Decree against wife of vendor, 20, 510

Decree varying contract, 20, 509

Findings, 20, 508

Illustrations, 20, 507

In general, 20, 506

Prayer for relief, 20, 511

Relief to strangers to suit, 20, 511

Damages, 20, 505

Damages in addition to specific performance, 20, 490

Compensation for deficiency, 20, 491

Compensation for delay, 20, 490

Compensation for incumbrances, 20, 492

Compensation for wife's refusal to join in conveyance, 20, 492

Damages for past breaches, 20, 493

Fraud, 20, 493

In general, 20, 490

Several covenants, 20, 493

Damages in lieu of specific performance, 20, 482

Assessment of damages, 20, 489

Default of plaintiff, 20, 488

Discretion of court, 20, 484

Inability to perform, 20, 485

Jurisdiction to award, 20, 482

Mutual mistake, 20, 488

SPECIFIC PERFORMANCE, *con.*Decree, *cont'd.*Damages in lieu of specific performance, *cont'd.*

Option to take land or proceeds, 20, 489

Performance refused for reasons arising *pendente lite*, 20, 487

Power incidental and ancillary, 20, 483

Specific performance inequitable, 20, 488

Waiver of specific performance, 20, 489

When granted or refused, 20, 485

Decree moulded to suit circumstances, 20, 478

Decree on pleadings, 20, 515

Dismissal in general, 20, 520

Dismissal without prejudice, 20, 520

Enforcement by contempt, 20, 519

Enforcement by injunction, 20, 518

Enforcement of decree, 20, 517

Execution of instruments, 20, 480

Finality, 20, 504

Form, 20, 504

Heirs, 20, 505

Infants, 20, 504

Injunction, 20, 496

Lien for reimbursement, 20, 495

Mutuality, 20, 504

Nature of relief granted, 20, 478

Opening, vacating, and amending judgments, 20, 515

Performance of decree, 20, 516

Reformation or alteration of instruments, 20, 480

Rendition and entry, 20, 514

Restoring *status quo*, 20, 493

Retaining jurisdiction to do complete equity, 20, 479

Return of consideration, 20, 494

Sale to raise purchase money, 20, 481

Statutory proceedings to enforce contracts of decedents, 20, 548

Sufficiency, 20, 504

Definiteness and certainty in pleadings, 20, 435

Definition, 20, 380

Demand, 20, 456

Demurrers, 20, 465

General or special demurrer, 20, 466

In general, 20, 465

Who may maintain suit, 20, 427

Discretionary character, 20, 390

Arbitrary discretion, 20, 391

SPECIFIC PERFORMANCE, *con.*

- Discretionary character, *cont'd.*
 - Controlled by settled principles, 20, 393
 - Enforcement of trust, 20, 395
 - General rule, 20, 390
 - Imposing equitable terms, 20, 395
 - Not demandable as matter of right, 20, 394
 - Particular circumstances control, 20, 394
- Dismissal, discontinuance, and non-suit, 20, 520
 - Dismissal without costs, 20, 526
 - Dismissal without prejudice, 20, 520
- Election of remedies, 20, 398
 - In general, 20, 398
 - Judgment at law, 20, 399
 - Prosecuting claims at law, 20, 398, 399
- Eminent domain:
 - Action on award and judgments 7, 628
- Equitable character of remedy, 20, 389
- Equitable defenses, 7, 804
- Executors and administrators:
 - As parties, 20, 421
 - Joinder of parties, 20, 432
 - Who may maintain suit, 20, 427
- Exhibits, 20, 460
- Extra allowance, 20, 527
- Findings, 20, 478
- Foreclosure of mortgages:
 - Purchaser, 9, 214
- Former adjudication, 20, 398, 399
- Fraud, 20, 470, 493
- Frauds, statute of, 20, 446
- Funds and deposits in court, 20, 476, 537
- Hearing or trial, 20, 476
 - By court or jury, 20, 475
 - Findings, 20, 478
 - Instructions, 20, 477
- Heirs, 20, 505
 - As parties, 20, 421
 - Who may maintain suit, 20, 427
- Husband and wife:
 - As parties, 20, 420
 - Joinder of parties, 20, 433
 - Who may maintain suit, 20, 429
- Illegality, 20, 470
- Improvements, 20, 495
- Infants, 20, 504
 - Ancestor's contract, 10, 770
- Injunctions, 20, 397, 475, 496, 518
 - Injunction and specific performance compared, 20, 397
 - Mandatory injunction, 20, 397
 - Negative covenants, 20, 397
- In rem* or *in personam*, 20, 398

SPECIFIC PERFORMANCE, *con.*

- Instructions, 20, 477
- Insurance, 11, 378
- Interlocutory proceedings, 20, 473
 - Appointment of surveyor, 20, 476
- Injunctions, 20, 475
- Motions, 20, 475
- Orders, 20, 475
- Payment of consideration into court, 20, 476
- Receivers, 20, 475
- Reference, 20, 473
- Joinder of parties, 20, 431
 - Defendants, 20, 433
 - Plaintiffs, 20, 431
 - Heirs, 20, 432
 - Husband and wife, 20, 433
 - In general, 20, 431
 - Personal representatives, 20, 432
 - Persons with conflicting interests, 20, 432
 - Purchasers of separate parcels, 20, 432
 - Vendee and subvendee, 20, 432
 - Widow, 20, 432
- Judgments (see *infra*, Decree):
 - Actions for specific performance on judgments, 11, 1114
 - Equitable relief against judgments, 11, 1175
- Judicial sales, 19, 917
- Jurisdiction (see *infra*, Venue), 20, 400
 - Allegations in bill, petition, or complaint, 20, 438
 - Justices of the peace, 20, 405
 - Of parties or subject-matter (see *infra*, Venue), 20, 405
 - Decree *in personam*, 20, 406
 - Parties but not subject-matter within jurisdiction, 20, 405
 - Subject-matter but not parties within jurisdiction, 20, 407
 - Particular courts, 20, 404
- Jurisdiction of equity, 20, 400
 - Adequate remedy at law*, see *infra*.
 - Adequate remedy at law*.
 - In general, 20, 400
 - Miscellaneous grounds of jurisdiction, 20, 404
 - Other grounds of jurisdiction, 20, 404
- Jury, 20, 476
 - Statutory proceedings to enforce contracts of decedents, 20, 548
- Justices of the peace, 20, 405
- Laches, 20, 449, 471
- Lien for reimbursement, 20, 495

SPECIFIC PERFORMANCE, *con.*

- Limitations, 20, 449, 471
- Local or transitory, 20, 400
- Mistake:
 - Damages in lieu of specific performance, 20, 488
- Mortgages:
 - Mortgagor and mortgagee as parties, 20, 419
- Motions, 20, 475
- Multifariousness, 20, 436
- Nature of remedy, 20, 389
- Necessary and proper parties, 20, 410
 - Assignment as collateral security, 20, 417
 - Assignor and assignee, 20, 416
 - Creditors, 20, 420
 - Devisees, 20, 421
 - General rules, 20, 410
 - Heirs, 20, 421
 - Husband and wife, 20, 420
 - Miscellaneous cases, 20, 423
 - Mortgagor and mortgagee, 20, 419
 - Particular persons, 20, 414
 - Parties and privies, 20, 410
 - Personal representatives, 20, 422
 - Persons interested, 20, 412
 - Persons whose interest has terminated, 20, 414
 - Principal and agent, 20, 418
 - Strangers to the contract, 20, 411
 - Subpurchasers, 20, 414
 - Subsequent purchasers, 20, 415
 - Third persons claiming inconsistent interests, 20, 413
 - Trustee and *cestui que trust*, 20, 418
 - Widow, 20, 423
- New trial, 20, 521
- Orders, 20, 475
 - Statutory proceedings to enforce contracts of decedents, 20, 548
- Parties, 20, 410
 - Against whom suit may be maintained, 20, 429
 - Common-law remedies in Pennsylvania, 20, 533
 - Death of party, 20, 433
 - Joinder*, see *infra*, Joinder of parties.
 - Necessary parties*, see *infra*, Necessary and proper parties.
 - Proper parties*, see *infra*, Necessary and proper parties.
 - Statutory proceedings to enforce contracts of decedents, 20, 545
 - Who may maintain suit*, see *infra*, Who may maintain suit.
- Partition, 15, 803
- Payment into court, 20, 476, 537
- Pennsylvania, see *infra*, Common-law remedies in Pennsylvania.

SPECIFIC PERFORMANCE, *con.*

- Petition (see *infra*, Bill, petition, or complaint), 16, 510
- Statutory proceedings to enforce contracts of decedents, 20, 547
- Plea or answer, 20, 467
 - Admissions in answer, 20, 473
 - Answer as evidence, 20, 473
 - Bona fide* purchase without notice, 20, 471
 - Denial of contract, 20, 467
 - Different contract, 20, 467
 - Discharge in bankruptcy, 20, 472
 - Fraud, 20, 470
 - Homestead, 20, 472
 - Illegality, 20, 470
 - Immaterial issues, 20, 472
 - Limitation and laches, 20, 471
 - Particular defenses, 20, 467
 - Plea accompanied by answer, 20, 472
 - Rescission, 20, 470
 - Statute of frauds, 20, 467
 - Supplemental answer, 20, 473
 - Want of equity, 20, 472
 - Want of title in plaintiff, 20, 471
- Prayer for relief, 20, 461, 511
- Publication, 20, 409
- Purchasers*, see *infra*, Necessary and proper parties.
- Real or personal action, 20, 400
- Receivers, 20, 475
- References, 20, 473
- Reformation of instruments, 20, 396
 - Decree, 20, 480
- Remedy at law*, see *infra*, Adequate remedy at law.
- Rendition and entry of judgment, 20, 514
- Rescission (see *infra*, Reformation of instruments), 20, 470
- Rescission, cancellation, and reformation of contracts, 18, 749
- Rescission, converse of, 20, 396
- Sales, 19, 11
- Scope of remedy, 20, 389
- Service of process, 20, 409
- Settlement of decedents' estates*, see *infra*, Statutory proceedings to enforce contracts of decedents.
- Splitting causes of action, 1, 162
- Statutory proceedings to enforce contracts of decedents, 20, 542
 - Appeals, 20, 549
 - Costs, 20, 549
 - Decree, 20, 548
 - Exclusiveness of remedy, 20, 544
 - In general, 20, 542
 - Jury, 20, 548
 - Nature and extent of power conferred, 20, 543
 - Order, 20, 548
 - Parties, 20, 545

SPECIFIC PERFORMANCE, *con.*

Statutory proceedings to enforce contracts of decedents, *cont'd.*

Petition, 20, 547

Process, 20, 547

Venue, 20, 545

Summons and process, 20, 409

Supplemental answer, 20, 473

Surveyor, appointment of, 20, 476

Survival of actions, 21, 319

Tender, 20, 450

Terms, imposition on plaintiff, 20, 500

Transitory actions, 20, 400

Trial (see *infra*, Hearing or trial), 20, 476

Trusts and trustees:

Parties, 20, 418; 22, 183

Variance, 20, 442, 444, 450, 462; 22, 609

Vendor and purchaser (see *infra*, Joinder of parties; Necessary and proper parties; Who may maintain suit):

Against whom suit maintained, 20, 429

Purchaser's remedies, 22, 667

Vendor's remedies, 22, 660

Venue, 20, 407

Jurisdiction of parties or subject-matter, 20, 405

Objection to wrong venue, 20, 408

Statutory proceedings to enforce contracts of decedents, 20, 545

Where land lies or defendant resides, 20, 407

Verdict, 20, 539

Verification, 20, 462

Water companies and water works, 22, 1140

Who may maintain suit, 20, 424

Agents, 20, 429

Assignees, 20, 426

Common-law remedies in Pennsylvania, 20, 533

Creditors, 20, 426

Devisees, 20, 427

Grantors, 20, 429

Heirs, 20, 427

Infants, 20, 429

In general, 20, 424

Married women, 20, 429

Personal representatives, 20, 427

Receivers, 20, 429

Third person for whose benefit contract was made, 20, 425

Volunteers, 20, 425

Widow, 20, 423

Joinder of parties, 20, 432

SPLITTING CAUSES OF ACTION

(see SEVERANCE):

Accounts and accounting, 1, 153

May sue for less, 1, 154

SPLITTING CAUSES OF ACTION, *cont'd.*

Accounts and accounting, *cont'd.*

Separate accounts, 1, 154

What constitutes account, 1, 154

Actions, 1, 148

Board, 1, 151

Breaches of several and distinct covenants, 1, 153

Contracts, 1, 151, 153-159

Credits, 1, 153

General rule, 1, 148

Indemnity bond, 1, 151

Independent stipulation, 1, 152

Sales, 1, 153

Specific contracts, 1, 153

Taxes, 1, 151

What constitutes an entire cause of action, 1, 150

Contracts, 1, 152

Whether single causes of action can be split, 1, 148

Another suit pending, 1, 762

Assault and battery, 1, 161

Assignments, 1, 158

Bills:

Notes, 1, 156

Claims with reference to real property, 1, 162

Collateral securities, 1, 153

Conversion, 1, 161

Creditor's bill, 1, 160

Ejectment, 1, 162

Equitable assignments, 7, 763

Examples, 1, 159-163

False imprisonment, 1, 162

Fraud, 1, 158, 160, 162

Gambling contracts, 1, 152

Instalments, 1, 154

Insurance policy, 1, 157

Interest, 1, 157

Judgments, 1, 156; 11, 1168

Leases, 1, 155, 156

Libel and slander, 1, 162

Malicious prosecution, 1, 162

Master and servant, 1, 157

Partial assignment, 1, 518

Patents:

Infringement, 16, 80

Railroads:

Injury to crops, 17, 628

Real property, 1, 162

Rents, 1, 155

Replevin, 1, 161

Specific performance, 1, 162

Torts, 1, 159

General rule, 1, 159

Same transaction, 1, 160

Trespass, 1, 161

Trover and conversion, 1, 161

Vendor and purchaser, see VENDOR AND PURCHASER.

Waste, 1, 162

SPLITTING JUDGMENTS:

Executions, 8, 471

STAKEHOLDERS:

Funds and deposits in court, 9, 748

STARE DECISIS:

Appeals, 2, 381

Division of opinion, 7, 47

Rehearing, 18, 38

STATED CASE, see AGREED CASE.**STATEMENT OF CASE:***New trial, see NEW TRIAL.***STATEMENT OF CLAIM, 20, 580**

Amendments, 20, 585

General rule, 20, 585

Objection to amendment, 20, 585

Test of allowability of amendment, 20, 585

Averment of amount claimed, 20, 583

Averment of cause of action, 20, 582

Definition, 20, 580

Names and capacity of plaintiffs, 20, 584

Necessity for copies of notes, contracts, etc., 20, 584

Reference to records, 20, 584

Requisites, 20, 582

Service of statement, 20, 585

Signature, 20, 584

When proper, 20, 581

STATEMENT OF DEFENSE, see NOTICE OR BRIEF STATEMENT OF DEFENSE.**STATEMENT OF FACTS ON APPEAL, 20, 550***See CASE MADE ON APPEAL.***Adjournment:**

Adjournment of settlement, 20, 573

Amendments, 20, 567

Bills of exceptions, 3, 384

By whom prepared, 20, 558

By appellant, 20, 558

By trial judge, 20, 558

Certificate of judge, 20, 574

Amended and supplemental certificates, 20, 577

Form of certificate, 20, 576

Revocation of certificate, 20, 577

Unnecessary in case of agreement of parties, 20, 575

Construction on appeal, 20, 579

Contents of statement, 20, 560

Aider by court's conclusions, 20, 561

Contents of depositions, 20, 564

Effect of failure to specify grounds, 20, 561

In general, 20, 560

Insertion of deeds and other instruments, 20, 564

Proof of venue, 20, 565

Reports of referees, 20, 565

Index Pl. & Pr. — 66

STATEMENT OF FACTS ON APPEAL, *cont'd.*Contents of statement, *cont'd.*

Rulings and instructions of court, 20, 564

Setting out evidence, 20, 563

Statement of facts only, 20, 562

Definition, 20, 551

Evidence, setting out, 20, 563

Filing after settlement, 20, 578

Filing statement before service, 20, 565

Instructions, 20, 564

Judges (*see infra*, Seal; Signature):

Remedy for refusal of judge to act, 20, 578

Judgments, see infra, Certificate of judge.

Manner of preparing statement, 20, 560

Nature and purpose, 20, 553

Necessity for statement, 20, 554

Errors appearing on record, 20, 556

General rule, 20, 554

Necessary to review rulings on evidence, 20, 555

Presumption as to sufficiency of evidence in absence of statement, 20, 555

Presumption in favor of judgment in absence of statement, 20, 554

Use on appeal of statement on motion for new trial, 20, 557

Where it is objected that verdict is contrary to law and evidence, 20, 556

New trial:

Use on appeal of statement on motion for new trial, 20, 557

On appeal from judgment, 20, 558

On appeal from order granting or refusing new trial, 20, 557

Notice of settlement, see infra, Settlement.

Records, 20, 579

Reference:

Reports of referees, 20, 565

Remedy for refusal of judge to act, 20, 578

Report and case made, see REPORT AND CASE MADE.

Seal, 20, 577

Service of statement, 20, 566

Necessity for, 20, 566

Time of service, 20, 566

Settlement, 20, 568

Adjournment of settlement, 20, 573

Alteration of proposed settlement, 20, 573

Before whom settled, 20, 570

STATEMENT OF FACTS ON APPEAL, *cont'd.***Settlement, *cont'd.***

- Definition, 20, 568
- Effect of failure to settle at day named, 20, 573
- Manner of making statement, 20, 574
- Necessity for, 20, 568
 - In general, 20, 568
 - Signature, 20, 569
 - Where judge fails to approve or sign, 20, 570
 - Where parties disagree, 20, 569
- Notice of settlement, 20, 570
 - In absence of amendment, 20, 571
 - Manner of service, 20, 573
 - Necessity for, 20, 570
 - Requisites of notice, 20, 571
 - Time of service, 20, 572
 - Waive of defective service, 20, 573
 - Writing, 20, 571

Preparation of new statement, 20, 574**Proceedings in settlement of statement, 20, 573**

- Signature, 20, 567, 569, 570, 577
- Stipulations, 20, 639
- Time of preparing, 20, 558
 - Excuse for failure to file within prescribed time, 20, 559
 - Extension of time, 20, 559
 - In general, 20, 558

When proper, 20, 553**STATES, 20, 587**

- Abatement, 20, 591
- Actions, see UNITED STATES COURTS.
- Advancement for hearing of suits by state, 20, 592
- Aid to railroads, see RAILROADS.

Appeals:

- State of party, 2, 42

Appearances, 2, 592

- Right of states to prescribe what is an appearance, 2, 595

Application of usual rules of procedure where state is party, 20, 588

- Bonds, affidavits, and security for costs, 20, 588
- In general, 20, 588

Bill, declaration, or complaint, 20, 591

- Averment of capacity or authority to take and hold instrument sued on, 20, 591
- Averment of compliance with terms and conditions prescribed by statute, 20, 591
- Averment of state's interest in matter in controversy, 20, 591

STATES, *cont'd.*

- Bills in equity, 20, 591
- By whom action in behalf of state instituted, 20, 589
- General rule, 20, 589
- Suit in name of governor, 20, 589

Certiorari:

- Prosecution in name of state, 4, 162

Costs, 5, 151; 20, 592**Declaration and complaint, 20, 591****Divorce:**

- State as party, 7, 66

Escheat, see ESCHEAT.**Executions:**

- Direction in name of sovereign or state, 8, 389

Extradition, see EXTRADITION.**Hearing:**

- Advancement for hearing of suits by state, 20, 592

Indictments, see INDICTMENTS.**Injunctions, 10, 911, 943**

- Bonds, 10, 1015

Interstate commerce, see INTERSTATE COMMERCE.**Jurisdiction of particular courts over actions against states, 20, 587**

- State courts, 20, 587

- United States courts, 20, 588

Objection that state is not proper party, 20, 589**Licenses, see LICENSES.****Marriage (annulment), 13, 874****Negotiable instruments, see NEGOTIABLE INSTRUMENTS.****Objection that state is not proper party:**

- Where state is defendant, 20, 589
- Where state is plaintiff, 20, 589

Parties to actions:

- Use of name of state to enforce private rights, 15, 498

Penalties and penal actions (see PENALTIES AND PENAL ACTIONS):

- Action by state, 16, 248

Probate and contest of wills:

- Right to contest wills, 16, 1014

Removal of causes, see REMOVAL OF CAUSES.**Security for costs, 19, 355****Service of process (see SERVICE OF PROCESS), 20, 590****Substitution of parties, 20, 1024****United States courts, see UNITED STATES COURTS.****Venue, 20, 588****Waiver of state's immunity by appearance, 20, 590****STATING PART, see BILLS IN EQUITY.**

STATUTE OF FRAUDS, see
FRAUDS, STATUTE OF.

STATUTE OF LIMITATIONS, see
LIMITATIONS.

STATUTES, 20, 593

See ORDINANCES.

Appeal bonds and undertakings, see AP-
PEAL BONDS AND UNDERTAKINGS.

Arrest of judgment:

Statutes repealed under which
indictment drawn, 2, 796

Assumpsit, 2, 990

Attachment, see ATTACHMENT.

Common-law remedy, effect of stat-
utes on, 20, 603

Conditions precedent, see CONDITIONS
PRECEDENT.

Debt:

As to actions of debt on statutes,
see DEBT.

Definiteness and certainty in plead-
ings:

Private acts, 6, 264

Foreign laws, 9, 542; 20, 598

Averments as to effect of foreign
statutes, 20, 601

Definiteness and certainty, 20,
601

General rule as to necessity of
pleading, 20, 598

Manner of pleading foreign
statutes, 9, 543; 20, 600

Necessity of pleading, 9, 542

Pleading construction of foreign
statutes, 20, 602

Presumption in absence of plead-
ing, 9, 543

Reference to title and date, 20,
601

What are foreign statutes within
meaning of rule, 20, 600

Where foreign statutes are mere
matters of evidence, 20, 599

Indictments, see INDICTMENTS.

Judicial notice, 20, 594, 597

Limitations:

Foreign statutes, 13, 277

Misrecitals in pleading statutes, 20,
602

Effect of misrecital, 20, 602

Effect on verdict of misrecital,
20, 602

In general, 20, 602

Nul tiel record, 20, 598

Private statutes, 20, 596

Averment of facts meeting re-
quirements of statute, 20, 598

Judicial notice, 20, 597

Manner of pleading private stat-
utes, 20, 597

Necessity of pleading, 20, 596

Reference to title and date, 20,
597

STATUTES, *cont'd.*

Private statutes, *cont'd.*

Statutory provisions as to man-
ner of pleading, 20, 597

Public statutes, 20, 594

Averment of facts bringing case
within operation of statute,
20, 595

Exceptions to general rule, 20,
596

General rule as to necessity of
pleading, 20, 594

Judicial notice, 20, 594

Penal actions, 20, 596

Statutes creating new offenses,
20, 596

STAY OF EXECUTION (see SUPER-
SEDEAS AND STAY OF PROCEEDINGS):
Coram nobis and *coram vobis*, 5, 35

STAY OF PROCEEDINGS, see
SUPERSEDEAS AND STAY OF PROCEED-
INGS.

STENOGRAPHERS, 10, 399

Arguments of counsel:

Use of reporter's stenographic
notes, 2, 741

Bills of exceptions, 3, 436

Certificate of stenographer, 3,
437

Costs, 5, 230, 231

Examination of witnesses:

Stenographic notes, 8, 145

Records, 17, 929

References, 17, 1082, 1087

STIPULATIONS, 20, 604

Abatement of actions, 20, 616

Abiding the event, 1, 54; 20, 611

Action at law or suit in equity to
enforce, 20, 669

Additional allowances of costs, 1,
223; 20, 634

Admiralty, 1, 297

Libellant's stipulation for costs,
1, 257

Order as to performance by
stipulators, 1, 277

Stipulation for costs, 1, 264

Stipulation for release, 1, 265

Stipulation for value, 1, 266

Affidavits, 20, 666

Agreed case, see AGREED CASE.

Amendments, 1, 504; 2, 304

Appeal bond, 20, 637

Appeals, 20, 635

Amendments of record, 2, 304

As to bills of exceptions and in
lieu thereof, 20, 638

Bond or undertaking, 20, 637

Briefs and assignments of errors,
20, 643

Case on appeal, 20, 639

Continuance of cause on appeal,
20, 643

STIPULATIONS, *cont'd.***Appeals, *cont'd.***

- In general 20, 635
 - Judgment of appellate court, 20, 644
 - New trial, 20, 644
 - Notice of appeal, 20, 637
 - Petition for rehearing, 20, 644
 - Record, 20, 639
 - Statement, 20, 639
 - Time for appeal, 20, 637
 - Time of filing record, 20, 643
 - Transcript, 20, 639
 - Transcript on appeals, 2, 267
 - Waiver of right of appeal, 2, 173; 20, 636
 - Withdrawal or dismissal of appeal, 20, 637
- Appellate review of rulings on stipulations, 20, 669
- Appealability of orders, 20, 669
 - Method of review, 20, 669
 - Orders refusing to vacate stipulations held erroneous, 20, 671
 - Orders refusing to vacate stipulations sustained, 20, 671
 - Orders vacating stipulations held erroneous, 20, 671
 - Orders vacating stipulations sustained, 20, 670
 - Review of exercise of discretion, 20, 670
 - Stipulation must in some proper manner appear in record, 20, 670

Arbitration and award, 20, 628

Assignment of errors, 20, 643

Attorneys, 20, 620

Appeals, see *infra*, Appeals.

Arbitration, 20, 628

Compromise of suit, 20, 629

Costs or additional allowances, 20, 634

Enforcement of judgment, 20, 635

Examples, 20, 620, 621

Implied authority of attorney or counsel, 20, 620, 645

Attorney of record, 20, 645

Attorneys subsequently superseded, 20, 650

Co-parties, 20, 649

Criminal cases, 20, 649

Exclusiveness of attorney's authority, 20, 647

Infants, 20, 649

Married women, 20, 649

Presumption of authority, 20, 648

Prosecuting attorney, 20, 649

Ratification of unauthorized stipulations, 20, 648

STIPULATIONS, *cont'd.***Attorneys, *cont'd.***

- Implied authority of attorney or counsel, *cont'd.*
 - Rendition and entry of judgment, 20, 648
 - Termination of attorney's authority, 20, 648
 - Incidental remarks by counsel, 20, 621
 - Judgments, 20, 632, 635
 - Opening or vacating judgments, 20, 634
 - References, 20, 628
 - Relief against unauthorized stipulations, 20, 665
 - Rendition and entry of judgments, 20, 632
 - Solemn admissions, 20, 621
 - Unauthorized stipulations, 20, 665
 - Waiver of jury trial, 20, 631
- Bills of exceptions (see **BILLS OF EXCEPTIONS**), 20, 638
- Agreed statement of facts, 3, 389
 - Waiver of signature, 3, 452
- Briefs, 20, 643
- Case made on appeal, 3, 884; 20, 639
- Collusion, 20, 663
- Compromise of suits, 20, 629
- Conditions of relief, 20, 617
- Consolidation of actions, 4, 701, 704
- Constitutionality, 20, 607
- Construction of stipulations, 20, 622, 657
- Construction by parties, 20, 659
 - Construction of particular stipulations, 20, 661
 - Effectiveness, 20, 658
 - Entire stipulation to be considered, 20, 658
 - Entire stipulation to be given effect, 20, 658
- Expressio unius est exclusio alterius*, 20, 660
- Favorable construction, 20, 657
- General rules of construction, 20, 657
- Good faith, 20, 660
- Grammatical inaccuracies, 20, 660
- Liberal construction, 20, 655
- Parol evidence, 20, 661
- Province of court and jury, 20, 661
- Reasonable construction, 20, 658
- Several instruments, 20, 659
- Subject-matter and surrounding circumstances, 20, 659
- Words and phrases, 20, 660
- Continuances, 4, 831; 20, 614
- Contracts, 20, 607
- Co-parties, 20, 649

STIPULATIONS, *cont'd.*

- Costs, 5, 111; 20, 634
 - Motion for relief, 20, 668
 - Several suits, 5, 139
- Courts, see *infra*, Enforcing or obtaining benefit of stipulations; Relief from stipulations.
- Criminal procedure, 20, 649
- Damages, 20, 633
- Death, 20, 616, 648
 - Stipulation against abatement, 5, 846
- Decrees, see *infra*, Judgments or decrees.
- Defaults:
 - Violation of stipulation, 6, 173
- Depositions, 20, 622
- Discretion of court, 20, 662
- Dismissal, discontinuance, and non-suit, 20, 615
- Divorce:
 - Service of process, 7, 106
- Enforcing or obtaining benefit of stipulations, 20, 668
 - Action at law or suit in equity, 20, 669
 - Benefit of stipulation, 20, 668
 - Mandamus, 20, 669
 - Policy of courts, 20, 668
- Evidence, 20, 620
 - Admitting testimony of witness on former trial, 20, 624
 - Conclusiveness and effect in pending trial, 20, 625
 - Conclusiveness and effect in subsequent trial of same cause, 20, 626
 - Construction, 20, 622
 - Implied authority of attorney, 20, 620
 - Incidental remarks of counsel, 20, 621
 - Objections to depositions, 20, 622
 - Recognition and enforcement by court, 20, 621
 - Relief from stipulation, 20, 628
 - Solemn admissions, 20, 621
 - Stipulation as to facts, 20, 623
 - Testimony of absent witness, 20, 624
 - Validity of stipulations as to the evidence, 20, 620
 - Where counsel in his opening statement, 20, 621
- Exceptions and objections:
 - Obviating necessity for objections and exceptions by stipulation, 8, 168
- Findings, 20, 635
- Fraud, 20, 663
- General nature, 20, 604
- Infants, 20, 649
- Injunctions, 20, 635

STIPULATIONS, *cont'd.*

- Instructions, 20, 632
- Issues, 20, 617
- Judgments or decrees, 20, 632
 - Additional allowances, 20, 634
 - Amount of damages, 20, 633
 - Attorney, 20, 633, 634, 635
 - Costs, 20, 634
 - Enforcement, 20, 635
 - Opening or vacating, 20, 634
 - Rendition and entry, 20, 632
- Jurisdiction, 20, 609
- Jury:
 - Waiver of jury trial, 20, 631
 - Waiver of right to jury trial, 12, 261
- Law ruling the case, 20, 613
- Mandamus, 13, 551
- Married women, 20, 649
- Minutes, 20, 651
- Mistake, 20, 663
- Motions:
 - Relief against stipulations, 20, 666
- New trial, 20, 644
- Next friend, 14, 1040
- Opening, vacating, and amending judgment (see *infra*, Appellate review of rulings on stipulations), 20, 634
- Oral stipulations, 20, 650
- Orders (see *infra*, Appellate review of rulings on stipulations):
 - Order granting or denying relief from stipulations, 20, 667
- Parol evidence, 20, 661
- Pleadings, 20, 617
- Prosecuting attorney (see PROSECUTING ATTORNEY), 20, 649
- Public policy, 20, 609
- Questions of law and fact, 20, 661
- Records, 20, 639, 653
- References, 20, 628
- Rehearing, 20, 644
- Relief from stipulations, 20, 662
 - Application for relief and hearing thereon, 20, 666
 - Collusion, 20, 663
 - Costs of motion, 20, 668
 - Discretion of court, 20, 662
 - Fraud, 20, 663
 - Grounds for relief, 20, 662
 - Mistake, 20, 663
 - Order granting or denying relief, 20, 667
 - Power of court, 20, 662
 - Prejudice resulting from inadvertence, improvidence, etc., 20, 664
 - Some good cause necessary, 20, 662
 - Unauthorized stipulation, 20, 665
 - Undue influence, 20, 663

STIPULATIONS, *cont'd.*

- Removal of causes:
 - Extension of time, 18, 295
 - Removal by stipulation of parties, 18, 302
- Rendition and entry of judgments, 20, 632, 648
- Repudiation of stipulations, 20, 662
- Review, 18, 1042
- Revival of judgments, 18, 1092
- Rules of court, 20, 608
 - Validity of rules of court, 18, 1245
- Service of process, 20, 610
- Signature, 20, 652
- Statement of facts on appeal, 20, 639
- Statutory provisions, 20, 607
- Substitution of parties, 20, 1064
- Survival of actions:
 - Stipulation providing for survival, 21, 317
- Time to plead:
 - Extension of time by stipulation of parties, 21, 684
- Transcript of record, 20, 639
- Undue influence, 20, 663
- Validity of stipulations, 20, 607
 - Abatement by death, 20, 616
 - Abiding the event, 20, 611
 - Accepting service of process, 20, 610
 - Against public policy, 20, 609
 - Appeals*, see *infra*, *Appeals*.
 - As to the evidence*, see *infra*, *Evidence*.
 - As to the law ruling the case*, 20, 613
 - Attorneys*, see *infra*, *Attorneys*.
 - Compromise of suit, 20, 629
 - Condemned stipulations classified, 20, 652
 - Conduct of trial, 20, 630
 - Conferring jurisdiction, 20, 609
 - Contravening constitutional or statutory provisions, 20, 607
 - Contravening rules of court, 20, 608
 - Decrees*, see *infra*, *Judgments or decrees*.
 - Dismissal or discontinuance, 20, 615
 - Entry on minutes, 20, 652
 - Findings of court, 20, 635
 - For continuance, 20, 614
 - For removal of cause or change of venue, 20, 617
 - Injunction, modifying or waiving its violation, 20, 635
 - In regard to subject-matter, 20, 607
 - In respect of consideration, 20, 650

STIPULATIONS, *cont'd.*

- Validity of stipulations, *cont'd.*
 - In respect of form or of entry or filing, 20, 650
 - In respect of parties or relation of attorney or client*, see *infra*, *Attorneys*.
 - Instructions, 20, 632
 - Issues, 20, 617
 - Judgments*, see *infra*, *Judgments or decrees*.
 - Oral stipulations, 20, 650, 652
 - Pleadings, 20, 617
 - References, 20, 628
 - Rules of court, 20, 651
 - Statutory provisions, 20, 651
 - Stipulations admitted by the party, 20, 655
 - Stipulations made as conditions of relief, 20, 617
 - Stipulations written or entered on minutes, 20, 651
 - Scope and operation of the statutes and rules, 20, 654
 - Statutory provisions or rules of court, 20, 651
 - Stipulation executed, 20, 655
 - Submission to arbitration, 20, 628
 - Time of trial, 20, 630
 - Verdict, 20, 632
 - Waiver of jury trial, 20, 631
 - Verdict, 20, 632
 - Withdrawal of stipulations, 20, 662
 - Witnesses*, see *WITNESSES*.
 - Written stipulations, 20, 651
- STOCK AND STOCKHOLDERS (see CORPORATIONS):**
- Accounts and accounting, 1, 105
 - Admissions, 20, 697
 - Amendments, 20, 754, 794
 - Answers*, see *infra*, *Enforcement of stockholders' liability to creditors; Plea or answer*.
 - Appeals*, see *infra*, *Review of corporate election*.
 - Assumpsit:
 - Dividends and new or bonus stock, 20, 810
 - Enforcement of stockholders' liability, 20, 699
 - Enforcement of subscriptions or calls, 20, 679
 - Proceedings respecting transfer of stock and certificates, 20, 812
 - Attachment and garnishment:
 - Enforcement of stockholders' liability to creditors, 20, 699, 763
 - Affidavit, 20, 763
 - Answer, 20, 764
 - In general, 20, 763
 - Interrogatories, 20, 764

STOCK AND STOCKHOLDERS,
cont'd.

- Attachment and garnishment, *cont'd.*
- Enforcement of stockholders' liability to creditors, *cont'd.*
- Joinder of defendants, 20, 763
- Judgment, 20, 765
- Proceedings subsequent to answer, 20, 764
- Trial, 20, 765
- Writ, 20, 764

Bills in equity (see *infra*, Enforcement of stockholders' liability to creditors; Inspection of books):

- Cancellation, 20, 828
- Contribution, 20, 766
- Dividends, and new or bonus stock, 20, 811
- Proceedings respecting transfer of stock and certificates*, see *infra*, Proceedings respecting transfer of stock and certificates.
- Relief from fraud, ultra vires, illegal conduct, etc.*, see *infra*, Relief from fraud, *ultra vires*, illegal conduct, etc.

Review of corporate election, 20, 803, 807

Bills of discovery, 20, 705

Bonus stock, see *infra*, Dividends and new or bonus stock.*Books*, see *infra*, Inspection of books.Calls (see *infra*, Enforcement by corporation of subscriptions or calls), 20, 691

Making the call, 20, 691

Notice of call given, 20, 693

Cancellation of stock, 20, 827

Bill or complaint, 20, 828

Multifariousness, 20, 828

Ownership of stock, 20, 829

Parties defendant, 20, 828

Parties plaintiff, 20, 827

Remedy in equity, 20, 827

Certificates, see *infra*, Proceedings respecting transfer of stock and certificates.

Certiorari:

Assessments against stockholders, 4, 170

Complaint, see *infra*, Declaration and complaint.

Confession and avoidance, 20, 697

Conflict of laws, see *infra*, Enforcement of stockholders' liability to creditors.

Contribution, 20, 765

Answer, 20, 766

Bill or complaint, 20, 766

Judgment or decree, 20, 767

Nature of proceeding, 20, 765

Parties, 20, 766

STOCK AND STOCKHOLDERS,
cont'd.

Corporations:

Pleading existence and nature of corporation, 20, 734

Costs, 5, 156

Enforcement of stockholders' liability, 20, 757

Proceedings respecting transfer of stock and certificates, 20, 825, 827

Creditors (see *infra*, Enforcement of stockholders' liability to creditors):

Enforcement of stockholders' liability, 20, 703

Creditors' bills:

Corporate stock, 5, 443

Unpaid stock subscriptions, 5, 444

Damages:

Proceedings respecting transfer of stock and certificates, 20, 817

Death:

Proceedings on motion to enforce stockholders' liability, 20, 762

Debt:

Enforcement of stockholders' liability, 20, 699

Declaration and complaint (see *infra*, Enforcement of stockholders' liability to creditors):

Contribution, 20, 766

Dividends and new or bonus stock, 20, 811

Inspection of books, see *infra*, Inspection of books.*Proceedings respecting transfer of stock and certificates*, see *infra*, Proceedings respecting transfer of stock and certificates.*Relief from fraud, ultra vires, illegal conduct, etc.*, see *infra*, Relief from fraud, *ultra vires*, illegal conduct, etc.

Review of corporate election, 20, 807

Subscriptions or calls, 20, 683

Calls, 20, 691

Capacity to sue, 20, 683

Conditions precedent, 20, 686

Conditions subsequent, 20, 687

Corporation in process of formation, 20, 685

Demand, 20, 691

Execution of contract, 20, 694

Indebtedness, 20, 690

In general, 20, 683

Making of call, 20, 691

STOCK AND STOCKHOLDERS,

cont'd.

- Declaration and complaint, *cont'd.*
 - Subscriptions or calls, *cont'd.*
 - Notice of call given, 20, 693
 - Organization, 20, 685
 - Preferred stock, 20, 689
 - Profert, 20, 694
 - Subscription made to existing corporation, 20, 685
 - Sufficiency of allegation, 20, 684
 - Tender of stock, 20, 687
 - Transfer of rights under subscription contract, 20, 689

Decrees, see *infra*, Enforcement of stockholders' liability to creditors; Judgments.

Definiteness and certainty in pleading, 20, 776

Demand.

- Action on subscription or assessment, 20, 691
- Conversion, 20, 817
- Enforcement by corporation of subscriptions or calls, 20, 691
- Enforcement of stockholders' liability, 20, 745
- Inspection of books, 20, 800
- Proceedings respecting transfer of stock and certificates, 20, 817, 823, 826

Demand upon directors and exhaustion of other remedies, 20, 778, 793

- Breaches of duty, 20, 783
- Excuse for omission, 20, 781
- Federal practice, 20, 781
- Guilt and control of directors, 20, 783
- In general, 20, 778
- Interest of directors, 20, 784
- Nonexistence of corporation, 20, 785

Ultra vires, 20, 783

Uselessness of demand, 20, 782

Demurrers, 20, 793

Enforcement of stockholders' liability to creditors, 20, 753

Directors, see *infra*, Demand upon directors and exhaustion of other remedies.

Dividends and new or bonus stock, 20, 809

- Answer, 20, 812
- Assumpsit, 20, 810
- Bill, 20, 811
- Declaration and complaint, 20, 811
- Dividends as debt, 20, 809
- Enforcement of stockholders' rights, 20, 809

STOCK AND STOCKHOLDERS,

cont'd.

Dividends and new or bonus stock, *cont'd.*

- In general, 20, 809
- Mandamus, 20, 810
- Nature of proceeding and form of action, 20, 810
- Parties, 20, 810
- Proceedings in equity to recover, 20, 810
- Trespass, 20, 810

Election of remedies:

- Enforcement of stockholders' liability, 20, 707
 - In general, 20, 707
 - On dissolution of corporation, 20, 709
 - When the creditor is a stockholder, 20, 709
- Where no form of action is prescribed by statute, 20, 708
- Where no liability is assumed by the subscriber, 20, 710
- Where the capital stock of a corporation is regarded as a trust fund, 20, 709
- Where the claim is one of law, 20, 711
- Where the liability of the stockholders is proportionate to their shares, 20, 709
- Where the statute makes every stockholder individually liable, 20, 711

Enforcement of subscriptions or calls, 20, 680

Elections, see *infra*, Review of corporate election.

Eminent domain:

- Commissioners, 7, 560
- Juries, 7, 553

Enforcement by corporation of subscriptions or calls, 20, 678

Assumpsit, 20, 679

At law or in equity, 20, 678

Declaration and complaint, see *infra*, Declaration and complaint.

Election of remedies, 20, 680

Forfeiture, 20, 680

Joinder of causes of action, 20, 681

Jurisdiction, 20, 678

Nature of proceeding, 20, 678

Parties defendant, 20, 682

Parties plaintiff, 20, 682

Plea or answer, see *infra*, Plea or answer.

Replications and replies, 20, 698

STOCK AND STOCKHOLDERS, *cont'd.*

- Enforcement of stockholders' liability to creditors, 20, 698
- Actions at law, 20, 699
- Amendments, 20, 754
- Appointment of receiver, 20, 754
- Assumpsit, 20, 699
- Attachment, 20, 699
- Attachment and garnishment*, see *infra*, Attachment and garnishment.
- Bill, declaration, or complaint, 20, 731
 - Amount of stock held by defendant, 20, 737
 - Capacity to sue, 20, 734
 - Capital stock, 20, 745
 - Compliance with statutes, 20, 743
 - Definiteness and certainty in pleading, 20, 731
 - Demand on stockholder, 20, 745
 - Dissolution of corporation, 20, 742
 - Equitable liability, 20, 732
 - Exhaustion of legal remedy, 20, 741
 - Existence and nature of corporation, 20, 734
 - Fraud, 20, 746
 - Indebtedness of corporation, 20, 739
 - Indebtedness of defendant, 20, 735
 - Indebtedness to corporation, 20, 738
 - In general, 20, 731
 - Insolvency, 20, 741
 - Interest of defendant, 20, 735
 - Judgment against corporation, 20, 739
 - Nature of corporation's indebtedness, 20, 740
 - Nonpayment of capital stock, 20, 745
 - Notice to stockholder, 20, 745
 - Overvaluation, 20, 746
 - Ownership of stock, 20, 735
 - Pleading statute creating liability, 20, 733
 - Recovery of judgment, 20, 739
 - Restrictions upon liability, 20, 743
 - Statute creating liability, 20, 733
 - Subscription liability, 20, 732
 - Time of ownership of stock, 20, 736
 - Withdrawal, 20, 747
- Common-law liability, 20, 698

STOCK AND STOCKHOLDERS, *cont'd.*

- Enforcement of stockholders' liability to creditors, *cont'd.*
 - Costs, 20, 757
 - Creditor's bill, 20, 703
 - Debt, 20, 699
 - Demurrers, 20, 753
 - Election of remedies*, see *infra*, Election of remedies.
 - Equity, 20, 702
 - In foreign jurisdictions, 20, 711
 - As respects the nature of the remedy, 20, 714
 - In general, 20, 711
 - Local construction of statute, 20, 714
 - United States courts, 20, 716
 - United States practice, 20, 713
 - Where the liability is contractual, 20, 712
 - Where the liability is penal, 20, 714
- Joinder of causes, 20, 717
 - In general, 20, 717
 - Joinder of claims against corporation with one against stockholder, 20, 720
 - Joinder of contractual and penal liability, 20, 719
 - Joinder of subscription and statutory liability, 20, 720
 - United States practice, 20, 718
- Joinder of parties, 20, 721, 725, 727
 - Equitable or beneficial owners, 20, 727
 - Necessity of joining corporation in federal courts, 20, 728
 - Necessity of joining corporation in state courts, 20, 728
 - Necessity of joining receiver or assignee, 20, 730
 - Representatives of decedents, 20, 727
- Judgment or decree, 20, 754
 - Amount of judgment, 20, 755
 - Apportionment of indebtedness, 20, 755
 - In general, 20, 754
 - Joint judgments, 20, 756
- Mandamus, 20, 702
- Motions (see *infra*, Motions), 20, 705
 - Execution, 20, 705
 - Scire facias, 20, 705
 - Statutory provision, 20, 705
- Nature of liability, 20, 698
- Objections, 20, 753

STOCK AND STOCKHOLDERS,
cont'd.

Enforcement of stockholders' liability to creditors, *cont'd.*

Parties, 20, 721

Action by one creditor in equity in behalf of several, 20, 721

Defendant at law where liability is joint, 20, 724

Defendant at law where liability is joint and several, 20, 724

Defendant at law where liability is several, 20, 723

Defendant in action to enforce proportionate liability, 20, 723

Defendant in equity, 20, 724

Impracticability of joining all parties, 20, 725

Joinder of creditors in equity, 20, 721

Joinder of parties, 20, 721, 725, 727

Nonresident and insolvent stockholder, 20, 725

Notice to other creditors, 20, 722

Parties plaintiff at law, 20, 721

Parties plaintiff in equity, 20, 721

Suit to wind up, 20, 726

When all stockholders are proper but not indispensable parties, 20, 725

Plea or answer, 20, 748

Adequate remedy at law, 20, 749

Averment that incorporation was perfected, 2, 752

Denials, 20, 750

Discharge of plaintiff's liability to corporation, 20, 752

In general, 20, 748

Limitations of liability, 20, 751

Payment of corporate indebtedness, 20, 751

Set-off or counterclaim, 20, 751

Solvency of corporation, 20, 751

Raising and waiving objections, 20, 730

Allegations of plea in abatement, 20, 731

Common law, 20, 730

In general, 20, 730

Under codes, 20, 731

Receiver, 20, 754

STOCK AND STOCKHOLDERS,
cont'd.

Enforcement of stockholders' liability to creditors, *cont'd.*

Replication and reply, 20, 752

Statutory liability, 20, 698

United States courts, 20, 713, 716

Various remedies, 20, 699

Enforcement of stockholders' rights, 20, 765

Contribution, see *infra*, Contribution.

Dividends and new or bonus stock, see *infra*, Dividends and new or bonus stock.

Refusal of inspection of books, see *infra*, Inspection of books.

Relief from fraud, *ultra vires*, illegal conduct, etc., see *infra*, Relief from fraud, *ultra vires*, illegal conduct, etc.

Review of corporate election, see *infra*, Review of corporate election.

Equity:

Enforcement of stockholders' liability, 20, 702

Proceedings respecting transfer of stock and certificates, see *infra*, Proceedings respecting transfer of stock and certificates.

Proceedings respecting transfer of stock and certificates.

Exceptions and objections:

Enforcement of stockholders' liability to creditors, 20, 753

Parties in action to enforce stockholders' liability to creditors, 20, 730

Executions, 20, 705

Executors and administrators:

Joinder of representatives of deceased stockholders in actions to enforce stockholders' liability to creditors, 20, 727

Existence:

Pleading, 20, 734

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Forfeiture:

Enforcement of subscriptions or calls, 20, 680

Fraud (see *infra*, Relief from fraud, *ultra vires*, illegal conduct, etc.):

Action on subscriptions or calls, 20, 696

Garnishment (see *infra*, Attachment and garnishment):

Enforcement of stockholders' liability, 20, 699

Illegal conduct of corporation, see *infra*, Relief from fraud, *ultra vires*, illegal conduct, etc.

Illegality, 20, 697

STOCK AND STOCKHOLDERS,
cont'd.

- Information and belief, 20, 777
- Injunctions:
 - Payment of dividends, 20, 811
 - Restraining voting, 20, 807
 - Restraining voting at corporate election, 20, 804
- Inspection of books, 20, 794
 - Actions for damages, 20, 796
 - Bill or petition in equity, 20, 795
 - Mandamus, 20, 794
 - Parties in actions for damages, 20, 797
 - Parties in equity, 20, 797
 - Parties in mandamus, 20, 796
 - Petition, bill, or complaint, 20, 797
 - Action for damages, 20, 798
 - Bill in equity, 20, 798
 - Description of books, 20, 799
 - In action for mandamus, 20, 797
 - In general, 20, 797
 - Injury and damage, 20, 801
 - Notice, 20, 799
 - Previous demand and refusal, 20, 800
 - Purpose and motive, 20, 799
 - Requisite averments, 20, 799
 - Plea or answer, 20, 801
 - Denials, 20, 802
 - In general, 20, 801
 - Remedies, 20, 794
- Joinder of causes of action, see infra.*
- Enforcement of stockholders' liability to creditors.
- Joinder of counts and causes, 20, 681*
- Joinder of parties (see infra, Enforcement of stockholders' liability to creditors):*
 - Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 770, 772
- Judgments (see *infra*, Enforcement of stockholders' liability to creditors):
 - Contribution, 20, 767
 - Proceedings on motion to enforce stockholders' liability, 20, 761
 - Proceedings respecting transfer of stock and certificates, 20, 825, 827
 - Recovery of judgment against corporation where it is sought to enforce stockholders' liability, 20, 739
 - Review of corporate election, 20, 808
- Jurisdiction:
 - Enforcement by corporation of subscriptions or calls, 20, 678

STOCK AND STOCKHOLDERS,
cont'd.

- Jurisdiction, *cont'd.*
 - Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 767
- Jury:
 - Right to jury trial in proceedings respecting transfer of stock and certificates, 20, 825
- Limitations upon liability of stockholders, 20, 743, 751
- Mandamus:
 - Enforcement of stockholders' liability, 20, 702
 - Inspection of books, 20, 794, 796, 797
 - Proceedings respecting transfer of stock and certificates, 20, 814, 826
 - Averments of petition, 20, 826
 - Demand, 20, 826
 - Identification of stock, 20, 826
 - Joinder of petitioners, 20, 826
 - To whom writ should be directed, 20, 826
 - Review of corporate election, 20, 805
- Motions:
 - Enforcement of stockholders' liability, 20, 705
 - Execution, 20, 705
 - Scire facias, 20, 705
 - Statutory provisions, 20, 705
- Enforcement of stockholders' liability to creditors, 20, 758
 - Abatement of proceedings, 20, 762
 - Bill of exceptions, 20, 762
 - Hearing, 20, 761
 - In general, 20, 758
 - Moving papers, 20, 758
 - Notice of motion, 20, 759
 - Orders and judgments, 20, 761
 - Proceedings on review, 20, 763
 - Requisites and sufficiency of notice, 20, 759
 - Review, 20, 762
 - Service of notice of motion, 20, 760
 - To what court addressed, 20, 759
 - Proceedings respecting transfer of stock and certificates, 20, 816, 827
- Multifariousness, 20, 821, 828
- Names:
 - Suits in names of stockholders, 5, 65

STOCK AND STOCKHOLDERS, STOCK AND STOCKHOLDERS,

cont'd.

New stock, see *infra*, Dividends and new or bonus stock.

Notice:

Conversion, 20, 817
 Enforcement by corporation of subscriptions or calls, 20, 693
 Enforcement of stockholders' liability, 20, 745
 Inspection of books, 20, 799
 Motion to enforce stockholders' liability, 20, 759
 Proceedings respecting transfer of stock and certificates, 20, 817, 823
 Review of corporate election, 20, 806

Notice of call given, 20, 693

Officers of private corporations (see OFFICERS OF PRIVATE CORPORATIONS):

Remedy by stockholder against officers, 15, 64

Orders:

Proceedings on motion to enforce stockholders' liability, 20, 761

Parties (see *infra*, Enforcement of stockholders' liability to creditors):

Cancellation of stock, 20, 827
 Contribution, 20, 766
 Dividends and new or bonus stock, 20, 810
 Enforcement by corporation of subscriptions or calls, 20, 682
 Inspection of books, 20, 796
 Proceedings respecting transfer of stock and certificates (see *infra*, Proceedings respecting transfer of stock and certificates), 20, 816

Relief from fraud, ultra vires, illegal conduct, etc., see *infra*,
Relief from fraud, ultra vires, illegal conduct, etc.

Review of corporate election, 20, 806

Plea or answer (see *infra*, Enforcement of stockholders' liability to creditors):

Action on subscriptions or calls, 20, 695
 Admissions, 20, 697
 Averment and proof, 20, 698
 Confession and avoidance, 20, 697.
 Denials, 20, 697
 Fraud, 20, 696
 Illegality, 20, 697
 In general, 20, 695
 Release, 20, 697

cont'd.

Plea or answer, *cont'd.*

Action on subscriptions or calls, *cont'd.*

Variance, 20, 698

Verification, 20, 697

Contribution, 20, 766

Dividends and new or bonus stock, 20, 812

Inspection of books, 20, 801

Proceedings respecting transfer of stock and certificates, 20, 818, 824

Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 789

Review of corporate election, 20, 808

Proceedings respecting transfer of stock and certificates, 20, 812

Actions at law, 20, 816

Assumpsit, 20, 812

Averments of bill or complaint in suits in equity, 20, 822

Demand, 20, 823

Inadequacy of remedy at law, 20, 823

In general, 20, 822

Notice of ownership, 20, 823

Power to issue stock, 20, 822

Prayer of bill, 20, 824

Case, 20, 812

Costs, 20, 826, 827

Declaration and complaint, 20, 816

Conditions precedent, 20, 817

Conversion, 20, 817

Damages, 20, 817

Demand and notice, 20, 817

Title and interest of plaintiff, 20, 816

Demand, 20, 817, 823, 826

Equity, 20, 813, 818

Judgment, 20, 825, 827

Jury trial, 20, 825

Mandamus, 20, 814

Misjoinder, 20, 821

Motion, 20, 816, 827

Multifariousness, 20, 821

Notice, 20, 817, 823

Parties, 20, 816, 818

Corporation and directors, 20, 820

In general, 20, 818

Persons holding stock in controversy, 20, 819

Petition, 20, 827

Plea or answer, 20, 818, 824

Profert and oyer, 20, 694

Publication, 17, 41

Quo warranto:

Review of corporate election, 20, 803

STOCK AND STOCKHOLDERS, STOCK AND STOCKHOLDERS,

- cont'd.*
Receivers:
 Assessment calls in corporation receiverships, 17, 831
 Enforcement of stockholders' liability, 20, 754
Refusal of inspection of books, see infra, Inspection of books.
Release, 20, 697
Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 767
 Amendments, 20, 794
 Bill or complaint, 20, 776
 Definiteness and certainty, 20, 776
 Demand upon directors and exhaustion of other remedies, see infra, Demand.
 Fraud, 20, 785
 Illegal conduct of majority, 20, 788
 Information and belief, 20, 777
 Irreparable injury, 20, 789
 Title and interest of plaintiff, 20, 777
 Ultra vires, 20, 787
 Verification of bill, 20, 789
Defending corporate interests, 20, 790
Demand on directors, 20, 793
Demurrers and motions to dismiss, 20, 793
Illegal conduct of majority, 20, 788
Irreparable injury, 20, 789
Joinder of causes of action, 20, 768
Jurisdiction, 20, 767
Nature of remedy, 20, 767
Parties, 20, 770
 All persons interested, 20, 770
 Corporation, 20, 771
 Creditors, 20, 771
 Defendants, 20, 773
 Directors, 20, 774
 Excuse for omission of necessary parties, 20, 771
 Fraudulent grantees, 20, 775
 General rule, 20, 770
 Persons without interest, 20, 775
 Plaintiffs, 20, 772
 Stockholders, 20, 771, 774
 Plea or answer, 20, 789
 United States courts, 20, 768
 Verification of bill, 20, 789
Removal of causes, see REMOVAL OF CAUSES.
Replications and replies:
 Actions on subscriptions or calls, 20, 698
- cont'd.*
Replications and replies, *cont'd.*
 Enforcement of stockholders' liability to creditors, 20, 752
Rescission, cancellation, and reformation of contracts, see infra, Cancellation of stock.
Review of corporate election, 20, 802
 Bill, 20, 807
 Bill in equity, 20, 803
 Complaint, 20, 807
 Information, 20, 807
 In general, 20, 802
 Judgment, 20, 808
 Mandamus, 20, 805
 Nature of proceeding, 20, 803
 Notice, 20, 806
 Parties, 20, 806
 Plea or answer, 20, 808
 Proceedings on motion to enforce stockholders' liability, 20, 766
 Quo warranto, 20, 803
 Restraining voting, 20, 804
 Summary proceedings, 20, 805
Rights of stockholders, see infra, Enforcement of stockholders' rights.
Scire facias, 19, 292; 20, 705
Sequestration, 20, 705
Service of process:
 Service on corporation, 19, 667
Statutory liability, see infra, Enforcement of stockholders' liability to creditors.
Subscriptions, see infra, Enforcement by corporation of subscriptions or calls; Enforcement of stockholders' liability to creditors.
Summary proceedings:
 Review of corporate election, 20, 805
Survival of actions, 21, 358
 Causes of action against corporate officers, 21, 358
 Causes of action against stockholders, 21, 358
Transfer of stock, see infra, Proceedings respecting transfer of stock and certificates.
Trespass on the case:
 Dividends and new or bonus stock, 20, 810
 Proceedings respecting transfer of stock and certificates, 20, 812
Trover and conversion, 21, 1021
 Transfer of stock and certificates, 20, 817
Ultra vires, see infra, Relief from fraud, ultra vires, illegal conduct, etc.
United States courts:
 Demand upon directors, 20, 781

STOCK AND STOCKHOLDERS,
cont'd.

- United States courts, *cont'd.*
 - Enforcement of stockholders' liability, 20, 713, 716
 - Joinder, 20, 718
 - Necessity of joining corporation in actions to enforce stockholders' liability to creditors, 20, 728
 - Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 768
- Variance:
 - Plea or answer in actions on subscriptions, 20, 698
- Verification, 20, 789
 - Plea or answer in actions on subscriptions, 20, 697
- Winding up corporations, 22, 1257, 1259
 - Enforcement of stockholders' liability, 20, 709
 - Joinder of stockholders where suit to enforce a statutory liability is really one to wind up the affairs of a corporation, 20, 726
 - riority of creditors over stockholders, 22, 1291

STOCKBROKERS:

- Assumpsit, 2, 1023

STOCK EXCHANGES:

- Creditors' bills:
 - Whether seat in stock exchange is subject to, 5, 440

STORE:

- Burglary, 3, 748, 749

STRAYS, see ESTRAYS; TRESPASSING, VICIOUS, AND DISEASED ANIMALS.

STREET RAILWAYS, 20, 830

Abutting owners:

- Remedies by abutting owners for trespass by elevated roads, see infra, Remedies of abutting owners for trespass by elevated roads.*

- Animals, see infra, Injuries to persons, animals, and vehicles.*

Appellate review:

- Condemnation proceedings by elevated railway companies, 20, 840

- Equitable action for trespass by elevated roads, see infra, Equitable action for trespass by elevated roads.*

- Supreme court commissioners, 20, 838

- Bills in equity (see *infra*, Equitable action for trespass by elevated roads):

- Enjoining construction and operation, 20, 849

STREET RAILWAYS, *cont'd.*

- Commissioners, see infra, Condemnation proceedings by elevated railway companies; Construction of road, location of route, etc.*

- Complaint, see infra, Declaration and complaint.*

- Condemnation proceedings by elevated railway companies, 20, 840

- Action by owner pending or determined, 20, 841

- Amendments, 20, 844

- Appellate review, 20, 846

- Application or petition to court, 20, 842

- Appointment of commissioners, 20, 845

- Commissioners' proceedings and report, 20, 845

- Description of property, 20, 843

- Effort to agree with property owner prerequisite, 20, 841

- Hearing and determination, 20, 845

- In general, 20, 840

- Parties, 20, 842

- Petition to court, 20, 842

- Proceedings after lease or consolidation, 20, 842

- Proceedings by company after construction of road, 20, 841

- Purpose partly legal and partly illegal, 20, 844

- Stating inability to acquire property, 20, 843

- Stating intention to construct road, 20, 844

- Uniting properties and interests, 20, 842

Consent:

- Consent of local authorities, 20, 835

- Refusal of property owners' consent, 20, 835

- Construction of road, location of route, etc., 20, 832

- Enjoining construction and operation, see infra, Injunctions.*

- In general, 20, 832

- Proceedings before court and commissioners in New York, 20, 833

- Introductory, 20, 833

- Supreme court commissioners, 20, 834

- Action of court on application, 20, 836

- Action of court on commissioners' report, 20, 837

- Appellate review, 20, 838

STREET RAILWAYS, *cont'd.*

- Construction of road, location of route, etc., *cont'd.*
- Proceedings before court and commissioners in New York. *cont'd.*
- Supreme court commissioners, *cont'd.*
- Application for appointment of commissioners, 20, 836
- Consent of local authorities, 20, 835
- General statutory provisions, 20, 834
- Refusal of property owners' consent, 20, 835
- Supervisors', mayor's, or rapid transit commissioners, 20, 833
- Statutory provisions, 20, 832
- Contributory negligence, 20, 872
- Negating contributory negligence, 20, 870
- Costs:
 - Equitable action for trespass by elevated roads, 20, 862
- Crossings and intersections, 20, 838
- Obtaining crossing, 20, 838
- Obtaining use, 20, 839
- Preventing crossing or use, 20, 839
- Damages, averment of, 20, 871
- Declaration and complaint:
 - Injuries to persons, animals, and vehicles, see infra, Injuries to persons, animals, and vehicles.*
 - Trespass of elevated roads, 20, 851
- Directing verdict, 20, 881
- Dismissal, discontinuance, and nonsuit, 20, 871
- Elevated railroads (see *infra*, Condemnation proceedings by elevated railway companies):
 - Remedies by abutting owners for trespass by elevated roads, see infra, Remedies of abutting owners for trespass by elevated roads.*
- Eminent domain, see *infra*, Condemnation proceedings by elevated railway companies.
- Equitable action for trespass by elevated roads, 20, 852
- Adequacy of remedy, 20, 852
- Appellate review, 20, 862
- Errors in admission or rejection of evidence, 20, 863
- Exceptions and objections, 20, 862
- In general, 20, 862
- Stay of proceedings, 20, 864

STREET RAILWAYS, *cont'd.*

- Equitable action for trespass by elevated roads, *cont'd.*
- Ascertaining past and fee damages as incidents, 20, 853
- Findings by court and referee, 20, 858
- As to beneficial effect of road, 20, 859
- As to incidental and future injury, 20, 858
- As to nominal value of easements, 20, 859
- In general, 20, 858
- In general, 20, 852
- Issues to the jury, 30, 857
- Judgments, 20, 860
- In general, 20, 850
- Injunction with stay for acquiring property, 20, 861
- Injunction with stay on payment of damages, 20, 860
- Parties, 20, 854
- In general, 20, 854
- Lessor and lessee, 20, 856
- Personal representatives, trustees, heirs, etc., 20, 854
- Subsequent purchasers and grantors, 20, 855
- Pleadings, 20, 857
- Right to injunction as basis of action, 20, 853
- Right to resort to, 20, 852
- Exceptions and objections:
 - Equitable action for trespass by elevated roads, 20, 862
- Findings (see *infra*, Equitable action for trespass by elevated roads):
 - Injuries to persons, animals, and vehicles, 20, 882*
- Harmless errors, 20, 881
- Improvement of street, 20, 864
- Injunctions:
 - Equitable action for trespass by elevated roads:
 - Injunction with stay for acquiring property, 20, 861
 - Injunction with stay on payment of damages, 20, 860
 - Right to injunction as basis of action, 20, 853
 - Protecting rights and restraining interference, 20, 865
 - Right to injunction as basis of equitable action for trespass by elevated roads, 20, 853
 - Where road authorized, 20, 846
 - Where road unauthorized, 20, 847
 - Bill or complaint, 20, 849
 - In general, 20, 847
 - Joinder of parties, 20, 848
 - Parties defendant, 20, 848
 - Parties plaintiff, 20, 847

STREET RAILWAYS, *cont'd.*

Injuries to persons, animals, and vehicles, 20, 866

Contributory negligence, 20, 872

Declaration and complaint, 20, 867

Averment of damages, 20, 871

Averment of proof, 20, 869

Averment of violation of ordinances, 20, 870

General allegation of negligence, 20, 867

Negating contributory negligence, 20, 870

Stating cause and foundation of action, 20, 867

Variance, 20, 869

Instructions, 20, 873

Directing verdict, 20, 881

Duty to give, 20, 874

Errors harmless or cured, 20, 881

Ignoring facts, circumstances, or evidence, 20, 880

In general, 20, 873

Invading province of jury, 20, 877

Limiting inquiry, 20, 878

Matters outside of pleadings and evidence, 20, 878

Requests for, 20, 874

Liability and negligence of defendant, 20, 871

Non suit, 20, 872

Notice of claim of action, 20, 866

Parties, 20, 866

Plea or answer, 20, 871

Province of court and jury, 20, 871

Verdicts, findings, and judgments, 20, 882

Fixing damages, 20, 883

Special verdicts and findings, 20, 883

Verdicts in general, 20, 282

Instructions, see infra, Injuries to persons, animals, and vehicles.

Intersections, see infra, Crossings and intersections.

Issues to the jury:

Equitable action for trespass by elevated roads, 20, 857

Judgments:

Equitable action for trespass by elevated roads, see infra, Equitable action for trespass by elevated roads.

Injuries to persons, animals, and vehicles, 20, 882

Trespass by elevated roads, 20, 851

STREET RAILWAYS, *cont'd.*

Location of route, see infra, Construction of road, location of route, etc.

Mandamus:

Mandamus to compel operation of road, 20, 864

Negligence, see infra, Injuries to persons, animals, and vehicles.

Notice of claim of action for injuries, 20, 866

Nuisances, see infra, Injunctions.

Ordinances:

Averment of violation, 20, 870

Parties:

Condemnation proceedings by elevated railroad companies, 20, 842

Enjoining construction and operation, 20, 847

Injuries to persons, animals, and vehicles, 20, 866

Trespass of elevated roads, 20, 850, 854

Personal injuries, see infra, Injuries to persons, animals, and vehicles.

Petition, see infra, Condemnation proceedings by elevated railway companies.

Protecting rights and restraining interference, 20, 865

Questions of law and fact, 20, 871, 877

Instructions invading province of jury, 20, 877

Railroads:

Crossings, 17, 513

References, see infra, Equitable action for trespass by elevated roads.

Remedies of abutting owners for trespass by elevated roads, 20, 849

Action at law, 20, 849

Complaint, 20, 851

Foundation and nature, 20, 849

In general, 20, 849

Parties, 20, 850

Trial, verdict, and judgment, 20, 851

Equitable action, see infra, Equitable action for trespass by elevated roads.

Repairs and improvements of street, 20, 864

Compelling performance, 20, 864

Recovering costs of or assessment for, 20, 865

Report of commissioners, 20, 837, 845

Supersedeas and stay of proceedings:

Equitable action for trespass by elevated roads, 20, 864

Trespass, see infra, Remedies of abutting owners for trespass by elevated roads.

STREET RAILWAYS, *cont'd.*

Variance:

Allegation of negligence, 20, 869
Vehicles, see infra, Injuries to persons, animals, and vehicles.

Verdict:

Injuries to persons, animals, and vehicles, 20, 882
 Trespass of elevated roads, 20, 881

STREETS AND HIGHWAYS, 20, 885

Actions:

Obstruction of streets and highways, see infra, Obstruction of streets and highways.

Actions by and against highway officers in general, 20, 907

Costs, 20, 907

Officers sue and are sued, 20, 907

Verdict in action against several officers, 20, 907

Actions for damages caused by opening of highway, 20, 905

Actions for damages caused by repairs or change of grade, 20, 918

Actions for damages caused by unlawful removal, 20, 943

Actions for injuries to highways or wrongful appropriation thereof, 20, 908

Actions for injuries to person or property:

Declaration and complaint, see infra, Declaration and complaint.

Injuries resulting from defects or obstructions, see infra, Injuries resulting from defects or obstructions.

Actions to recover for repairs made, 20, 917

Alteration, see infra, Establishment, alteration, and vacation of highways.

Amendments, 20, 899

Declaration and complaint, 20, 964

Appeal bond, 20, 895

Appeals, 2, 49

Actions for injuries, 20, 976

Establishment, alteration, and vacation of highways, 20, 889

Amendments, 20, 899

Appeal dependent on statute, 20, 890

Appeal or certiorari, 20, 890

Argument, 20, 899

Bond on appeal, 20, 895

By whom appeal may be taken, 20, 892

Change of venue, 20, 899

STREETS AND HIGHWAYS, *con.*Appeals, *cont'd.*

Establishment, alteration and vacation of highways, *con.*

Consolidation of appeals, 20, 899.

Correction of mistakes in order, 20, 900

Costs, 20, 901

Determination of appeal, 20, 900

Effect of appeal, 20, 902

Examination of case on appeal, 20, 896

Findings, 20, 900

Joint or separate appeals, 20, 894

Judgment, 20, 901

Notice of appeal, 20, 894

Objections waived below, 20, 898

Open and close, 20, 899

Party whose land is taken, 20, 893

Reference to committee, 20, 898

Right to appeal in general, 20, 889

Scope of review, 20, 896

Time of taking appeal, 20, 894

To what court appeal may be taken, 20, 891

Transcript, 20, 896

Trial *de novo*, 20, 897

Verdict, 20, 900

View of premises by jury, 20, 899

What orders are appealable, 20, 891

Withdrawal of appeal, 20, 899

Obstruction of streets and highways, 20, 936, 939, 943

Bills in equity:

Obstruction of streets and highways, 20, 937

Certiorari (*see CERTIORARI*), 20, 890, 902

Changes of grade, see infra, Repairs, improvements, and changes of grade.

Collateral attack, 20, 903

Collisions, 20, 978

Contributory negligence:

Declaration and complaint, 20, 957

Defendant's pleadings, 20, 965

Instructions, 20, 972

Costs:

Actions by and against highway officers in general, 20, 907

Appeals, 20, 901

STREETS AND HIGHWAYS, *con.***Costs, *cont'd.***

Obstruction of streets and highways, 20, 935, 943

Criminal procedure (see *infra*, Repairs, improvements, and changes of grade):

Failure to perform road duty, 20, 920

Miscellaneous offenses relating to highways, 20, 979

Obstruction of streets and highways, see *infra*, Obstruction of streets and highways.

Crossings, see CROSSINGS.

Damages, 20, 962

Declaration and complaint:

Actions for injuries to person or property, 20, 953

Amendment of averments, 20, 964

Cause of injury, 20, 958

Contributory negligence, 20, 957

Damages, 20, 962

Description of defect, 20, 958

Distinction between negligence and nuisance, 20, 953

Duty to repair, 20, 954

Duty to repair at time and place of accident, 20, 955

In general, 20, 953

Knowledge of defect, 20, 958

Nature of injury, 20, 962

Negligence and nuisance distinguished, 20, 953

Negligence at time and place of injury, 20, 957

Negligence of defendant, 20, 956

Notice of defect, 20, 962

Performance of conditions precedent, 20, 963

Place where injury was received, 20, 960

Plaintiff's freedom from contributory negligence, 20, 957

Possession of funds sufficient to repair, 20, 956

Service of notice of injury, 20, 963

Time when injury was received, 20, 960

Obstruction of streets and highways, 20, 932, 942

Ejectment, 7, 270, 276

In general, 7, 270

Lands dedicated to particular purpose, 7, 271

Possession wholly inconsistent with public easement, 7, 271

STREETS AND HIGHWAYS, *con.***Ejectment, *cont'd.***

Recovery subject to easement, 7, 271

Toll road, 7, 270

Use of road, 7, 271

Where the fee of land taken, 7, 271

Eminent domain, see EMINENT DOMAIN.

Encroachments on streets and highways, 20, 946

Action for penalty for failure to remove, 20, 947

Certificate of jury, 20, 947

Distinction between encroachments and obstructions, 20, 946

Notice and order to remove, 20, 947

Proceedings to remove encroachments, 20, 946

Statutory remedies, 20, 946

Suit in equity, 20, 946

Equity, see *infra*, Obstruction of streets and highways.

Establishment, alteration, and vacation of highways, 20, 889

Appeals, see *infra*, Appeals.

Certiorari, 20, 902

Collateral attack, 20, 903

Evidence:

Admissibility of evidence in actions for personal injuries, 20, 966

Failure to perform road duty, 20, 920

Action for penalty, 20, 921

Criminal prosecution, 20, 920

Findings, 20, 975

Fine:

Criminal prosecution for failure to repair, 20, 917

Frightening horses, 20, 979

Improvements, see *infra*, Repairs, improvements, and changes of grade.

Indictments (see *infra*, Criminal procedure):

Miscellaneous offenses relating to highways, 20, 979

Injunctions:

Injunction to prevent repairs or change of grade, 20, 920

Injunction to restrain opening of highway, 20, 905

Mandatory injunction to compel restoration of highway, 20, 910

Removal of obstruction, 20, 945

Injuries resulting from defects or obstructions, 20, 949

Admissibility of evidence under pleadings, 20, 966

Appeal, 20, 976

STREETS AND HIGHWAYS, con.

Injuries resulting from defects or obstructions, *cont'd.*

Averments of declaration and complaint, see infra, Declaration and complaint.

Collisions, 20, 978

Defendant's pleadings, 20, 965

Findings, 20, 975

Frightening horses, 20, 979

In general, 20, 949

Instructions, see infra, Instructions.

Judgment, 20, 975

Parties defendant, 20, 951

Parties plaintiff, 20, 950

Parties to action, 20, 950

Pleading and proof, 20, 966

Remedy over, 20, 977

Splitting cause of action, 20, 949

Survival of action, 20, 949

Variance, 20, 966

Venue, 20, 949

Verdict in joint action against

city and private person, 20, 975

View of premises by jury, 20, 975

Instructions:

Actions for injuries resulting from defects or obstructions, 20, 970

Cause of injury, 20, 973

Contributory negligence, 20, 972

Defects in original construction of sidewalk, 20, 973

Duty to repair, 20, 971

In general, 20, 970

Negligence, 20, 972

Notice of defect, 20, 973

Right of city to recover over against private party, 20, 974

That defendant is a municipal corporation, 20, 974

Time to repair highway, 20, 974

Prosecution for obstruction, 20, 930

Judgments, 20, 975

Obstruction of streets and highways, 20, 931, 935, 943

Prosecution for obstruction, 20, 931

Jurisdiction:

Obstruction of streets and highways, 20, 922, 932, 940

Lewdness, 13, 21

Mandamus:

Private citizens, 13, 634

Relator's pleading, 13, 688

Removal of obstruction, 20, 944

Repairs and restoration of highway, 20, 910

STREETS AND HIGHWAYS, con.

Mandamus, cont'd.

To compel opening of road, 20, 904

Negligence (see *infra, Declaration and complaint*):

Instructions, 20, 972

Notice:

Encroachments, 20, 947

Notice of appeal, 20, 894

Notice of defects:

Declaration and complaint, 20, 958

Instructions, 20, 973

Variance, 20, 970

Notice of injury:

Declaration and complaint, 20, 962

Service of notice of injury, 20, 963

Obstruction of streets and highways, 20, 922

Action at law, 20, 932

Appeal, 20, 936

Averments of declaration or complaint, 20, 932

Costs, 20, 935

Defendant's pleadings, 20, 934

Description and location of obstruction, 20, 934

Description of highway, 20, 934

Judgment, 20, 935

Jurisdiction, 20, 932

Order of proof, 20, 935

Parties, 20, 932

Special damage to private individual, 20, 933

Variance, 20, 934

Venue, 20, 932

Verdict, 20, 935

Action for damages caused by unlawful removal, 20, 943

Action for penalty, 20, 940

Appeal, 20, 943

Costs, 20, 943

Declaration and complaint, 20, 942

In general, 20, 940

Instructions, 20, 942

Judgment, 20, 943

Jurisdiction, 20, 940

Parties, 20, 941

Pleading and proof, 20, 942

Variance, 20, 942

Verdict, 20, 943

Criminal prosecution, 20, 922

Averments of indictment or information, 20, 922

Burden of proof, 20, 930

Continuance of obstruction, 20, 927

STREETS AND HIGHWAYS, con.Obstruction of streets and highways, *cont'd.*Criminal prosecution, *cont'd.*

Defendant a railroad company, 20, 923

Description of highway, 20, 925

Description of obstruction, 20, 927

Duplicity, 20, 924

Incorporation of town, 20, 928

Instructions, 20, 930

Intent, 20, 928

Judgment, 20, 931

Pleading and proof, 20, 929

Variance, 20, 929

Verdict, 20, 931

Distinction between encroachments and obstructions, 20, 946

Injunction to prevent removal, 20, 945

Injuries resulting from defects or obstructions, see infra, Injuries resulting from defects or obstructions.

Mandamus to compel removal, 20, 944

Suit in equity, 20, 936

Appeal, 20, 939

Averments of bill, 20, 937

Decree, 20, 939

New trial, 20, 939

Parties, 20, 936

Officers, see infra, Actions by and against highway officers in general.

Open and close, 20, 899

Opening of streets and highways, 20, 904

Action for damages caused by opening of highway, 20, 905

Injunction to restrain opening of highway, 20, 905

Mandamus to compel opening of road, 20, 904

Parties:

Injuries resulting from defects or obstructions, 20, 950

Defendant, 20, 951

Plaintiff, 20, 950

Obstruction of streets and highways, 20, 932, 936, 941

Penalties and penal actions:

Encroachments, 20, 947

Failure to perform road duty, 20, 921

*Obstruction of streets and highways, see infra, Obstruction of streets and highways.**Personal injuries, see infra, Actions for injuries to person or property.***STREETS AND HIGHWAYS, con.***Public officers, see infra, Actions by and against highway officers in general.*

Railroads (see STREET RAILWAYS):

Penalties for obstructing highways, 17, 536

Repairs, improvements, and changes of grade, 20, 909

Actions for damages caused by repairs or grading, 20, 918

Actions to recover for repairs made, 20, 917

Criminal prosecution, 20, 909, 911

Averments of indictment or information, 20, 911

Description of highway, 20, 915

Duplicity, 20, 912

Duty to repair, 20, 912

Fine, 20, 917

In general, 20, 911

Means to repair, 20, 916

Neglect of duty, 20, 913

Pleadings and proof, 20, 916

That neglect is wilful, 20, 916

Variance, 20, 916

Verdict, 20, 917

Duty to repair highway, 20, 971

Injunction to prevent repairs or change of grade, 20, 920

Mandamus, 20, 910

Mandatory injunction to compel restoration of highway, 20, 910

Remedies for failure to repair, 20, 909

Street railways, 20, 864

Time to repair highway, 20, 974

Scope of article, 20, 888

Street railways, see STREET RAILWAYS.

Survival of actions:

Injuries caused by defects in highways, 21, 341

Transcript on appeal, 20, 896

Trial *de novo*, 20, 897*Vacation, see infra, Establishment, alteration, and vacation of highways.*

Variance, 20, 967

Criminal prosecution for failure to repair, 20, 916

Obstruction of streets and highways, 20, 934, 942

Prosecution for obstruction, 20, 929

Verdict, 20, 975

Criminal prosecution for failure to repair, 20, 917

Obstruction of streets and highways, 20, 931, 935, 943

STREETS AND HIGHWAYS, con.Verdict, *cont'd.*

Prosecution for obstruction, 20, 931

Repairs, improvements, and changes of grade, 20, 917

View by jury, 20, 899, 975.

STRICT FORECLOSURE, see FORECLOSURE OF MORTGAGES.**STRIKES AND BOYCOTTS, 20, 981**

Actions for damages, 20, 985

Conspiracy, 4, 727

Contempt, 20, 995

Injunctions against strikes and boycotts, 20, 982

Allegation of defendant's acts in establishing boycott, 20, 984

Allegation of facts, 20, 983

Averment of different causes for plaintiff's suspension of business, 20, 985

Averment of overt acts, 20, 984

Bill or complaint, 20, 983

In general, 20, 982

Requisite allegations of indictment, 20, 981

Criminal object, 20, 982

General rule, 20, 981

Intention to intimidate, 20, 981

Threats or methods of intimidation, 20, 982

STRIKING FROM THE CALENDAR, see CALENDARS AND TRIAL DOCKETS.**STRIKING OUT, 20, 986**

See SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER.

Appeals, 20, 994

From order granting motion, 20, 995

From order overruling motion, 20, 994

Record on appeal, 20, 995

Contempt, 4, 805

Court's control over pleadings, and power to strike out, 20, 986

Code states, 20, 989

Courts of equity, 20, 987

In general, 20, 986

On motion of party whose pleading is affected, 20, 988

Under the code, 20, 987

When motion to strike out proper remedy, 20, 988

Determination, 20, 993

Effect of motion, 20, 990

Hearing, 20, 993

Notice of motion, 20, 992

Order, 20, 993

Parties to motion, 20, 992

Pleadings subsequent to order striking out, 20, 994

Records, 20, 995

STRIKING OUT, *cont'd.*

Requisites of motion, 20, 992

Scandal and impertinence, see SCANDAL AND IMPERTINENCE.*Sham and frivolous pleadings*, see SHAM AND FRIVOLOUS PLEADINGS.

Specification of grounds, 20, 992

Time of moving, 20, 991

Time limited by statute, 20, 991

Waiver by pleading over, 20, 991

Writing, motion in, 20, 992

STRIKING OUT EVIDENCE, see WITHDRAWING AND STRIKING OUT EVIDENCE.**STRUCK JURY, see SPECIAL AND STRUCK JURIES.****SUBMISSION:**

Dismissal, discontinuance, and nonsuit

Submission of suit to arbitration, 6, 955

Hearing, 10, 16

SUBMISSION OF CONTROVERSY, see AGREED CASE; ISSUES TO THE JURY.**SUBORNATION OF PERJURY, see PERJURY.****SUBPOENA, 10, 393**

See SUMMONS AND PROCESS; WITNESSES.

Amendments, 1, 492, 501

Continuances, 4, 857

Divorce, see DIVORCE.

Foreclosure of mortgages, 9, 362

Returns, 22, 1341

Revivor of suits and actions, 18, 1108

Necessity for, 18, 1108

Service, 18, 1109

Service of process, see SERVICE OF PROCESS.*Witnesses*, see WITNESSES.**SUBPOENA DUCES TECUM:**

See WITNESSES.

SUBROGATION, 20, 996

Affidavit of surety, 20, 999

Answers in equity, 20, 999

Appeal bonds and undertakings, 1, 1020

Appeals, 2, 33, 142

Bill or complaint, 20, 998

Averment of fraud and collusion, 20, 998

General requisites, 20, 998

Creditors' bills:

Party paying judgment, 5, 467

Manner of enforcement, 20, 996

Parties to actions, 20, 997

Pledges, 16, 647

Variance, 20, 999

SUBSCRIBING PLEADINGS, 20, 1000

By whom subscribed, 20, 1001

SUBSCRIBING PLEADINGS, *con.*

Effect of omission, 20, 1002
Necessity for, 20, 1001
Waiver of objection, 20, 1002
What constitutes, 20, 1000

SUBSCRIPTIONS, 20, 1003

See STOCK AND STOCKHOLDERS.

Declaration, petition, or complaint,
20, 1005

Allegations and proof, 20, 1006

Averment of compliance with
terms, 20, 1006

Averment of delivery and ac-
ceptance, 20, 1006

Averment of demand or notice,
20, 1005

In general, 20, 1005

Directing verdict, 6, 707

Parties, 15, 503; 20, 1003

Assignees, 20, 1004

Defendant, 20, 1005

Plaintiff, 20, 1003

Petition, see *infra*, Declaration, pe-
tition, or complaint.

Plea or answer, 20, 1006

Stock, see STOCK AND STOCKHOLDERS.

Variance, 20, 1006

SUBSEQUENT PLEADINGS:

*Surplusage, irrelevant or redundant
matter*, see SURPLUSAGE, IRRELE-
VANT OR REDUNDANT MATTER.

**SUBSTITUTED SERVICE, see PUB-
LICATION; SERVICE OF PROCESS AND
PAPERS.**

**SUBSTITUTION OF ATTORNEYS,
20, 1008**

Appeals:

Service of notice of appeal, 2, 221

Signature of notice of appeal, 2,
215

Application and order of court, 20, 1012

Enforcement of substitution, 20,
1017

Imposition of terms, 20, 1015

In general, 20, 1012

Manner of application, 20, 1014

Necessity of order of court, 20,
1015

Notice of substitution to adverse
party, 20, 1016

Notice to attorney of record, 20,
1014

Order of court, 20, 1015

Payment of fees earned, 20, 1013

Reference to determine attor-
ney's compensation, 20, 1016

Resistance by assignee of mov-
ing party, 20, 1014

Right of client to change attor-
ney, 20, 1013

Waiver of notice, 20, 1016

Withdrawal of application, 20,
1014

**SUBSTITUTION OF ATTORNEYS,
*cont'd.***

Consent of attorney and client, 20, 1011

Court's own motion, 20, 1017

Error, writ of, 7, 825

Manner of substitution, 20, 1011

Necessity for substitution, 20, 1008

Appeal from judgments, 20, 1011

Effect of noncompliance with
rule, 20, 1009

General rule, 20, 1008

Proceedings after judgment, 20,
1010

Regular substitution necessary,
20, 1008

When formal substitute un-
necessary, 20, 1010

Notice:

Adverse party, 20, 1016

Attorney of record, 20, 1014

Notice to appoint another attorney,
20, 1018

Effect of failure to comply with
notice, 20, 1018

In general, 20, 1018

Order of court, see *infra*, Application
and order of court.

Orders, see *infra*, Application and
order of court.

Right of attorney to employ substi-
tute, 20, 1017

General rule, 20, 1017

Ratification of employment of
substitute, 20, 1017

Withdrawal of attorney, 20, 1017

**SUBSTITUTION OF PARTIES, 20,
1019**

Agency, 20, 1027

Appeal bond, 20, 1065

Appeals, 20, 1067

Appeal in behalf of deceased
party, 2, 196

Death of joint appellant, 2, 199

Death of joint appellee, 2, 201

Death of sole appellee, 2, 200

Order, 20, 1067

Substitution on appeal, 20, 1068

Assignment for benefit of creditors,
20, 1036

Assignments (see *infra*, Where inter-
est in action is transferred
pending suit):

Motion by assignee after death
of assignor, 20, 1055

Motion for substitution of as-
signee, 20, 1056

Bankruptcy, 20, 1036

Bonds:

Effect on bonds, 20, 1065

Change of nominal parties, 20, 1023

Actions relating to corporations,
partnerships, and voluntary
associations, 20, 1026

SUBSTITUTION OF PARTIES, *con.*

- Change of nominal parties, *cont'd.*
 - Beneficiary, 20, 1024
 - Holder of legal title, 20, 1025
 - In general, 20, 1023
 - Next friend or guardian, 20, 1025
 - State or town, 20, 1024
- Collateral attack, 20, 1066
- Corporations, 20, 1026, 1040
 - On appointment of receiver, 20, 1041
 - On consolidation or transfer of property 20, 1040
 - On discharge of receiver, 20, 1042
- Effect of substitution, 20, 1061
 - Amendment of pleadings, 20, 1062
 - Effect on bonds, 20, 1065
 - In general, 20, 1061
 - Jurisdiction of federal court, 20, 1065
 - On contract of guaranty, 20, 1064
 - On prior order appointing receiver, 20, 1064
 - On prior order of attachment, 20, 1064
 - On prior order of reference, 20, 1064
 - On rights of original party, 20, 1063
 - On stipulations previously made, 20, 1064
 - Statute of limitation, 20, 1066
 - Supplemental pleadings, 20, 1062
 - Where original party has been defaulted in pleading, 20, 1066
- Ejectment, 20, 1040
- Executors and administrators:
 - New personal representative, 20, 1039
- Guardians, 20, 1025
- How substitution effected, 20, 1050
 - Averments of motion papers, 20, 1056
 - By whom motion may be made, 20, 1051
 - Hearing of application, 20, 1056
 - In general, 20, 1050
 - Motion for substitution by order of interpleader, 20, 1057
 - Motion for substitution of assignee, 20, 1056
 - Motion for substitution of sheriff's indemnitors, 20, 1158
 - Notice of motion, see *infra*, Notice of motion.
 - Order, see *infra*, Order.
 - Time within which motion may be made, see *infra*, Time within which motion may be made.
- Indemnity, see *infra*, Sheriffs and constables.

SUBSTITUTION OF PARTIES, *con.*

- Infants:
 - Where infant becomes of age pending suit, 20, 1037
- Insane persons:
 - Where party becomes insane pending suit, 20, 1037
- Interpleader, 20, 1047
 - Imposition of terms, 20, 1059
 - Motion for substitution by order of interpleader, 20, 1057
 - Time within which motion may be made, 20, 1053
- Joinder of parties, 20, 1028
- Limitations, 20, 1028, 1066
- Mandamus, 20, 1066
- Motions, see *infra*, How substitution effected.
- Motion to set aside order, 20, 967
- Next friend, 20, 1025
- Nominal parties, see *infra*, Change of nominal parties.
- Notice of motion, 20, 1054
 - In general, 20, 1054
 - Motion by assignee after death of assignor, 20, 1055
 - Motion to substitute sheriff's indemnitors, 20, 1056
- Objections to substitution, 20, 1048
- Order (see *infra*, Review of order), 20, 1058
 - Entry of record, 20, 1060
 - Granting a motion for substitution of sheriff's indemnitors, 20, 1059
 - Imposition of terms, 20, 1058
 - In cases of substitution by order of interpleader, 20, 1059
 - Motion to set aside order, 20, 1067
- Partnership, 20, 1026
- Pending suit, see *infra*, Where interest in action is transferred pending suit.
- Public officers, 20, 1037
- Receivers, 20, 1036
 - Corporations:
 - On appointment of receiver, 20, 1041
 - On discharge of receiver, 20, 1042
 - New receiver, 20, 1039
- Records, 20, 1060
- Review of order, 20, 1066
 - Appeal, 20, 1067
 - Collateral attack, 20, 1066
 - Mandamus to compel substitution, 20, 1066
 - Motion to set aside order, 20, 1067
- Right of substitution, 20, 1021
 - Assignee in bankruptcy, 20, 1036
 - Assignments for benefit of creditors, 20, 1036

SUBSTITUTION OF PARTIES, *con.*

- Right of substitution, *cont'd.*
 - Change of nominal parties, 20, 1023
 - Ejectment, 20, 1040
 - In actions against corporations*, see *infra*, Corporations.
 - In actions against sheriffs and constables*, see *infra*, Sheriffs and constables.
 - In actions relating to estates of decedents, 20, 1027
 - Infant, 20, 1037
 - In general, 20, 1021
 - Insane persons, 20, 1037
 - New personal representative, 20, 1039
 - New receiver, 20, 1039
 - New trustee, 20, 1039
 - Public officers, 20, 1037
 - Receivers, 20, 1036
 - Substitution to avoid bar of statute of limitations, 20, 1028
 - Substitution to cure misjoinder of parties, 20, 1028
 - Where interest in action is transferred pending suit, 20, 1029
 - Where relation of principal and agent exists, 20, 1027
- Scope of article, 20, 1020
- Service of process, 20, 1060
- Settlement of decedents' estates, 20, 1027
- Sheriffs and constables, 20, 1043
 - Action to recover property taken in replevin, 20, 1046
 - Action to recover property taken under execution, 20, 1043
 - Motion to substitute sheriff's indemnitors, 20, 1056
 - Averments of motion papers, 20, 1056
 - Imposition of terms, 20, 1059
 - Notice of motion, 20, 1056
 - Substitution by order of interpleader, 20, 1047
 - Substitution of party in whose favor execution issued, 20, 1043
 - Substitution of sheriff's indemnitors, 20, 1044
 - Time within which motion may be made, 20, 1053
- States, 20, 1024
- Stipulations, 20, 1064
- Substitution to cure misjoinder, 20, 1028
- Suretyship, 20, 1065
- Time within which motion may be made, 20, 1051
 - In actions against sheriffs and constables, 20, 1053

SUBSTITUTION OF PARTIES, *con.*

- Time within which motion may be made, *cont'd.*
 - In general, 20, 1051
 - Substitution by order of interpleader, 20, 1053
 - Substitution in trial court after appeal taken, 20, 1054
- Trusts and trustees:
 - New trustee, 20, 1039
 - United States courts, 20, 1065
- Where interest in action is transferred pending suit, 20, 1029
- Death of assignor prior to substitution of assignee, 20, 1031
- Discretion of court, 20, 1033
- Equity, 20, 1035
- Nominal assignee, 20, 1031
- Pendency of action at time of assignment, 20, 1032
- Rights of original party after assignment, 20, 1035
- Substitution optional, 20, 1033
- Successive transfers, 20, 1033
- Under codes and practice acts, 20, 1029
- What assignments are within statute, 20, 1031
- Where public officer ceases to hold office pending suit, 20, 1037
- SUCCESSION** (see **HEIRS AND DEVISEES; SETTLEMENT OF DECEDENTS' ESTATES**):
 - Heirs and devisees*, see **HEIRS AND DEVISEES**.
- SUCCESSION TAXES**:
 - Internal revenue:
 - Actions to enforce payment of legacy and succession taxes, 11, 440
- SUGGESTION**, see **DEATH; PROHIBITION; REVIVAL OF JUDGMENTS**.
- SUIT MONEY**:
 - Alimony*, see **ALIMONY**.
- SUIT PENDING**, see **ANOTHER SUIT PENDING**.
- SUITS** (see **ACTIONS**):
 - Another suit pending:
 - What constitutes a suit, 1, 751
 - Divorce*, see **DIVORCE**.
 - Garnishment, 9, 807
 - What constitutes a pending suit*, see **RECEIVERS**.
- SUMMARY PROCEEDINGS**, 20, 1071
 - See **FORCIBLE ENTRY AND DETAINER**.
 - Amendments:
 - Notice, 20, 1085
 - Amount in controversy, 20, 1078
 - Appeals, 2, 93
 - Appearances:
 - Waiver of notice, 20, 1086

SUMMARY PROCEEDINGS, *con.*

- Attorneys, 3, 108
 - Action as bar to summary proceeding, 3, 111
 - Cross demand of attorney, 3, 110
 - Different courts, 3, 111
 - Discretion of court, 3, 110
 - In general, 3, 108
 - Money collected, 3, 108
 - On what jurisdiction based, 3, 108
 - Parties, 3, 112
 - Professional character, 3, 111
 - Relation of attorney and client must exist, 3, 111
 - When a summary proceeding lies, 3, 109
 - Where to institute the proceeding, 3, 110
- Bonds (see OFFICIAL BONDS), 3, 637
- Cases in which allowed, 20, 1077
- Certiorari, 4, 87
- Common law, 20, 1073
- Constitutional law, 20, 1076
- Contempt, 4, 771
- Criminal procedure:
 - Notice, 20, 1086
 - Pleadings, 20, 1089
 - Form and sufficiency, 20, 1089
 - On what pleadings proceedings instituted, 20, 1089
 - Summary convictions, 20, 1074
- Cumulative nature of remedy, 20, 1076
- Declaration and complaint (see *infra*, Plaintiff's pleadings):
 - Notice serving as declaration and complaint, 20, 1084
 - Amendment, 20, 1085
 - Necessary averments, 20, 1084
 - What formality necessary, 20, 1084
- Defaults:
 - Admissions, 6, 120
- Defendant's pleadings, 20, 1088
- Definition, 20, 1073
- Dower*, see DOWER.
- Escape, 7, 923
- Executors and administrators, 20, 1080
- Forcible entry and detainer, 9, 31
- General principles, 20, 1073
- Guardians:
 - Failure to account, 9, 963
- Judgment and record, 20, 1091
 - In civil cases, 20, 1091
 - Aider by intendment, 20, 1092
 - Showing defendant's liability, 20, 1094

SUMMARY PROCEEDINGS, *con.*

- Judgment and record, *cont'd.*
 - In civil cases, *cont'd.*
 - Showing jurisdictional facts, 20, 1091
 - Showing notice to defendant, 20, 1093
 - Showing plaintiff's right to remedy, 20, 1093
 - Showing proof of jurisdictional facts, 20, 1092
 - In criminal cases, 20, 1094
 - Defendant's pleadings, 20, 1097
 - Description of offense, 20, 1096
 - Evidence on which conviction based, 20, 1097
 - Information or charge, 20, 1097
 - Judgment and sentence, 20, 1094
 - Judgment or sentence, 20, 1098
 - Jurisdiction, 20, 1096
 - Necessity for record, 20, 1095
 - Notice and appearance, 20, 1097
 - Record, 20, 1095
 - What record must show, 20, 1095
- Jurisdiction (see *infra*, Judgment and record), 20, 1078
- Jury:
 - Right to jury trial, 20, 1090
- Landlord and tenant*, see LANDLORD AND TENANT.
- Liens*, see LIENS.
- Motions, 20, 1087
- Notice in civil cases, 20, 1082
 - Amendment, 20, 1085
 - Appearance as waiver, 20, 1086
 - Formality necessary, 20, 1084
 - Judgment and record, 20, 1093
 - Necessary averments, 20, 1084
 - Notice serving as declaration or complaint, 20, 1084
 - Service, 20, 1086
 - Sureties, 20, 1083
 - Where provided by statute, 20, 1082
 - Where statute silent, 20, 1082
 - Whether judicial process, 20, 1083
- Notice in criminal cases, 20, 1086
 - Judgment and record, 20, 1097
- Official bonds*, see OFFICIAL BONDS.
- Ordinances, 15, 411
 - At common law, 15, 411
 - How summary proceedings instituted, 15, 412
 - Statutes authorizing summary proceedings, 15, 411

SUMMARY PROCEEDINGS, *con*

- Other existing remedies, 20, 1076
 - Effect on other existing remedies, 20, 1076
 - Ordinary action as bar to summary remedy, 20, 1077
- Parties defendant, 20, 1080
 - Personal representatives, 20, 1080
 - Persons against several parties jointly, 20, 1081
 - Persons against whom remedy expressly given, 20, 1080
- Parties plaintiff, 20, 1079
 - Personal representatives, 20, 1080
 - Persons to whom remedy expressly given, 20, 1079
- Plaintiff's pleadings, 20, 1087
 - Generally, 20, 1087
 - Motion, 20, 1087
- Pleadings, 20, 1087
 - Criminal cases, 20, 1089
 - Defendant's pleadings, 20, 1088
 - In civil cases, 20, 1087
 - Plaintiff's pleadings, 20, 1087
- Public officers, 17, 186
- Records*, see *infra*, Judgment and record.
- Sentence*, see *infra*, Judgment and record.
- Service of process, 20, 1086
- Sheriffs and constables (see SHERIFFS AND CONSTABLES):
 - Action in aid of process, 20, 115
- Statutes, 20, 1073
 - Confined to cases expressly provided for, 20, 1075
 - Constitutionality, 20, 1076
 - Derogation of common law, 20, 1074
 - Penal statute, 20, 1075
 - Remedial statute, 20, 1075
 - Strict construction, 20, 1074
- Stock and stockholders:
 - Review of corporate election, 20, 805
- Summons and process, 20, 1086
- Suretyship (see SURETYSHIP):
 - Notice, 20, 1083
- Survival of actions, 21, 360
- Taxation*, see TAXATION.
- Trial, 20, 1090
 - In general, 20, 1094
 - Right to jury trial, 20, 1090
- Vagrancy*, see VAGRANCY.
- Warrants, 20, 1086

SUMMING UP, see ARGUMENTS OF COUNSEL.**SUMMONS AND PROCESS, 20,**

- 1099
- Abuse of process*, see MALICIOUS PROSECUTION.

SUMMONS AND PROCESS, *cont'd.*

- Agency, 20, 1136
- Alias and pluries* writs, 20, 1177
 - Authority to issue, 20, 1178
- Continuance from term to term, 20, 1179
- Definition, 20, 1178
- Irregularity in issuance not jurisdictional, 20, 1179
- Issuance in general, 20, 1178
- Nature and form, 20, 1180
- Upon setting aside service, 20, 1179
- Alteration of instruments, 20, 1182
- Amendments (see AMENDMENTS), 1, 501, 658; 20, 1182
- Attachments, 1, 685
- Direction, 20, 1139
- Name and authority of state, 20, 1116
- Amount claimed, 20, 1148, 1152
- Amount demanded under code, 20, 1148
- Another suit pending:
 - Process necessary, 1, 754
- Appeals (see APPEALS), 2, 185
 - Death of parties, 2, 200
- Appearances*, see APPEARANCES.
- Arrest of judgment:
 - Defects in the process, 2, 810
- Attachment (see ATTACHMENT), 3, 40
- Attorneys:
 - Notice signed by party or attorney, 20, 1124
- Audita querela, 3, 113, 119
- Bankruptcy, 22, 351
- Bills of exceptions:
 - Where bill is not required, 3, 408
- Bills of review, 3, 593
- Caption, 20, 1118
- Cause of action*, see *infra*, Nature or cause of action.
- Citations (see CITATIONS), 20, 1117
- Clerk of court, 20, 1105
- Codes*, see *infra*, Relief or amount demanded under code.
- Contempt*, see CONTEMPT.
- Contents*, see *infra*, Form, contents, and sufficiency.
- Copy served:
 - Conformity with original, 20, 1177
- Corporations, 20, 1132, 1136
- Counties*, see *infra*, Issuing to other counties.
- Cross-bills, 5, 658
 - Necessity, 5, 658
 - On whom served, 5, 658
- Cross-complaints, 5, 683
- Date, 20, 1126
 - In general, 20, 1126
- Prima facie* evidence only, 20, 1127

SUMMONS AND PROCESS, *cont'd.*

Declaration and complaint, 20, 1102
Declaration as process, 20, 1104

Defaults:

Vacation of summons, 6, 161
Definiteness and certainty in pleadings, 20, 1144

Definition, 20, 1101

Designation of parties, 20, 1128

Assumed name, 20, 1137

Common name, 20, 1137

Corporations, 20, 1132

Counterpart summons to another county, 20, 1129

Descriptio personæ, 20, 1135

Fictitious name, 20, 1134

Full Christian names and surnames, 20, 1131

Idem sonans, 20, 1133

Misspelling, 20, 1133

Mistake, 20, 1133

Name unknown, 20, 1134

Naming defendants in several summons, 20, 1129

Necessity, 20, 1128

Representative capacity, 20, 1134

Residence, 20, 1137

Right party served by incorrect name, 20, 1131

Service not personal, 20, 1133

Statutory provisions, 20, 1130

Sufficient designation, 20, 1131

Writ against principal or corporation, 20, 1136

Direction to proper officer, 20, 1137

Amendment, 20, 1139

Blanks, 20, 1140

In general, 20, 1137

To one of several officers, 20, 1139

Writs running into another county, 20, 1140

Divorce, see **DIVORCE**.

Dower, see **DOWER**.

Eminent domain, see **EMINENT DOMAIN**.

Error, writ of, see **ERROR, WRIT OF**.

Exceptions and objections (see *infra*, Objections), 8, 180

Executors and administrators, 20, 1134

Filling blanks, 20, 1109, 1140

Forcible entry and detainer, see **FORCIBLE ENTRY AND DETAINER**.

Foreclosure of mortgages, 9, 362

Examples, 9, 362, 365

Form and contents, 9, 362

Form, contents, and sufficiency, 20, 1114

Caption, 20, 1118

Command to officer, 20, 1140

Copy served, 20, 1177

Date, 20, 1126

SUMMONS AND PROCESS, *cont'd.*

Form, contents, and sufficiency, *con.*

Designation of parties, see *infra*, Designation of parties.

Direction to proper officer, 20, 1137

Form in general, 20, 1114

Indorsement, see *infra*, Indorsement.

In name and by authority of state, 20, 1116

Literal or substantial compliance with statute, 20, 1115

Nature or cause of action, see *infra*, Nature or cause of action.

Place of return, see *infra*, Place of return.

Recitals, 20, 1115

Relief or amount demanded under code, 20, 1148

Return day, see *infra*, Return day.

Seal and signature, see *infra*, Seal and signature.

Statutory form, 20, 1115

Subpoena, 20, 1114

Teste, 20, 1125

Venue, 20, 1118

Garnishment, 9, 807

Idem sonans, 20, 1133

Indorsement, 20, 1152

Cause of action or amount claimed, 20, 1152

Effect of requirement, 20, 1154

In general, 20, 1152

Sufficient certainty, 20, 1155

Surplusage, 20, 1155

In general, 20, 1152

Name of attorney, 20, 1156

Issuance, 20, 1103

Authority to issue, 20, 1105

Clerk of court, 20, 1105

Declaration as process, 20, 1104

Delivering, 20, 1103

Filling blanks, 20, 1109

Holiday, 20, 1109

In general, 20, 1103

Issuing to other counties, 20, 1111

Ministerial act, 20, 1105

Order of court, 20, 1107

Præcipe, 20, 1106

Prerequisites to issuance, 20, 1106

Sealing, 20, 1103

Signing, 20, 1103

Sunday, 20, 1108

Time, 20, 1107

Two writs simultaneously issued, 20, 1104

Issuing to other counties, 20, 1111

Case must come within statute, 20, 1112

SUMMONS AND PROCESS, *cont'd.*

- Issuing to other counties, *cont'd.*
 - Counterpart summons to another county, 20, 1129
 - Direction, 20, 1140
 - In general, 20, 1111
 - Necessity of averment, 20, 1113
 - Objection, 20, 1113
 - Right to issue one writ, 20, 1114
 - United States courts, 20, 1111
- Judgment roll, 18, 475
- Jury:
 - As to procuring attendance of jurors at trial, see JURY.*
- Justices of the peace:
 - Nature or cause of action, 20, 1145
 - Conformity with statute necessary, 20, 1147
 - General statement of cause of action, 20, 1146
 - In general, 20, 1145
 - Jurisdictional matters, 20, 1147
 - Plaintiff bound by cause stated in summons, 20, 1148
 - Return day, 20, 1158
- Landlord and tenant, see LANDLORD AND TENANT.*
- Lost instruments and records, 13, 375
- Lost process, 20, 1081
- Malicious abuse of process, see MALICIOUS PROSECUTION.*
- Marriage (annulment), 13, 879
- Misspelling, 20, 1133
- Mistake, 20, 1133
- Names, see infra, Designation of parties; States.*
- Nature, 20, 1101
- Nature or cause of action, (*see infra*, Nature or cause of action), 20, 1141
 - Amount of claim as incidental to character of action, 20, 1143
 - Definiteness, 20, 1144
 - General statement of cause of action, 20, 1141
 - Indorsement of cause of action or amount claimed, 20, 1152
 - Effect of requirement, 20, 1154
 - In general, 20, 1152
 - Sufficient certainty, 20, 1155
 - Surplusage, 20, 1155
- In general, 20, 1141
- Justice of the peace, 20, 1145
- Name or form of action, 20, 1141
- Particularity of declaration and complaint, 20, 1144
- Statutory provisions, 20, 1142

SUMMONS AND PROCESS, *cont'd.*

- Nature or cause of action, *cont'd.*
 - Sufficiency of statement under statutes, 20, 1142
 - Sufficient particularity, 20, 1145
- Objections, 20, 1183
 - Effect of objection, 20, 1187
 - How made, 20, 1184
 - Judgment, 20, 1187
 - Motion to quash or plea in abatement, 20, 1185
 - Propriety of plea or motion, 20, 1186
 - Special appearance, 20, 1184
 - When made in general, 20, 1183
- Obstructing justice, see OBSTRUCTING JUSTICE.*
- Opening, amending, and vacating judgments:
 - Statutory proceedings by complaint and summons, 15, 257
- Orders, 20, 1107
- Ordinances, 15, 423
- Parties (*see infra*, Designation of parties):
 - Necessity of appearance to constitute one a party, 15, 466
- Partition (*see* PARTITION), 15, 773
- Partnership, see PARTNERSHIP.*
- Penalties and penal actions, see PENALTIES AND PENAL ACTIONS.*
- Petitions, 16, 520
- Place of return, 20, 1172
 - Counterpart writ, 20, 1175
 - Court not in existence, 20, 1175
 - Defendant entitled to notice of place, 20, 1172
 - In general, 20, 1172
 - Justice of the peace, 20, 1173
 - Place where plaintiff desires trial, 20, 1174
 - Statute mandatory, 20, 1172
 - Substantial compliance, 20, 1176
 - Sufficiency of designation, 20, 1175
 - Wrong court, 20, 1175
- Pluries writs, see infra, Alias and pluries writs.*
- Præcipe (*see* PRÆCIPE), 20, 1106
- Process, 20, 1101
- Prohibition, see PROHIBITION.*
- Quieting title, 17, 324
- Quo warranto, 17, 454
- Relief or amount demanded under code, 20, 1148
 - Further statement of the cause of action, 20, 1150
 - In general, 20, 1148
 - Necessity of compliance, 20, 1151
- Replevin, 18, 520
 - Alias summons, 18, 521*
 - Failure to serve, 18, 521
 - Necessary to summon, 18, 520

SUMMONS AND PROCESS, *cont'd.*

- Residence, 20, 1137
- Return day, 20, 1156
 - At next term, 20, 1169
 - At term generally, 20, 1168
 - Before justice of the peace, 20, 1158
- Change of term after issuance of process, 20, 1172
- Computation of time, 20, 1167
- Designation of term required by statute, 20, 1169
- Failure of term, 20, 1164
- Holiday, 20, 1166
- In general, 20, 1156
- Intervening terms, 20, 1164
- Naming proper term but wrong day, 20, 1170
- Necessity for designating return day, 20, 1159
- Next term, 20, 1156, 1169
- On first day of term, 20, 1170
- Procedure where writ is defective, 20, 1160
- Returnable instant, 20, 1165
- Returnable out of term, 20, 1163
- Returnable to wrong or impossible time or term, 20, 1162
- Return day indistinctly written, 20, 1171
- Return day left blank, 20, 1160
- Short summons, 20, 1165
- Subpoena *ad respondendum*, 20, 1157
- Substantial compliance with statute, 20, 1171
- Sufficiency of copy served, 20, 1162
- Sufficiency of designation of return day, 20, 1168
- Sunday, 20, 1166
- Terms without fixed duration, 20, 1161
- Time to appear under code, 20, 1161
- Where there are several defendants, 20, 1165
- Where writ is dated in month in which term begins, 20, 1170
- Returns (see RETURNS):
 - Place of return, see *infra*, Place of return.
- Review, 18, 1011
- Revival of judgments, 18, 1090
- Scire facias, 19, 263, 268
- Seal and signature, 20, 1103, 1118
 - Copy of petition, 20, 1123
 - Copy of summons, 20, 1124
 - In general, 20, 1118
 - Notice signed by party or attorney, 20, 1124
 - Printed signature, 20, 1125

SUMMONS AND PROCESS, *cont'd.*

- Seal and signature, *cont'd.*
 - Seal, 20, 1121
 - Seal once used, 20, 1124
 - Signature, 20, 1118
 - Sufficient compliance, 20, 1119
 - Writs issued by justice of peace, 20, 1120
 - Service of process, see PUBLICATION; SERVICE OF PROCESS.
 - Short summons, 20, 1165
 - Signature, see *infra*, Seal and signature.
 - Specific performance, 20, 409
 - States:
 - In name and by authority of state, 20, 1116
 - Amendable defect, 20, 1116
 - Form, 20, 1117
 - General rule, 20, 1116
 - To what process applicable, 20, 1116
 - Subpoena *ad respondendum*, 20, 1103
 - Sufficiency, see *infra*, Form, contents, and sufficiency.
 - Summary proceedings, 20, 1086
 - Summons, 20, 1102
 - Sunday *dies non juridicus*:
 - Power to take recognizance or bail bond, 20, 1197
 - Sundays and holidays, 20, 1108
 - Issuance of criminal process, 20, 1196
 - Return day, 20, 1166
 - Term, see *infra*, Return day.
 - Teste, 20, 1125
 - In general, 20, 1125
 - Matter of form, 20, 1126
 - Nature, 20, 1125
 - Notice, 20, 1126
 - Theory of the case, 21, 661
 - Time, computation of, 20, 1167
 - Trial of the right of property*, see RIGHT OF PROPERTY, TRIAL OF.
 - Trover and conversion, 21, 1055
 - United States courts, 22, 295
 - Sending subpoena into another district, 20, 1111
 - Variance, see VARIANCE.
 - Vendor's liens, 22, 707
 - Venue (see *infra*, Issuing to other counties; Place of return), 20, 1118
- SUNDAYS AND HOLIDAYS, 20,**
- 1189
 - Adjournments, 1, 240
 - Appeals, 2, 256
 - Transcript on appeal, 2, 278
 - Attachment, 3, 52; 20, 1196
 - Awards, 20, 1194
 - Bail and recognizance, 3, 229; 20, 1197
 - Bills of exceptions, 3, 482

SUNDAYS AND HOLIDAYS, *cont'd.*

- Contracts, 20, 1201
 - Averment that note was given in violation of Sunday law, 20, 1202
 - Complaint to recover on Sunday contract, 20, 1201
 - Pleading execution of contract on Sunday as defense, 20, 1202
 - Plea that note was executed on Sunday, 20, 1202
- Criminal procedure, 20, 1196, 1197
- Depositions, 6, 524
- Elections:
 - Time of filing notice, petition, or complaint, 7, 392
- Foreclosure of mortgages, 9, 178
- Gaming, 9, 799
- Hearing, 20, 1192
- Holidays as *dies non juridicus*, 20, 1205
 - In the absence of statute, 20, 1205
 - Ministerial acts, 20, 1205
 - Statutory provisions, 20, 1205
- Indictments*, see *infra*, Prosecutions for violation of Sunday laws.
- Instructions, 20, 1194
- Intoxicating liquors:
 - Averments of sale on indictment, 11, 537
 - Indictment, 11, 556, 557
 - Keeping open at prohibited time, 11, 571
- Judicial notice, 20, 1192
- Judicial sales, 12, 47
- Jury:
 - Discharge of jury, 20, 1195
 - Instructing jury, 20, 1194
 - Receiving verdict, 20, 1194
- Justices of the peace, 12, 734
 - Exercise of powers of magistrate in criminal action, 20, 1196
- Ministerial acts, 20, 1197
- New trial:
 - Computation of time, 14, 866
- Penalties and penal actions:
 - Action for penalty for violation of Sunday law, 20, 1201
 - Averment of petition or complaint, 20, 1201
 - Averment that work was not necessary, 20, 1201
 - Verdict or finding, 20, 1201
- Prosecutions for violation of Sunday laws, 20, 1198
 - Averment of intent, 20, 1200
 - Charging offense in language of statute, 20, 1200
 - Charging the offense, 20, 1199
 - Joinder of defendants, 20, 1198
 - Laying time, 20, 1198
 - Laying venue, 20, 1199

SUNDAYS AND HOLIDAYS, *cont'd.*

- Prosecutions for violation of Sunday laws, *cont'd.*
 - Negation of exceptions, 20, 1200
 - Question of necessity one for the jury, 20, 1201
 - Requisites of indictment, information, or complaint, 20, 1198
- Rendition and entry of judgments, 18, 433; 20, 1192, 1193
- Sentence, 19, 443
 - Pronouncing sentence, 20, 1192
- Service of process, 19, 600; 20, 1192
- Sheriffs' sales, 20, 205
- Summons and process, 20, 1108
 - Issuance of criminal process, 20, 1196
 - Return day, 20, 1166
- Sunday as *dies non juridicus*, 20, 1190
 - At common law, 20, 1190
 - Awards, 20, 1194
 - Discharge of jury, 20, 1195
 - Entering judgment of record on Sunday, 20, 1193
 - Exceptions to rule, 20, 1194
 - Exercise of powers of magistrate in criminal action, 20, 1196
 - General rule as to judicial proceedings, 20, 1190
 - Granting equitable relief, 20, 1197
 - Hearing, 20, 1192
 - Instructing jury, 20, 1194
 - Issuance of criminal process, 20, 1196
 - Judicial notice of Sunday, 20, 1192
 - Judicial proceedings within rule, 20, 1192
 - Receiving verdict, 20, 1194
 - Rendition of judgment or pronouncing sentence, 20, 1192
 - Service of process, 20, 1192
 - Trial, 20, 1192
 - Under statute, 20, 1191
 - Writs of attachment, 20, 1196
- Telegraphs and telephones, 21, 538
- Terms and sessions of court, 21, 635
- Time, computation of, 20, 1202
 - Exclusion of intervening Sundays, 20, 1202
 - Inclusion or exclusion of Sunday in computing time, 20, 1202
 - Practice where prescribed period closes on Sunday, 20, 1204
- Trial, 20, 1192
- Venue, 20, 1199
- Verdict:
 - Receiving verdict, 20, 1194
 - Reception of verdict on Sunday, 22, 924

SUPERSEDEAS AND STAY OF PROCEEDINGS, 20, 1207

See ANOTHER SUIT PENDING.

Appeal or error (see *infra*, Error, writ of), 2, 323, 333; 20, 1215

Chancery appeal, 20, 1214

Compliance with statute, 20, 1216

Bonds, see *infra*, Bond.*Criminal cases*, see *infra*, Criminal cases.*Effect of supersedeas*, see *infra*, Effect of supersedeas.*Issuance of writ or order of stay*, see *infra*, Issuance of writ or order of stay.

Lodgment of writ in lower court, 20, 1217

Remedy for violation, see *infra*, Remedy for violation.

Suing out writ of error or perfecting appeal, 20, 1216

Vacation of improper supersedeas, 20, 1247

Where there is no appeal, 20, 1216

Statutory stay in general, 20, 1215

Appearances, 2, 656, 657

Application for stay, 20, 1275

Chambers, 20, 1277

Discretion of court, 20, 1278

How made, 20, 1275

Mandamus, 20, 1278

Notice, 20, 1275

When and where made, 20, 1276

Arrest of judgment, see ARREST OF JUDGMENT.

Audita querela, 20, 1211

Bail and recognizance, 3, 182

Bills of exceptions, 3, 516

Bills of review, 3, 594

Bond, 20, 1222

Amount and conditions fixed by court, 20, 1224

Appeals, 20, 1235

Approval of bond, 20, 1227

Bond against waste, 20, 1224

Compliance with statute, 20, 1225

Conditions prescribed in particular cases, 20, 1223

Effect of executing stay or supersedeas bond, 20, 1229

Appeal, 20, 1235

Appeal from order or decree granting, refusing, or dissolving injunction, 20, 1231

Infringement of right, 20, 1234

Liability of sureties, 20, 1235

Mandamus, 20, 1230

SUPERSEDEAS AND STAY OF PROCEEDINGS, *cont'd.*Bond, *cont'd.*Effect of executing stay or supersedeas bond, *cont'd.*

Mandamus to protect, 20, 1234

Operation as supersedeas in general, 20, 1229

Order appointing receiver, 20, 1230

Execution, 20, 1226

Execution of bond, 20, 1218

Appeal without supersedeas, 20, 1219

Decree or judgment directing payment of fund in court, 20, 1221

Exceptions, 20, 1220

In general, 20, 1218

Public corporations and persons acting in trust capacity, 20, 1220

In general, 20, 1222

Issuance of writ or order of stay, 20, 1237

Joinder of defendants, 20, 1227

Liability of sureties, 20, 1235

Stay after approval without reference to sufficiency, 20, 1228

Stay of execution, 20, 1271

Certiorari, 4, 205; 20, 1212

After issuance of execution, 4, 208

Award of special supersedeas, 4, 206

Bond for supersedeas, 4, 184

Collateral proceedings, 4, 208

Correction of record, 4, 208

Criminal prosecution, 4, 206

Doctrine as to suspension of further proceedings, 4, 205

Liability for disobedience of supersedeas, 4, 211

Mere allowance of writ, 4, 207

Special clause in writ, 4, 207

Statutory provisions, 4, 209

Time of taking effect, 4, 207

Upon whom the supersedeas operates, 4, 209

Vacation of supersedeas, 4, 210

Chambers and vacation, 20, 1277

Change of venue, 4, 495

Commissions, 20, 1260

Confession of judgment, 20, 1270

Contempt, 20, 1246

Habeas corpus, 4, 815

Costs:

To enforce payment of costs of former suit, 20, 1253

Character of actions, 20, 1255

SUPERSEDEAS AND STAY OF PROCEEDINGS, *cont'd.***Costs, *cont'd.***

To enforce payment of costs of former suit, *cont'd.*

Court of different character or different jurisdiction, 20, 1257

Examination of merits in first action, 20, 1254

Identity of parties and causes, 20, 1255

In general, 20, 1253

Power exercised to prevent vexatious proceedings, 20, 1255

Criminal cases, 20, 1248

Certificate of doubt or probable cause, 20, 1250

Effect of stay as to custody, 20, 1251

In general, 20, 1248

Operation of appeal or error as stay, 20, 1248

Order of court, 20, 1250

Cross-bills, 5, 666; 20, 1260

Cross-complaints, 5, 685

Debt, stay upon payment of, 20, 1262

Definition and nature, 20, 1209

Express supersedeas, 20, 1210

Implied supersedeas, see *infra*,

Implied supersedeas.

In general, 20, 1209

Disbarment and suspension of attorneys, 6, 719

Dismissal, discontinuance, and non-suit:

Costs, 6, 978

Want of prosecution, 6, 918

Effect of supersedeas, 20, 1240

Effect upon execution, 20, 1241

After issuance, 20, 1242

Before issuance, 20, 1241

Execution issued in violation of stay, 20, 1243

Effect upon lien of judgment, 20, 1245

Expiration of stay, 20, 1245

In general, 20, 1240

Self-executing judgment, 20, 1244

Eminent domain, 7, 659

Error, writ of (see *infra*, Appeal or error), 7, 835

Implied supersedeas, 20, 1212

Action on judgment, 20, 1213

At common law, 20, 1212

Auxiliary process, 20, 1214

Second writ after abatement of first by act of plaintiff in error, 20, 1213

Substitute for writ of error, 20, 1212

SUPERSEDEAS AND STAY OF PROCEEDINGS, *cont'd.*

Escape, 7, 940

Evidence:

To procure evidence fraudulently withheld, 20, 1260

Executions, 22, 644

Agreement for stay of execution:

Examples, 8, 320

In general, 8, 320

Mere memorandum, 8, 320

Void or voidable, 8, 320

Effect of supersedeas on execution, 20, 1241

After issuance, 20, 1242

Before issuance, 20, 1241

Execution issued in violation of stay, 20, 1243

Time of issuance of writ, 8, 352

Where execution issues before appeal or error, 20, 1239

Executions against the body and arrest in civil cases, 8, 639; 20, 1211

Forcible entry and detainer, 9, 33, 79

Additional security, 9, 80

Extension of time to file bond, 9, 80

In general, 9, 79

Supersedeas *per se*, 9, 80

Foreclosure of mortgages, see **FORECLOSURE OF MORTGAGES.**

Forma pauperis, 16, 695

Forthcoming and delivery bonds, 9, 672

Fraud, 20, 1262

Funds and deposits in court, 9, 747

Decree or judgment directing payment of fund in court, 20, 1221

Garnishment:

Garnishment as a stay of other proceedings, 9, 854

Actions in foreign jurisdiction, 9, 846

Actions in same jurisdiction, 9, 855

Actions not barred, 9, 855

Effect upon prior suits, 9, 855

In general, 9, 854

Subsequent suits in foreign jurisdiction, 9, 857

Subsequent suits in same jurisdiction, 9, 856

Judgment with stay of execution, 9, 849

Habeas corpus, 9, 1029; 20, 1212

Appeal, 9, 1080

Implied supersedeas, 20, 1212

Certiorari, 20, 1212

Chancery appeals, 20, 1214

Habeas corpus, 20, 1212

SUPERSEDEAS AND STAY OF PROCEEDINGS, *cont'd.*Implied supersedeas, *cont'd.*

In general, 20, 1212

Writ of error, 20, 1212

Injunctions, 20, 1211

Appeal from order or decree granting, refusing, or dissolving injunction, 20, 1231

Intermediate proceedings, 20, 1252

Abuse of process, 20, 1253

Effect of stay, 20, 1263

For commission to take testimony, 20, 1260

Fraud and breach of faith, 20, 1262

In general, 20, 1252

Inherent power of court, 20, 1252

Pendency of another suit, 20, 1262

Pending bankruptcy proceedings, 20, 1262

Stay pending application for other relief, see *infra*, Stay pending application for other relief.

Stay upon payment of debt, 20, 1262

To compel filing of security for costs, 20, 1261

To enforce payment of costs of former suit, see *infra*, Costs.

To procure evidence fraudulently withheld, 20, 1260

Upon filing cross-bill, 20, 1260

Vexatious proceedings, 20, 1253

Issuance of writ or order of stay, 20, 1235

Appellate court, 20, 1237

In general, 20, 1235

Inherent power, 20, 1237

Where bond is fixed by order of court, 20, 1237

Where execution issues before appeal or error, 20, 1239

Judgments:

Actions on judgments, 11, 1105

Landlord and tenant:

Summary proceedings, 12, 898

Mandamus, 13, 586, 833; 20, 1230, 1234, 1278

Another adequate remedy, 13, 587

Discretion of lower court, 13, 587

Relief obtainable in superior court, 13, 586

To compel granting, 13, 586

To fix and approve supersedeas bond, 13, 588

To vacate supersedeas, 13, 587

When mandamus will not issue, 13, 586

Mechanics' liens, 13, 1047

Mills and milldams, 14, 15

Index Pl. & Pr. — 68

SUPERSEDEAS AND STAY OF PROCEEDINGS, *cont'd.*

New trial, 20, 1259

Notice:

Application for stay of execution, 20, 1275

Opening, amending, and vacating judgments, 20, 1259

Orders, see *infra*, Issuance of writ or order of stay.

Petitions, 16, 509

Prohibition, 16, 1141; 20, 1246

Public officers:

Suspension and removal, 17, 231

Railroads:

Intersection of railroads, 17, 512

Receivers, 17, 858

Decree involving property in hands of receiver, 17, 882

Effect of appeal, 17, 872

Rehearing, 20, 1259

Remedy for violation, 20, 1246

Contempt, 20, 1246

Proceedings set aside, 20, 1246

Prohibition, 20, 1247

Supersedeas from appellate court, 20, 1246

Removal of causes, 18, 395

Rendition and entry of judgments, 18, 445

Review (see REVIEW), 20, 1259

Satisfaction and discharge of judgments:

Set-off of judgment against judgment, 19, 159

Scandal and impertinence, 19, 229

Scire facias, 19, 305

Security for costs:

To compel filing security for costs, 20, 1261

Set-off:

Staying proceedings until party claiming benefit of set-off can get judgment, 19, 159

Settlement of decedents' estates:

Appeal from order of appointment of administrator, 19, 837

Statutory stay, see *infra*, Appeal or error; Stay of execution.

Stay of execution, 20, 1263

Appellate court, 20, 1264

Application for stay, 20, 1275

Exercise of judicial discretion, 20, 1263

Perpetual stay, 20, 1268

Power of court generally, 20, 1263

Statutory stay, 20, 1269

Amendment, 20, 1272

Confession of judgment, 20, 1270

Effecting stay, 20, 1271

SUPERSEDEAS AND STAY OF SUPPLEMENTAL PLEADINGS, PROCEEDINGS, *cont'd.*Stay of execution, *cont'd.*Statutory stay, *cont'd.*

Effect of stay in general, 20, 1274

Effect of stay upon right to appeal, 20, 1275

Execution of bond, 20, 1271

Strict construction of statute, 20, 1271

Time to take, 20, 1273

Waiver of right to stay, 20, 1271

Temporary or perpetual stay, 20, 1264

Temporary stay, 20, 1264

Effect of stay, 20, 1266

In general, 20, 1264

Stay by consent or agreement of parties, 20, 1266

Stay of intermediate proceedings:

Effect of stay, 20, 1263

Stay pending application for other relief, 20, 1258

In general, 20, 1258

Motion to open judgment or for new trial, 20, 1259

Power not arbitrary, 20, 1258

Rehearing, 20, 1259

Review, 20, 1259

Street railways:

Equitable actions for trespass by elevated roads, 20, 864

Temporary stay, see *infra*, Stay of execution; Stay of intermediate proceedings.

Vacation of improper supersedeas, 20, 1247

Venditioni exponas, 22, 644

Vendor and purchaser, 22, 699

Vexatious proceedings, 20, 1253, 1255, 1257

Violation, see *infra*, Remedy for violation.**SUPPLEMENTAL**, see SUPPLEMENTAL BILL; SUPPLEMENTAL PLEADINGS.**SUPPLEMENTAL BILL:**

Bills of review, 3, 598

Creditors' bills, 5, 576

Injunctions, see INJUNCTIONS.

Partnership:

Bill or complaint for accounting, dissolution, and settlement, 15, 1093

Patents, 16, 104

Pleas in equity, 16, 602

Winding up corporations, 22, 1274

SUPPLEMENTAL DECREES, 5, 931**SUPPLEMENTAL PLEADINGS**,

21, 1

See AMENDMENTS.

cont'd.

Admiralty, 21, 50

Amendments, 21, 78

Distinction between supplemental pleadings and amendments, see: *infra*, Rule that supplemental pleading must allege new matter.Answers (see *infra*, Supplemental answers):

Answer to supplemental bill, 21, 81

Propriety of supplemental answer or amendment of answer, 21, 12

Appeals:

Appealable orders, 21, 83

Appeal from decree rendered on supplemental bill, 21, 84

Review of discretion on appeal, 21, 63

Application of ordinary rules of pleading, 21, 69

Assignments, 21, 38

Supplemental answers, 21, 49

Bills, complaints, and petitions, 21, 15

Acquisition of new right or interest by complainant, 21, 31

Amended and supplemental bill treated as original bill, 21, 16

Answer to supplemental complaint or petition, 21, 81

Bill of discovery, 21, 35

Bringing in new parties, 21, 36

Changing theory of case, 21, 25

Consideration of matters which may and must be set up, 21, 28

Facts enabling plaintiff to specify damages, 21, 25

Judgment rendered *pendente lite*, 21, 32

Matters which entitle complainant to more extensive and additional relief, 21, 23

New and independent cause of action, 21, 22

New matter must be with respect to same rights and interests, 21, 23

New parties upon devolution and merger of corporations, 21, 41

New parties upon devolution of interest by assignment, 21, 38

Propriety of supplemental bill or amendment of bill, 21, 10, 11

Revivor, 21, 36

Rule that original pleading must state cause of action, 21, 15

Rule that supplemental pleading must not state new cause of action, 21, 20

SUPPLEMENTAL PLEADINGS,
cont'd.

- Bills, complaints, and petitions, *con.*
- Subsequent defaults and accrual of additional instalments, 21, 26
- Suit for account, 21, 34
- Supplemental bill, 21, 15
- Supplemental bill alleging new title, 21, 17
- Supplemental bill by intervening creditor, 21, 41
- Supplemental complaint or petition, 21, 18
- Waiver of objections, 21, 20, 28
- Where averments of original and of supplemental bill are not irreconcilable, 21, 27
- Compromise, 21, 48
- Conditions, see *infra*, Order granting or denying leave.
- Courts:
 - In what courts supplemental pleadings may be filed, 21, 8
- Cross-bills, 21, 50
- Death, 21, 38
- Decrees:
 - Judgment or decree after supplemental pleading has been filed, 21, 83
- Definiteness and certainty in pleading, 21, 69
- Demurrer, see *infra*, Objections to supplemental pleadings.
- Designation, 21, 67
- Discharge, 21, 48
- Discretion of court as to allowing supplemental pleadings, 21, 58
 - Abuse of discretion, 21, 63
 - Attempt to set up matters wholly insufficient in law, 21, 62
 - Avoidance of multiplicity of suits, 21, 63
 - Considerations governing exercise of discretion, 21, 61
 - Merits of proposed cause of action or defense, 21, 61
 - Pleading not tested on demurrer, 21, 61
 - Review of discretion on appeal, 21, 63
- Statement of general rule, 21, 58
- Supplemental answers, 21, 60
- Supplemental bills, 21, 59
- Supplemental complaints or petitions, 21, 59
- Supplemental pleadings and amendments compared, 21, 58
- Supplemental pleadings which come within well-established rules, 21, 58
- Truth or falsity of averments of proposed pleading, 21, 62

SUPPLEMENTAL PLEADINGS,
cont'd.

- Dismissal, discontinuance, and non-suit, 21, 80
- Distinct pleading, 21, 67
- Divorce, see DIVORCE.
- Effect of supplemental upon original pleading, 21, 78
- Effect of supplemental answer, 21, 80
- Effect of supplemental bill, 21, 78
- Effect of supplemental complaint, 21, 79
- In general, 21, 78
- Exceptions, see *infra*, Objections to supplemental pleadings.
- Filing (see *infra*, Time to file supplemental pleadings):
 - Failure to file supplemental pleadings, 21, 51
- Former adjudication, 9, 619
- Hearing:
 - Hearing after supplemental pleading has been filed, 21, 82
- How application made, 21, 65
- Joinder of counts and causes, 21, 73
- Judgments:
 - Judgment or decree after supplemental pleading has been filed, 21, 83
- Leave of court, 21, 55
 - Discretion of court as to allowing supplemental pleadings, see *infra*, Discretion of court as to allowing supplemental pleadings.
 - How application made, 21, 65
 - Motion papers, 21, 65
 - Necessity to obtain leave of court, 21, 55
 - Failure to obtain leave, 21, 57
 - In actions under the code, 21, 57
 - In equity, 21, 56
 - In general, 21, 55
 - Leave granted *nunc pro tunc*, 21, 57
- Notice of application, see *infra*.
- Notice of application.
- Order granting or denying leave, see *infra*, Order granting or denying leave.
- Supersedeas pending application for leave, 21, 65
- New parties, 21, 36
- Notice of application, 21, 63
- Chancery practice, 21, 63
- Code practice, 21, 64
- Nunc pro tunc*, 21, 57

SUPPLEMENTAL PLEADINGS,

cont'd.

- Objections to supplemental pleadings, 21, 75
 - By demurrer, 21, 75
 - Demurrer to supplemental answer, 21, 76
 - Demurrer to supplemental bill, 21, 75
 - Demurrer to supplemental complaint, 21, 76
 - Motion to strike out, 21, 77
 - Objections waived, 21, 77
- Order granting or denying leave, 21, 65
 - Frame of order, 21, 65
 - Imposition of terms, 21, 66
 - Necessity of pleading to conform to order of allowance, 21, 67
 - Power of court to impose terms, 21, 66
 - What terms may be imposed, 21, 66
- Original pleading, reference to, 2, 70
- Parties to actions, 21, 68
 - New matters affecting parties, 21, 49
 - New parties, 21, 36
- Payment, 21, 49
- Proceedings in the cause after supplemental pleadings filed, 21, 78
 - Appeal, 21, 83
 - Dismissal or discontinuance, 21, 80
 - Effect of supplemental upon original pleading, see infra, Effect of supplemental upon original pleading.*
 - Hearing after supplemental bill has been filed, 21, 82
 - Judgment or decree after supplemental pleading has been filed, 21, 83
 - New or additional process upon filing supplemental bill or complaint, 21, 80
 - Pleadings in answer or reply to supplemental pleadings, 21, 81
- Propriety of and necessity for supplemental pleadings, 21, 9
 - Failure to file supplemental pleadings, 21, 51
 - In general, 21, 9
 - Rule that supplemental pleading must allege new matter, see infra, Rule that supplemental pleading must allege new matter.*
 - Supplemental answers, see infra, Supplemental answers.*

SUPPLEMENTAL PLEADINGS,

cont'd.

- Propriety of and necessity for supplemental pleadings, *cont'd.*
 - Supplemental bills, complaints, and petitions, see infra, Supplemental bills, complaints, and petitions.*
 - Supplemental cross-bills, 21, 50
 - Supplemental pleadings in admiralty, 21, 50
 - Supplemental replies, 21, 50
 - Waiver of objections, 21, 51
- Release, 21, 48
- Replications and replies, 21, 50
 - Replication to supplemental answer, 21, 82
- Revivor, 21, 36
- Revivor of suits and actions, see REVIVOR OF SUITS AND ACTIONS.*
- Rule that supplemental pleading must allege new matter, 21, 9
 - Distinction between supplemental and amended pleadings considered technical and disregarded, 21, 13
- Exceptions to and qualifications of the rule, 21, 10
- Propriety of supplemental answer or amendment of answer, 21, 12
- Propriety of supplemental bill or amendment of bill, 21, 10
- Propriety of supplemental complaint or amendment of complaint, 21, 11
 - Waiver of objection, 21, 15
- Set-off, recoupment, and counterclaim, 21, 48
- Settlement, 21, 48
- Statutes allowing supplemental pleadings, 21, 5
 - Application of chancery rules to code pleading, 21, 7
 - In general, 21, 5
 - Provisions applicable to actions at law and suits in equity, 21, 7
- Striking out, 21, 78
 - Motion to strike out, 21, 77
- Style, frame, and allegations of supplemental pleadings, 21, 67
 - Application of ordinary rules of pleading, 21, 69
 - Averment of cause of action, 21, 72
 - Averment of material facts, 21, 71
 - Definiteness and certainty, 21, 69
 - Joinder of causes of action, 21, 73
 - Necessity to conform to order of allowance, 21, 67
- Parties, 21, 68

SUPPLEMENTAL PLEADINGS, SUPPLEMENTAL PLEADINGS,
cont'd. *cont'd.*

Style, frame, and allegations of supplemental pleadings, *cont'd.*
 Preparation as a distinct pleading, 21, 67
 Reference to original pleading, 21, 70
 Reiteration of averments of original pleading, 21, 70
 Style or designation, 21, 67
 Supplemental answers, 21, 73
 Supplemental bills, 21, 70
 Supplemental complaints or petitions, 21, 71
 Verification, 21, 74
 Supersedeas pending application for leave, 21, 65
 Supplemental answers, 21, 42
 Allegations in general, 21, 73
 As respects particular matters of defense, 21, 46
 Compromise, settlement, release, and discharge, 21, 48
 Consistency of supplemental and original answers, 21, 44
 Discretion of court, 21, 60
 Effect of supplemental answer, 21, 80
 Inequitable or unconscionable defenses, 21, 45
 In general, 21, 42
 Judgment recovered in another action, 21, 47
 Newly discovered matter of defense, 21, 43
 New matters affecting parties, 21, 49
 Payment, 21, 49
 Set-off and counterclaim, 21, 48
 Sufficiency of supplemental answer in substance, 21, 73
 Supplemental answer under code analogous to plea *puis darrein continuance*, 21, 43
 Tender, 21, 49
 Time of filing, see *infra*, Time to file supplemental pleadings.
 Title newly acquired by defendant, 21, 50
 Where defendant is mistaken in his original answer, 21, 43
 Supplemental bills, complaints, and petitions:
 Averment, 21, 70
 Averment of cause of action, 21, 72
 Averment of material facts, 21, 71
 Discretion of court, 21, 59
 Effect of supplemental bill or complaint, 21, 78, 79
 General rule, 21, 70

Supplemental bills, complaints, and petitions, *cont'd.*
 Joinder of causes of action, 21, 73
 Prayer, 21, 71
Time of filing, see *infra*, Time to file supplemental pleadings.
 Tender, 21, 49
Terms, see *infra*, Order granting or denying leave.
 Time to file supplemental pleadings, 21, 51
 After answer, 21, 52
 After appeal has been taken, 21, 53
 After judgment or decree, 21, 52
 At or during trial, 21, 52
 In general, 21, 51
 Laches, 21, 53
 Supplemental answer, 21, 52, 54
 Supplemental bill, 21, 52, 54
 Supplemental complaint, 21, 52, 54
 Verification, 21, 74
SUPPLEMENTARY PROCEEDINGS (see GARNISHMENT):
 Abandonment, 21, 198
 Adjournment, 21, 196
 Abandonment, 21, 198
 Failure to adjourn, 21, 197
 In general, 21, 196
 Affidavit for order of examination, 21, 117
 Affidavit after return of execution, 21, 118
 Affidavit before return of execution, 21, 122
 Affidavit for order of examination of third party, 21, 123
 Affidavit for second examination, 21, 125
 Allegation as to previous application, 12, 126
 Allegations upon information and belief, 21, 124
 Alternative statements, 21, 125
 Demand, 21, 123
 Description of judgment, 21, 119
 Issuance of execution, 21, 120
 Necessity, 21, 117
 Sufficiency, 21, 117
 Sufficiency of affidavit, 21, 126
 What affidavit must contain, 21, 119
 Who may make affidavit, 21, 118
 Against whom proceedings may be maintained, 21, 99
 Corporations, 21, 100
 Debtors of execution defendant, 21, 101
 In general, 21, 99
 Agency, 21, 98

SUPPLEMENTARY PROCEEDINGS, *cont'd.*

- Allowance of costs, 21, 200
 - How payable, 21, 203
 - In general, 21, 200
 - To judgment creditor, 21, 200
 - To judgment debtor, 21, 201
 - To third person, 21, 202
 - When payable, 21, 203
- Amount in controversy, 21, 107
- Answers:
 - Refusal to answer, 21, 170
- Appeals, 2, 144; 21, 204
 - Appealability of orders, 21, 204
 - Contempt, 21, 205
 - In general, 21, 204
 - To what court appeal should be taken, 21, 206
- Appearances, 2, 653; 21, 106
 - Failure to appear as contempt, 21, 168
- Arrest (see *infra*, Warrant of arrest):
 - Privilege from arrest, 21, 154
- Assignments:
 - Assignee of judgment, 21, 98
- Attachment, see *infra*, Contempt.
- Attorneys, 21, 98
- Chambers and vacation, 21, 97
- Change of venue, 4, 386
- Contempt, 21, 165
 - Adjudication, 21, 174
 - Appeals, 21, 205
 - Failure to attend for examination, 21, 168
 - Failure to turn over property or money, 21, 171
 - Hearing, 21, 174
 - Inability to perform act, 21, 181
 - Order, 21, 178
 - Order to show cause, 21, 175
 - Process, 21, 174
 - Punishment, 21, 179
 - Punishment proportioned to injury, 21, 180
 - Refusal to answer, 21, 170
 - Summary punishment, 21, 175
 - Violation of injunction, 21, 172
 - Warrant of attachment, 21, 175
 - Warrant to commit without notice, 21, 175
 - What constitutes contempt, 21, 166
 - When interrogatories necessary, 21, 177
 - Who may punish, 21, 165
- Corporations, 21, 100
- Costs (see *infra*, Allowance of costs):
 - Judgment for costs, 21, 104
- Creditors' bills:
 - Ouster of equitable jurisdiction, 5, 433
 - Supplementary proceedings substitute for creditors' bills, 21, 90

SUPPLEMENTARY PROCEEDINGS, *cont'd.*

- Debtors of execution defendant, 21, 101
- Defaults:
 - Defendant's failure to plead, 6, 78
- Delivery of property, see *infra*, Orders for payment of money or delivery of property.
- Demand, 21, 123
- Dismissal, discontinuance, and nonsuit, 21, 198
- Distinction under New York statutes, 21, 89, 164
- Examination, 21, 144
 - Affidavit for order of examination, see *infra*, Affidavit for order of examination.
 - Answers tending to convict of fraud, 21, 147
 - Assignment by debtor, 21, 146
 - Attendance of witness, 21, 150
 - Contempt, see *infra*, Contempt.
 - Corporations, 21, 149
 - Disposition of testimony, 21, 153
 - Form of testimony, 21, 153
 - Object, 21, 144
 - Order of examination, see *infra*, Order of examination.
 - Place of examination, 21, 152
 - Privilege from arrest, 21, 154
 - Proceedings on examination, 21, 148
 - Refusal to answer, 21, 150
 - Right to counsel, 21, 151
 - Scope, 21, 145
 - Second examination, 21, 152
- Examination of third party:
 - Affidavit for order, 21, 123
- Execution (see *infra*, Affidavit for order of examination), 21, 108
 - Alias and pluries executions, 8, 439
 - By whom issued, 21, 109
 - Necessity of issuance, 21, 108
 - Proceedings after return, 21, 110
 - Proceedings before return, 21, 115
 - Return at solicitation of creditor, 21, 114
 - Second execution, 21, 116
 - Sufficiency of return, 21, 111
 - Time within which return must be made, 21, 113
 - To whom issued, 21, 109
 - Truth of return, 21, 112
 - Void and voidable executions, 21, 115
- Executions against the body and arrest in civil cases, see *infra*, Warrant of arrest.
- Executors and administrators, 21, 99

SUPPLEMENTARY PROCEEDINGS, *cont'd.*

- Information and belief, 21, 124
- Injunctions (see *infra*, Orders):
 - Contempt, 21, 172
- Judgments, see *infra*, What judgments basis for proceedings.
- Jurisdiction, 21, 94
 - At chambers, 21, 97
 - In general, 21, 94
 - New York practice, 21, 95
- Limitations, 21, 101
- Money, see *infra*, Orders for payment of money or delivery of property.
- Nature and character of remedy, 21, 88
- Notice, 21, 194
 - Application for receiver, 21, 188, 193, 195
 - Examination of parties, 21, 195
 - In general, 21, 194
 - Orders for payment of money or delivery of property, 21, 156
- Object, 21, 92
- Order of examination, 21, 127
 - Affidavit for*, see *infra*, Affidavit for order of examination.
 - Before whom returnable, 21, 128
 - By whom granted, 21, 127
 - Contents of order, 21, 131
 - County to which execution issued, 21, 133
 - Creditor entitled to order, 21, 129
 - Direction as to place of attendance, 21, 132
 - Effect of order, 21, 134
 - How entitled, 21, 130
 - How served, 21, 136
 - Nature of order, 21, 127
 - Necessity of service, 21, 135
 - Objection to service, 21, 137
 - Place of residence or business, 21, 133
 - Second order, 21, 134
 - Service of order, 21, 135
 - To whom directed, 21, 131
 - Vacating order, 21, 137
 - When granted, 21, 129
- Orders:
 - Application for receiver, 21, 190
 - Collection of tax, 21, 94
 - Contempt, 21, 178
- Orders for payment of money or delivery of property, 21, 154
 - Application of money or property to satisfaction of judgment, 21, 165
 - Conditions in general, 21, 157
 - Contempt where there is a failure to turn over property or money, 21, 171

SUPPLEMENTARY PROCEEDINGS, *cont'd.*

- Orders for payment of money or delivery of property, *cont'd.*
- Distinction under New York statute, 21, 164
- Effect of order, 21, 163
- Effect of order permitting payment of money, 21, 164
- Forbidding transfer of property, 21, 161
- Form of order, 21, 162
- Form of order for delivery of property, 21, 162
- Form of order for payment of money, 21, 162
- In general, 21, 154
- Notice, 21, 156
- Orders permitting payment in general, 21, 164
- Power of court to settle disputed title, 21, 160
- Property in another state, 21, 155
- Temporary injunction, 21, 161
- Title must be clear and undisputed, 21, 158
- Under what conditions granted, 21, 157
- What property affected by order, 21, 161
- Order to show cause:
 - Contempt, 21, 175
- Payment, see *infra*, Orders for payment of money or delivery of property.
- Payment of order, see *infra*, Orders for payment of money or delivery of property.
- Place of examination, 21, 152
 - Order of examination, 21, 132, 133
- Possession, see *infra*, Orders for payment of money or delivery of property.
- Property, see *infra*, Orders for payment of money or delivery of property.
- Punishment, see *infra*, Contempt.
- Purpose, 21, 92
- Receiver, 17, 695; 21, 181
 - Appointment, 21, 181
 - Appointment as matter of course, 21, 186
 - At what stage of proceedings appointed, 21, 182
 - Bond, 21, 194
 - Extension of receivership, 21, 192
 - Filing orders, 21, 191
 - Ground of application, 21, 186
 - Notice of application, 17, 718, 719; 21, 188, 193, 195
 - Order, 21, 190

SUPPLEMENTARY PROCEEDINGS, *cont'd.*

- Receiver, *cont'd.*
 Regularity of appointment, 21, 193
 Removal, 21, 194
 Who may appoint, 21, 184
 Who may be appointed, 21, 185
 Who may object, 21, 193
 References, 21, 140
 Duties, 21, 141
 In general, 21, 140
 Oath of referee, 21, 141
 Powers, 21, 141
 Reference by consent, 21, 141
 Report, 21, 143
 Vacating and setting aside order of reference, 21, 143
Returns, see infra, Affidavit for order of examination; Execution.
 Second examination, 21, 152
 Affidavit for, 21, 125
 Second execution, 21, 116
 Second order for examination, 21, 134
 Security for costs, 19, 359
 Service of process, 21, 105
 Service of order, 21, 196
 Service of order of examination, 21, 135
 Taxes:
 Collection of tax, 21, 93
 Termination, 21, 199
Third party, see infra, Examination of third party.
 Time in which proceedings may be instituted, 21, 101
Title, see infra, Orders for payment of money or delivery of property.
 United States courts, 21, 106; 23, 309
 Vacating and setting aside order of reference, 21, 137, 143
 Warrant of arrest, 21, 138
 How obtained, 21, 139
 In general, 21, 38
 Proceedings under warrant, 21, 139
 Warrant to commit for contempt without notice, 21, 175
 What judgments basis for proceedings, 21, 103
 Amount, 21, 107
 In general, 21, 103
 Judgment for costs, 21, 104
 Judgments founded on personal service, 21, 105
 Judgments not founded on personal appearance, 21, 106
 Judgments of federal courts, 21, 106
 Void and voidable judgments, 21, 107

SUPPLEMENTARY PROCEEDINGS, *cont'd.*

- Who may maintain proceedings, 21, 97
 Agent, 21, 98
 Assignee of judgment, 21, 98
 Attorney, 21, 98
 In general, 21, 97
 Personal representative, 21, 99
 Within what time proceedings may be instituted, 21, 101
Witnesses, see infra, Examination.
SUPPLEMENTARY REMEDY, *see* MANDAMUS.
SUPPLICAVIT, 21, 208
 Breach of the peace, 21, 208
 Definition, 21, 208
 Discharge, 21, 209
 Procedure, 21, 209
 When proper, 21, 208
SUPPORT:
 Divorce, 7, 81
SUPPRESSION OF EVIDENCE:
Obstructing justice, see OBSTRUCTING JUSTICE.
SUPREME COURTS, *see* COURTS; UNITED STATES COURTS.
SURCHARGING AND FALSIFYING, 21, 210
 Accounts and accounting, 1, 102
 Settlement of decedents' estates, 19, 1045, 1075
SURETY, *see* DURESS.
SURETY COMPANIES:
 Appeal bonds and undertakings, 1, 1003
 Where statute requires sureties, 1, 1005
SURETYSHIP (see CERTIORARI; DURESS; GUARANTY; GUARDIANS):
 Action by surety against cosurety (see *infra*, Summary proceedings by surety against principal or cosurety), 16, 958
 Averring insolvency of principal, 16, 962
 Averring notice and demand, 16, 962
 Declaration and complaint, 16, 961
 Demand, 16, 960
 Form of action, 16, 960
 Joinder of plaintiffs, 16, 961
 Judgment, 16, 963
 Jurisdiction, 16, 958
 Notice, 16, 960
 Parties, 16, 960
 Pleading, 16, 961
 Trial by jury, 16, 963
 Venue of action, 16, 960
 Action by surety against principal (see *infra*, Summary proceedings by surety against principal or cosurety):

SURETYSHIP, *cont'd.*

Action by surety against principal, *cont'd.*

Bill by surety for exoneration, 16, 956

Declaration and complaint, 16, 956

Amendment, 16, 957

In general, 16, 956

Jurisdiction, 16, 951

At law, 16, 952

Discharge of undertaking, 16, 952

In equity, 16, 951

Parties, 16, 954

Defendants, 16, 956

Joinder of cosureties, 16, 955

Plaintiffs, 16, 954

Plea or answer, 16, 957

Action to enforce contract of suretyship, 16, 928

Declaration and complaint, see *infra*, Declaration and complaint.

Dismissal of action as to principal, 16, 937

Execution, 16, 939

Form of action, 16, 928

Intervention by surety, 16, 937

Judgment, 16, 938

Jurisdiction, 16, 928

Parties, see *infra*, Parties to actions.

Pleading, 16, 932

Pleading and proof, 16, 937

Plea or answer, see *infra*, Plea or answer.

Trial, 16, 937

Venue, 16, 928

Admiralty, 1, 267

Answers, see *infra*, Plea or answer.

Answers in code pleading:

Discharge of sureties, 1, 851

Appeal bonds and undertakings:

Common law, 1, 1006

Contract of suretyship joined, 1, 1015

Discharge of sureties, 1, 1016

Change of issue, 1, 1017

In general, 1, 1016

Legal satisfaction, 1, 1016

Tender, 1, 1017

Effect of failure to justify, 1, 1006

Exceptions to sureties, 1, 1005

Except to surety under code procedure, 1, 1005

Ordering sureties, 1, 1004

Qualifications of sureties, 1, 1002

Acceptance of a surety, 1, 1003

Affidavit of worth, 1, 1003

Attorney as surety, 1, 1004

SURETYSHIP, *cont'd.*

Appeal bonds and undertakings, *con.*

Qualifications of sureties, *cont'd.*

Effect of disqualification of surety, 1, 1003

Necessary parties to appellants' proceedings, 1, 1002

Parties, 1, 1002

Pecuniary responsibility, 1, 1004

Representative party, 1, 1002

Statutory qualifications, 1, 1003

Surety companies, 1, 1003

Signature of sureties, 1, 974

Strict construction, 1, 1011

Surety companies where statutes require surety, 1, 1005

Surety on bonds in suit, 1, 1004

Time when sureties were justified, 1, 1007

Assumpsit, 2, 1014

Action for contribution, 16, 960

Attachment:

Bond, 3, 36

Bail and recognizance, see BAIL AND RECOGNIZANCE.

Bastardy:

Security for appearance, 3, 282

Security for maintenance, 3, 312

Complaint, see *infra*, Declaration and complaint.

Consideration, 16, 933

Contribution, 16, 958

Averring insolvency of principal, 16, 962

Averring notice and demand, 16, 962

Declaration and complaint, 16, 961

Demand, 16, 960

Form of action, 16, 960

Joinder of plaintiffs, 16, 961

Judgment, 16, 963

Jurisdiction, 16, 958

Notice, 16, 960

Parties, 16, 960

Pleading, 16, 961

Trial by jury, 16, 963

Venue of action, 16, 960

Costs, see SECURITY FOR COSTS.

Declaration and complaint, 16, 932

Action by surety against principal, 16, 956

Amendment, 16, 957

In general, 16, 956

Action for contribution, 16, 961

Averments necessary, 16, 962

Averring insolvency of principal, 16, 962

Averring notice and demand, 16, 962

In general, 16, 961

SURETYSHIP, *cont'd.*

- Declaration and complaint, *cont'd.*
 - Action to enforce contract of suretyship, 16, 932
 - Consideration, 16, 933
 - Demand, 16, 933
 - In general, 16, 932
 - Notice, 16, 933
- Demand, 16, 933
 - Action by surety against principal, 16, 953
 - Action for contribution, 16, 960, 962
- Determination of suretyship, 16, 963
 - Manner of raising question, 16, 964
 - Nature of proceeding, 16, 963
 - Notice, 16, 964
 - Time of trial, 16, 964
- Dismissal, discontinuance, and nonsuit:
 - Dismissal of action as to principal, 16, 937
- Duress, 7, 246
- Embezzlement*, see EMBEZZLEMENT.
- Evidence:
 - Evidence admissible under general denial, 16, 937
- Execution:
 - Actions to enforce contract of suretyship, 16, 939
 - Levy of writ, 8, 553
- Exoneration, bill for:
 - Action by surety against principal, 16, 956
- Foreclosure of mortgages:
 - Rights of sureties, 9, 279
- Form of action, 16, 928
 - Action for contribution, 16, 960
- Forthcoming and delivery bonds:
 - Bond without sureties, 9, 659
- Fraud:
 - Necessity of special plea, 16, 936
- Guardians (see GUARDIANS):
 - Settlement by sureties, 9, 960
- Injunctions*, see INJUNCTIONS.
- Intervention, 16, 937
- Joinder of parties:
 - Action for contribution, 16, 961
 - Joinder of cosureties in action by surety against principal, 16, 955
- Judgments:
 - Action for contribution, 16, 961
 - Action to enforce contract of suretyship, 16, 938
 - Equitable relief against judgments, 11, 1179
- Jurisdiction:
 - Action by surety against cosurety, 16, 958
 - Concurrent jurisdiction of equity and law, 16, 959
 - Whether in equity or at law, 16, 958

SURETYSHIP, *cont'd.*

- Jurisdiction, *cont'd.*
 - Action by surety against principal, 16, 951
 - At law, 16, 952
 - Discharge of undertaking, 16, 952
 - In equity, 16, 951
 - Action to enforce contract of suretyship, 16, 928
 - Summary proceeding by surety against principal or cosurety, 16, 965
- Jury:
 - Trial by jury:
 - Action by surety for contribution, 16, 963
 - Summary proceeding by surety against principal or cosurety, 16, 966
- Mechanics' liens:
 - Sureties on bond to discharge lien, 13, 965
- Motion*, see *infra*, Summary proceedings by surety against principal or cosurety.
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- Notice, 16, 933
 - Action by surety against principal, 16, 953
 - Action for contribution, 16, 960, 962
 - Determination of suretyship, 16, 964
- Official bonds*, see OFFICIAL BONDS.
- Parties to actions, 16, 929
 - Action by surety against principal, 16, 954
 - Defendants, 16, 956
 - Joinder of cosureties, 16, 955
 - Plaintiffs, 16, 954
 - Action for contribution, 16, 960
 - Defendants, 16, 961
 - Joinder of plaintiffs, 16, 961
 - Plaintiffs, 16, 961
 - Action to enforce contract of suretyship, 16, 929
 - Bond in severalty, 16, 930
 - Defendants at law, 16, 929
 - Equity, 16, 931
 - Making principal a party, 16, 930
 - Plaintiffs, 16, 929
 - Statutory regulations, 16, 931
 - Sureties in different undertakings, 16, 931
- Equity, 15, 659
- Summary proceedings by surety against principal or cosurety, 16, 965
- Pleading and proof, 16, 937

SURETYSHIP, *cont'd.*

Plea or answer:

Action by surety against principal, 16, 957

Action to enforce contract of suretyship, 16, 933

Defenses available to principal, 16, 934

Equitable defenses, 16, 933

Failure to sue principal after notice, 16, 935

Fraud, 16, 936

Indulgence to principal, 16, 934

Joinder in plea, 16, 937

Necessity of special plea, 16, 936

Release of surety, 16, 936

Requisites to plea or answer, 16, 934

What surety may plead, 16, 933

Release:

Necessity of special plea to release surety, 16, 936

Removal of causes, see REMOVAL OF CAUSES.*Security for costs*, see SECURITY FOR COSTS.

Substitution of parties, 20, 1065

Summary proceedings by surety against principal or cosurety, 16, 965

Defenses, 16, 966

Judgment, 16, 967

Jurisdiction, 16, 965

Nature of remedy, 16, 965

Notice of motion, 16, 965

Parties to motion, 16, 965

Sufficiency of motion, 16, 966

Time of motion, 16, 966

Trial by jury, 16, 966

Trial:

Action to enforce contract of suretyship, 16, 937

Dismissal of action as to principal, 16, 937

Intervention of surety, 16, 937

Venue:

Action for contribution, 16, 960

Action to enforce contract of suretyship, 16, 928

SURFACE WATERS (see DRAINAGE; WATERS AND WATERCOURSES):
Mills and milldams, see MILLS AND MILLDAMS.**SURGEONS**, see PHYSICIANS AND SURGEONS.**SURPLUSAGE, IRRELEVANT OR REDUNDANT MATTER**, 21, 223

See DEFINITENESS AND CERTAINTY IN

SURPLUSAGE, ETC., *cont'd.*

PLEADING; SCANDAL AND IMPERTINENCE; SHAM AND FRIVOLOUS PLEADINGS; STRIKING OUT.

Accounts and accounting:

Bill in equity, 1, 98

Adultery, 1, 306

Affidavits:

Jurat, 1, 317

Agency, 21, 295

Amendments, 21, 362

Descriptio personae, 21, 295

Answers:

Intermingling causes of action or grounds of defense, 21, 289

Anticipatory averments, 21, 293

In actions at law, 21, 293

In equitable actions, 21, 294

Appeal and error under codes, 21, 297

Appeal from interlocutory orders, 21, 297

Assignment of error, 21, 300

Copying parts stricken out into transcript, 21, 306

Evidence under general issue, 21, 302

Issues on appeal, 21, 308

Order denying application, 21, 299

Order granting application, 21, 299, 301

Order refusing application, 21, 302

Proper order on appeal where ruling below was correct, 21, 298

Record on appeal, 21, 305

References to portions of pleading stricken out in record, 21, 307

Review on appeal from final judgment, 21, 300

Statutory appeals, 21, 297

Waiver of right to appeal, 21, 307

Appeal bonds and undertakings, 1, 992

Application of principles, 21, 264

Intermingling causes of action or grounds of defense, see *infra*,
Intermingling causes of action or grounds of defense.*Legal and equitable code actions*, see *infra*, Legal and equitable code actions.*Unnecessary counts, pleas, and subsequent pleadings*, see *infra*,
Unnecessary counts, pleas, and subsequent pleadings.

Assault and battery, 2, 842, 845

Assignments, 21, 295

Attachment:

Affidavit, 3, 11

Bond, 3, 31

SURPLUSAGE, ETC., *cont'd.*

Change of venue:

Affidavits, 4, 436

Code pleadings (see *infra*, Legal and equitable code actions):

Duplicity, 21, 282

Intermingling causes of action or grounds of defense, see *infra*, Intermingling causes of action or grounds of defense.

Costs, 21, 263

Counts (see *infra*, Unnecessary counts, pleas, and subsequent pleadings):

Superfluous counts, 21, 262

Death by wrongful act, 5, 873

Declaration and complaint, 4, 607

Definitions, 21, 225

Immaterial, 21, 227

Impertinent, 21, 227

Irrelevant and redundant matter, 21, 226

Irrelevant matter defined, 21, 228

Redundant matter defined, 21, 229

Surplusage, 21, 225

Demurrers, see *infra*, Intermingling causes of action or grounds of defense.

Demurrers in chancery, 6, 409

Descriptio personæ, 21, 294

Agent, 21, 295

Assignee, 21, 295

As to the effect of the word "as," 21, 296

Executors and administrators, 21, 294

Guardian, 21, 295

Receiver, 21, 295

Title of public or private office, 21, 295

Trustee, 21, 295

Duplicity (see *infra*, Intermingling causes of action or grounds of defense), 7, 241

Equitable actions, 21, 265

Evidence:

Pleading evidence, 21, 267

Allegations of evidence regarded as irrelevant or redundant, 21, 270

Proceedings for injunction, 21, 269

Under the codes, 21, 267

Executions, 8, 388

General commands in special executions, 8, 395

Executors and administrators, 21, 294, 295

Averment of official character of foreign representatives as surplusage, 8, 712

SURPLUSAGE, ETC., *cont'd.*Executors and administrators, *cont'd.**Descriptio personæ*, 8, 670*Descriptio personæ* as surplusage, 8, 684

Fines, 21, 264

General issue, 21, 275, 302

Guardians, 21, 295

Immaterial, 21, 227

Impertinent, 21, 227

Indictments (see **INDICTMENTS**), 10, 530*Contra pacem* and *contra formam*, 10, 443

Duplicity, 10, 535

Inducement, matter of, 21, 297

Informations, 10, 530

Intermingling causes of action or grounds of defense, 21, 281

Answers, 21, 289

Code practice, 21, 282

Complaint or petition, 21, 282

Declarations, 21, 282

Demurrer for misjoinder, 21, 282

General rule as to duplicity and multifariousness, 21, 281

Motion to elect or set aside, 21, 283

Motion to make definite and certain, 21, 283

Motion to strike out as irrelevant or redundant, 21, 284

Motion to strike out duplicitous matter, 21, 285

Pleas, 21, 282

Replications, 21, 282

Surplusage, 21, 286

Defective allegations, 21, 287

Formal allegations, 21, 286

In general, 21, 286

Prayers for relief, 21, 286

Intoxicating liquors, 11, 527

In general, 11, 527

Knowledge, 11, 528

License, 11, 528

Place where liquor was to be drunk, 11, 527

Purchaser, 11, 528

Sales, barter, and gifts, 11, 527

Sunday, 11, 638

In what pleadings contained, 21, 230

Chancery and code pleadings, 21, 230

Common-law and criminal pleadings, 21, 230

First and subsequent pleadings, 21, 230

Irrelevant and redundant matter, 21, 230

Irrelevant, 21, 226

Irrelevant matter defined, 21, 228

Joinder, see *infra*, Intermingling causes of action or grounds of defense.

SURPLUSAGE, ETC., *cont'd.*

- Judgments, 11, 960
 - Conformity to verdict or findings, 11, 908
- Larceny, 12, 953
 - Value, 12, 997
- Legal and equitable code actions, 21, 264
 - Actions at law, 21, 267
 - Declaration, petition, or complaint, 21, 270
 - Equitable actions, 21, 265
 - Evidence in equity cases, 21, 269
 - Evidence in proceedings for injunction, 21, 269
 - Evidence regarded as irrelevant or redundant, 21, 270
 - Facts constituting a cause of action, 21, 267
 - General rules of code pleading, 21, 264
 - Introduction of unnecessary matter, 21, 264
 - Matter contained in a pleading in equity, 21, 267
 - "Ordinary and concise language," 21, 265
 - Pleading evidence, 21, 267
 - Subsequent pleadings*, see *infra*, Unnecessary counts, pleas, and subsequent pleadings.
- Legal conclusions, 12, 1028; 21, 292
 - In general, 21, 292
 - Matters of which court takes judicial notice, 21, 292
 - Repugnant conclusions, 21, 293
- Libel and slander:
 - Innuendo, 13, 56
 - Malicious mischief, 13, 416
- Matter of inducement, 21, 297
- Mayhem, 13, 934
- Motions, 14, 93
- Multifariousness*, see *infra*, Intermingling causes of action or grounds of defense.
- Names:
 - Descriptio personæ*, 21, 294
- Negligence, 14, 338
- Obstructing justice, 15, 21
- Ordinances, 15, 432
- Penalties and penal actions, 16, 269
- Petition*, see *infra*, Unnecessary counts, pleas, and subsequent pleadings.
- Pleas (see *infra*, Unnecessary counts, pleas, and subsequent pleadings):
 - Duplicity, 21, 282
- Pleas at law, 16, 565
- Pleas in equity, 16, 608
- Prayers for relief, 21, 286
- Prejudice and vexation, 21, 559
 - Irrelevant or redundant matter, 21, 259

SURPLUSAGE, ETC., *cont'd.*

- Prejudice and vexation, *cont'd.*
 - Matter tending to embarrass trial, 21, 262
 - Superfluous counts, 21, 262
- Prosecuting attorneys:
 - Averments of authority, 17, 6
- Public officers, 21, 295
- Receivers, 21, 295
- Record on appeal, 21, 305
- Records*, see *infra*, Striking out.
- Redundancy, 21, 226
- Redundant matter defined, 21, 229
- Remedies for irrelevant or redundant matter, 21, 231
 - Application against superfluous counts, 21, 250
 - Applications at trial, 21, 246
 - At what stage in cause application made, 21, 243
 - Character of code remedy, 21, 239
 - Contents of application, 21, 247
 - Demurrer, 21, 234
 - Demurrer where entire cause of action or defense is irrelevant, 21, 235
 - Discretion of court in striking out, 21, 240
 - Evidence on application, 21, 250
 - General rule as to demurrer, 21, 234
 - In what court or judge application to strike out addressed, 21, 243
 - Matter in mitigation of damages, 21, 242
 - Notice of application, 21, 247
 - Parties to application, 21, 246
 - Renewal of application, 21, 251
- Striking out:
 - Application against superfluous counts, 21, 250
 - Application at trial, 21, 246
 - At what stage in cause application made, 21, 243
 - Contents of application, 21, 247
 - Discretion of court in striking out, 21, 240
 - Evidence on application, 21, 250
 - Matter in mitigation of damages, 21, 242
 - Notice of application, 21, 247
 - Parties to application, 21, 246
 - Renewal of application, 21, 251
 - To what court or judge application to strike out addressed, 21, 243
 - Waiver, 21, 244
 - Where irrelevancy not apparent, 21, 241

SURPLUSAGE, ETC., *cont'd.*

- Remedies for irrelevant or redundant matter, *cont'd.*
 - Various code provisions, 21, 231
 - Waiver, 21, 244
 - Where irrelevancy not apparent, 21, 241
- Remedies for surplusage, 21, 251
 - Disregarding surplusage after verdict, 21, 258
 - Disregarding surplusage at trial, 21, 257
 - Disregarding surplusage on demurrer or like proceeding, 21, 253
 - Disregarding surplusage on joinder of issues, 21, 255
 - Distinction between common-law and code pleadings, 21, 256
 - Inherent power of court, 21, 252
 - Motion to strike out, 21, 251
- Remedies other than motions to strike out, 21, 278
 - Demurrer, 21, 289
 - Denial of leave to file pleading, 21, 280
 - Motion to elect or set aside, 21, 278
- Replevin, 18, 533
- Replications and replies, 18, 662
 - Duplicity, 21, 282
- Repugnancy, 18, 740
- Repugnant allegations, 21, 291
 - Allegations of time, 21, 291
 - Exceptions, 21, 292
 - General rule, 21, 291
 - Illustrations, 21, 291
 - Legal conclusions, 21, 293
- Riot, 18, 1206
- Scilicet and videlicet, 21, 291
- Scope of article, 21, 225
- Set-off, recoupment, and counter-claim, 19, 750
- Striking out (see *infra*, Remedies for irrelevant or redundant matter):
 - How matter expunged from record, 21, 262
 - Intermingling causes of action or grounds of defense, 21, 284
 - Motion to strike out surplusage, 21, 251
- Subsequent pleadings, see *infra*, Unnecessary counts, pleas, and subsequent pleadings.
- Surplusage (see *infra*, Prejudice and vexation):
 - Chancery and code pleadings, 21, 230
 - Common-law and criminal pleadings, 21, 230
 - Costs, 21, 263
 - Definition, 21, 225

SURPLUSAGE, ETC., *cont'd.*

- Surplusage, *cont'd.*
 - First and subsequent pleadings, 21, 230
 - Remedies for surplusage, see *infra*, Remedies for surplusage.
 - Unnecessary counts, pleas, and subsequent pleadings, 21, 281
 - Trover and conversion, 21, 1059, 1081
 - Trusts and trustees, 21, 295
 - Unnecessary counts, pleas, and subsequent pleadings, 21, 270
 - Declaration, petition, or complaint, 21, 270
 - Counts not substantially variant, 21, 273
 - Duplication of statements at common law, 21, 270
 - Duplication of statements under codes, 21, 271
 - Duplication of statements under English rules of court, 21, 270
 - Right to duplicate statements, 21, 270
 - Denials and defenses, 21, 277
 - General issue and special pleas, 21, 275
 - Pleas, 21, 274
 - Remedies other than motions to strike out, see *infra*, Remedies other than motions to strike out.
 - Subsequent pleadings, 21, 274
 - Denials and defenses, 21, 277
 - General issue and special pleas, 21, 275
 - In general, 21, 274
 - Remedies other than motions to strike out, see *infra*, Remedies other than motions to strike out.
 - Special pleas, 21, 276
 - Surplusage, 21, 281
 - Use, allegations of, 21, 296
 - Verdict, 22, 977
 - Amendment, 22, 977
 - Special verdict, 22, 999
 - Vexation, see *infra*, Prejudice and vexation.
- SURPLUS MONEY, 21 211**
- Costs of distribution, 21, 216
 - Foreclosure of mortgages, (see *infra*, Sales under trust deeds and power-of-sale mortgages), 21, 212
 - Sales under decree, 21, 212
 - Application for order, 21, 213
 - Costs for distribution, 21, 216
 - General rule as to control of court over surplus, 21, 212
 - Notice of application, 21, 213

SURPLUS MONEY, *cont'd.*Foreclosure of mortgages, *cont'd.*Sales under decree, *cont'd.*

Order for distribution, 21,

216

Petition for distribution, 21,

213

Power of court over referee's
report, 21, 215Proceedings to secure distri-
bution, 21, 213*Reference, see infra, Refer-*
*ence.*Funds and deposits in court, 21,
221

Limitations, 21, 220

Notice:

Application for distribution, 21,
213

Order of distribution, 21, 216

Reference:

Foreclosure of mortgages under
decree of court, 21, 214

Exceptions to report, 21, 215

Order, 21, 214

Power of court over referee's
report, 21, 215

Powers of referee, 21, 214

Report of referee, 21, 215

Requisites of referee's re-
port, 21, 215Who may be heard before
referee, 21, 214Sales under trust deeds and power-
of-sale mortgages, 21, 216

Accrual of right to sue, 21, 281

Action at law, 21, 216

Assumpsit, 21, 217

Declaration and complaint, 21,
220

Form of action, 21, 217

Interpleader, 21, 217

Manner of determining rights of
claimants to surplus, 21, 216

Parties, 21, 218

Payment of surplus to sheriff,
21, 217Plea of statute of limitations by
mortgagee with power of sale,
21, 220

Sheriff's sales, 21, 221

Control of court over surplus
proceeds, 21, 221Determination of claims upon
motion, 21, 222Payment of money into court by
officer, 21, 221Settlement of conflicting claims,
21, 221**SURPRISE (see BILLS TO IMPEACH****DECREES AND JUDGMENTS):**

Bills of particulars:

To prevent surprise, 3, 519

SURPRISE, *cont'd.**Bills to impeach decrees and judgments,**see BILLS TO IMPEACH DECREES*
*AND JUDGMENTS.*Continuances (see CONTINUANCES), 4,
863

Insufficient ground, 4, 864

Motion and affidavit, 4, 864

Sufficient ground, 4, 863

Decrees:

Modification or amendment to
decrees, 5, 1056Opening orders and decrees *pro*
confesso, 5, 1012

Defaults (see DEFAULTS):

Application for relief, 6, 165

Judgments:

Equitable relief against judg-
ments, 11, 1184*New trial, see NEW TRIAL.*Opening, amending, and vacating
judgments, 14, 245**SURREBUTTER:**

Failure to surrebut, 18, 75

SURREJOINDER, 18, 71, 73

Failure to surrejoin, 18, 75

Sham and frivolous pleadings, 20,
47**SURRENDER BY BAIL, 3, 183,**

189, 244

Arrest, 3, 245

Arrest of principal, 3, 192

Bail and recognizance, 3, 183

Completion, 3, 193

Effect, 3, 246

How made, 3, 191, 245

Imprisonment, 3, 191

In general, 3, 189

Right, 3, 244

Right of bail, 3, 189

Sickness, 3, 191

When made, 3, 190

SURROGATES (see EXECUTORS AND**ADMINISTRATORS; GUARDIANS; PRO-****BATE AND CONTEST OF WILLS; SET-****TLEMENT OF DECEDENTS' ESTATES):***Accounting, see SETTLEMENT OF DE-*
CEDENTS' ESTATES.

Additional allowances of costs, 1, 212

Certiorari, 4, 23, 40, 88

Jurisdictional errors, 4, 95

Construction of wills, 22, 1214

Costs:

Appeals from surrogate, 5, 209

Examples, 5, 208, 210

In general, 5, 208

Unsuccessful appellant, 5,
208Dismissal, discontinuance, and non-
suit:

Right of plaintiff, 6, 867

Dower, 7, 188

Infants, see GUARDIANS AD LITEM.

SURROGATES, *cont'd.*

Issues to the jury (see ISSUES TO THE JURY), 11, 624, 626

Judgments:

Probate orders and judgments, 11, 824

Jury:

Issues to the jury, see ISSUES TO THE JURY.

Letters testamentary or of administration, see SETTLEMENT OF DECEDENTS' ESTATES.

Limitations, 13, 193

Partition, see PARTITION.

Partnership:

Accounting, dissolution, and settlement, 15, 1056

Receivers, 17, 685

Averment in application for receiver, 17, 731

Removal of causes, 18, 165, 224

Proceedings relating to wills and administration, 18, 174

Review, 18, 1000

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Trusts and trustees, 22, 22, 40

Accounting, 22, 92

Actions between trustees and beneficiaries or their representatives, 222, 139

Charitable trusts, 22, 203

Establishment and enforcement of trusts, 22, 118

Resignation, 22, 55

Sale, mortgage, or lease of trust property, 22, 73

Wills:

Jurisdiction as between courts of equity and courts of probate, 22, 1198

SURVIVAL OF ACTIONS, 21, 309

See REVIVOR OF SUITS AND ACTIONS.

Accounts and accounting, 21, 319

Actio personalis moritur cum persona, 21, 312

Common-law rule, 21, 312

Rule in equity, 21, 317

Statutory provisions, 21, 314

Admiralty, 21, 321

Alimony, 21, 360

Assault and battery, 21, 346

Attorneys:

Negligence of attorney, 21, 353

Bastardy, 21, 360

Breach of promise of marriage, 21, 324

Causes of action against officers and their deputies, 21, 354

Deputies, 21, 356

Postmaster, for misfeasance of clerk, 21, 356

SURVIVAL OF ACTIONS, *cont'd.*

Causes of action against officers and their deputies, *cont'd.*

Sheriffs and constables, see *infra*, Sheriffs and constables.

Causes of action *ex contractu*, 21, 322

Breach of promise of marriage, 21, 324

In general, 21, 322

Injuries from breach of contract, incidental injury to property, 21, 339

Joint rights and liabilities, 21, 323

Partnership contracts, 21, 323

Statutory provisions, 21, 324

Causes of action *ex delicto* (see *infra*, Injuries to person or reputation), 21, 325

By statute, 21, 326

Common law, 21, 325

Fraud, 21, 351

Fraud in procuring marriage, 21, 353

In general, 21, 325

Joint rights and liabilities, 21, 328

Negligence of attorney, 21, 353

Waiver of tort, 21, 326

Causes of action relating to personal property, 21, 328

Detinue, 21, 332

Devastavit, 21, 329

Injuries to goods and chattels, 21, 328

Replevin, 21, 331

Right of action under civil damage act, 21, 330

Trover, 21, 332

Wrongful appropriation of personal property, 21, 331

Causes of action relating to real property, 21, 333

Dower, 21, 336

Ejectment, 21, 335

Eminent domain, 21, 337

Flowing lands, 21, 334

In general, 21, 333

Mechanics' liens, 21, 337

Mesne profits, 21, 336

Obstructing or diverting water-course, 21, 334

Partition, 21, 337

Trespass *quare clausum fregit*, 21, 333

Civil damage acts, 21, 330

Common-law rule, 21, 312

Actions *ex contractu*, 21, 312

Actions *ex delicto*, 21, 312

Actio personalis moritur cum persona, 21, 312

Test of survivorship, 21, 313

Conflict of laws, 21, 321, 343

SURVIVAL OF ACTIONS, *cont'd.*

Conspiracy, 4, 738
 Copyright, 21, 359
 Criminal conversation, 21, 349
 Damages:
 Measure of damages in actions which survive, 21, 342
 Death:
 Personal injuries resulting in death, 21, 342
 Death by wrongful act, 21, 345
 Death of beneficiary, 21, 345
 Death of wrongdoer, 21, 346
 Personal injuries resulting in death, 21, 342
 Deceit, 21, 351
 Deputies, 21, 355, 356
 Detinue, 21, 332
 Devastavit, 21, 329
 Divorce, 21, 360
 Dower, 21, 336
 Druggists, 7, 228; 21, 348
 Ejectment, 21, 335
 Eminent domain, 21, 337
 Equity, *see infra*, Rule in equity, 21, 317
Ex contractu and *ex delicto* (*see infra*, Causes of action *ex contractu*; Causes of action *ex delicto*), 21, 312, 313
 Executors and administrators:
 Devastavit, 21, 329
 False imprisonment, 8, 845; 21, 347
 False representations, 21, 351
 Flowing lands, 21, 334
 Fraud, 21, 351
 Fraud in procuring marriage, 21, 353
 In general, 21, 351
 General principles, 21, 312
 Highways:
 Injuries caused by defects in highways, 21, 341
 Husband and wife:
 Injuries to wife, 21, 341
 Injunctions, 21, 318
 Injuries to person or reputation, 21, 337
 Assault and battery, 21, 346
 Common-law and English statutes, 21, 337
 Conflict of laws, 21, 342
 Criminal conversation, 21, 349
 Death by wrongful act, 21, 345
 False imprisonment, 21, 347
 Incidental injury to property, 21, 339
 Injuries caused by defects in highways, 21, 341
 Injuries from breach of contract, 21, 339
 Injuries to wife or child, 21, 341
 Libel and slander, 21, 349
 Index Pl. & Pr. — 69

SURVIVAL OF ACTIONS, *cont'd.*

Injuries to person or reputation, *con.*
 Malicious prosecution, 21, 351
 Malpractice by physician or surgeon, 21, 347
 Measure of damages in actions which survive, 21, 342
 Merger in verdict or judgment, 21, 351
 Negligence of apothecary, 21, 347
 Nuisance, 21, 348
 Personal injuries in general, 21, 337
 Personal injuries resulting in death, 21, 342
 Removal of cause to federal court, 21, 342
 Seduction, 21, 349
 Statutes in the United States, 21, 338
 Judgments:
 Impeachment of judgment, 21, 360
 Libel and slander, 21, 349
 Malicious prosecution, 21, 351
 Malpractice, 21, 347
 Marriage:
 Fraud in procuring marriage, 21, 353
 Mechanics' liens, 21, 337
 Merger:
 Merger in verdict or judgment, 21, 351
 Mesne profits, 21, 336
 Mortgages, 21, 318
 Nuisances, 21, 348
 Officers of private corporations, 15, 81
 Ordinances, 21, 360
 Parent and child:
 Injuries to child, 21, 341
 Partition, 21, 337
 Partnership, 21, 323
 Patents, 21, 359
 Penalties and penal actions, 21, 356
Personal injuries, *see infra*, Injuries to person or reputation.
 Physicians and surgeons:
 Malpractice, 21, 347
Property, *see infra*, Causes of action relating to personal property; Causes of action relating to real property.
Real property, *see infra*, Causes of action relating to real property.
 Removal of causes, 21, 342
 Replevin, 21, 331
 Rescission, cancellation, and reformation of contracts, 21, 320
 Rule in equity, 21, 317
 In general, 21, 317
 Injunction, 21, 318

SURVIVAL OF ACTIONS, *cont'd.*

- Rule in equity, *cont'd.*
 - Rights and liabilities in regard to trusts, 21, 319
 - Rights arising from mortgages, 21, 318
 - Right to accounting, 21, 319
 - Right to rescission and cancellation of contract, 21, 320
 - Right to specific performance of contract, 21, 319
 - Various other equitable rights and liabilities, 21, 320
- Scope of article, 21, 312
- Seduction, 21, 349
- Sheriffs and constables, 21, 354
 - For their own misfeasance, 21, 354
 - For the misfeasance of their deputies, 21, 355
- Specific performance, 21, 319
- Statutory causes of action, 21, 356
 - Penal statutes, 21, 356
 - Remedial statutes, 21, 357
- Statutory provisions, 21, 314
 - Distinction between survivability and revivability, 21, 317
 - England, 21, 314
 - Right of personal representative to sue where cause of action survives, 21, 317
 - Survivorship mutual, 21, 317
 - United States, 21, 314
- Stipulations:
 - Stipulation providing for survival, 21, 317
- Stock and stockholders, 21, 358
 - Causes of action against corporate officers, 21, 358
 - Causes of action against stockholders, 21, 358
- Summary proceedings, 21, 360
- Telegraphs and telephones, 21, 535
- Torts*, see *infra*, Causes of action *ex delicto*.
- Trespass *quare clausum fregit*, 21, 333
- Trover, 21, 332
- Trusts and trustees, 21, 319
- United States courts, 21, 321; 22, 325
 - Admiralty, 21, 321
 - In general, 21, 321
- Waters and watercourses, 22, 1145, 1158
 - Obstructing and diverting watercourse, 21, 334

SUSPENSION OF ATTORNEY, see DISBARMENT AND SUSPENSION OF ATTORNEYS.**SWEARING, see AFFIDAVITS; AFFIRMATION; PERJURY; OATHS; VERIFICATION; PROFANE SWEARING.****SWINDLING, see FALSE PRETENSES; FALSE REPRESENTATIONS AND DECEIT; FRAUD.****SYMPATHY, see ARGUMENTS OF COUNSEL.****TALESMEN, see JURY.****TAXATION, 21, 361**

- Action against defaulting collector, 21, 426
 - By whom instituted, 21, 427
 - In general, 21, 426
 - Official bond, 21, 428
 - Summary proceedings, 21, 429
 - By whom prosecuted, 21, 433
 - Conclusiveness of summary judgment, 21, 430
 - Defendants, 21, 434
 - Election of remedies, 21, 432
 - In general, 21, 429
 - Judgment, 21, 434
 - Notice and motion, 21, 432
 - Official bond, 21, 431
 - Strict construction, 21, 430
- Actions (see *infra*, Erroneous taxation or assessment), 21, 381
 - Action provided by statute, 21, 383
 - Conflict of authority, 21, 381
 - Customs duties, 21, 383
 - Exhaustion of other remedies, 21, 385
 - Form of action, 21, 386
 - Judgment or decree, 21, 412
 - Personal liability independent of lien, 21, 385
 - Recovery back*, see *infra*, *Recovery back*.
 - Rule that implied obligation carries remedy by action, 21, 382
 - Statutory remedy strictly pursued, 21, 384
- Amendments:
 - Sale, 21, 480
- Answer, 21, 411
- Appeal and review, 2, 43; 21, 419
 - Effect of appeal, 21, 420
 - Exceptions and objections, 21, 421
 - In general, 21, 419
 - Judgment on appeal, 21, 421
 - Parties, 21, 420
 - Reassessment, 21, 444
- Apprehended public wrongs increasing taxation, 21, 470
 - Distinct individual interest, 21, 470
 - In general, 21, 470
 - Rule that taxpayer's interest is sufficient, 21, 471
- Assessment (see *CERTIORARI*; and see *infra*, Erroneous taxation or assessment):
 - Bill, petition, and complaint, 21, 405
 - Necessity for assessment, 21, 379

TAXATION, *cont'd.*Assessment, *cont'd.*

- Partly legal and partly illegal, 21, 445, 450, 458, 460
- Resort to particular property assessed, 21, 379
- Separation of legal from illegal assessment, 21, 419
- Bill (see *infra*, Declaration, petition, bill, and complaint):
- Bills of peace, 3, 567
- Certiorari, 21, 445
 - Amendment of petition, 21, 447
 - Assessment partly legal, 21, 450
 - Direction of writ, 21, 447
 - Erroneous taxation or assessment, 21, 445
 - Grounds not provided by statute, 21, 447
 - Hearing, 21, 449
 - Judgment, 21, 449
 - Laches, 21, 445
 - Petition, 21, 446
 - Return or answer, 21, 447
 - Supersedeas and stay of proceedings, 21, 451
- Collateral attack, 21, 441
- Collection and enforcement, 21, 366
 - Appeals*, see *infra*, Appeal and review.
 - By and against whom proceedings instituted, 21, 397
 - Against whom in general, 21, 399
 - By whom in general, 21, 397
 - Death of owner, 21, 400
 - In name of officer, 21, 398
 - Persons assessed, 21, 400
 - Unknown owner, 21, 401
 - Declaration, petition, bill, and complaint*, see *infra*, Declaration, petition, bill, and complaint.
 - Defense, 21, 410
 - Enforcement of penalties, forfeitures, and costs*, see *infra*, Enforcement of penalties, forfeitures, and costs.
 - Exclusiveness of statutory remedy for collection, 21, 378
 - Joinder of parties and causes*, see *infra*, Joinder.
 - Judgment or decree*, see *infra*, Judgment or decree.
 - Judicial proceedings, 21, 380
 - Jurisdiction, 21, 397
 - Mandamus*, see *infra*, Mandamus.
 - Mandamus against corporation, 31, 386
 - Necessity for assessment, 21, 379

TAXATION, *cont'd.*Collection and enforcement, *cont'd.*

- Proceedings in rem*, see *infra*, Proceedings in rem.
- Resort to particular property assessed, 21, 379
- Venue, 21, 397
- Collector, see *infra*, Action against defaulting collector.
- Complaint (see *infra*, Declaration, petition, bill, and complaint):
 - Setting aside sale or deed and removing cloud, 21, 487
- Confirmation of sale, 21, 480
- Corporations:
 - Corporation and stockholder, 21, 462
 - Mandamus, 21, 386
- Costs (see COSTS; and see *infra*, Enforcement of penalties, forfeitures, and costs):
 - Erroneous taxation or assessment, 21, 470
- Criminal procedure, 21, 497
- Customs duties:
 - Enforcement of penalties, forfeitures, and costs, 21, 422
 - Recovery back, 21, 475
- Death:
 - Death of owner, 21, 400
- Debt, 5, 908
 - Duties, 5, 909
- Declaration, petition, bill, and complaint, 21, 403
 - Application of general rules, 21, 409
 - Assumpsit, 21, 404
 - Conditions precedent, 21, 404
 - Delinquency, 21, 409
 - Designation of property chargeable, 21, 407
 - Enforcement of penalties, forfeitures, and costs, 21, 422
 - Jurisdiction, 21, 406
 - Levy and assessment, 21, 405
 - Municipal ordinance, 21, 405
 - Objections, 21, 409
 - Ownership, 21, 406
 - Ownership at particular time, 21, 407
 - Person and property chargeable, 21, 407
 - Property taxable at particular place, 21, 408
 - Recovery back of tax license paid, 21, 478
 - Setting out taxes sued for, 21, 408
 - Setting aside deed or sale and removing cloud, 21, 489
 - Showing valid tax, 21, 404
 - Statement of cause of action, 21, 403

TAXATION, *cont'd.*

Declaration, petition, bill, and complaint, *cont'd.*

Statutory form of complaint, 21, 403

Decrees, see *infra*, Judgment or decree.

Defense, 21, 410

In general, 21, 410

Sufficiency of plea or answer, 21, 411

Delinquency, 21, 409

Delinquent list, see *infra*, Proceedings in rem.

Election of remedies, 21, 432

Enforcement of penalties, forfeitures, and costs, 21, 422

Customs duties, 21, 422

Declaration and complaint, 21, 424

Information or libel, 21, 424

In general, 21, 422

Jurisdiction of the United States, 21, 423

Pleading and proof, 21, 426

Variance, 21, 426

Erroneous taxation or assessment, 21, 434

Certiorari, see *infra*, *Certiorari*.

Costs, 21, 470

Final and conclusive determination, 21, 439

Action beyond jurisdiction, 21, 442

Collateral attack, 21, 441

Exempt property, 21, 443

Fraud, 21, 443

In general, 21, 439

Legality of tax or assessment involved, 21, 442

Injunction, see *infra*, *Injunction*.

Mandamus, 21, 468

Discretion cannot be controlled, 21, 468

When there is another remedy, 21, 469

Where there is no discretion, 21, 468

Necessity to follow statutory remedy, 21, 435

Exclusiveness of remedy, 21, 436

Failure to resort to statutory remedy, 21, 437

In general, 21, 435

Waiver of objections, 21, 21, 437

Parties, see *infra*, Parties to actions.

Pleading, 21, 435

Prohibition, 21, 460

Reassessment, 21, 444

Remedy in general, 21, 434

TAXATION, *cont'd.*

Erroneous taxation or assessment, *cont'd.*

Separation of legal and illegal items, 21, 445

Summary proceeding by action, 21, 435

Exceptions and objections, 8, 302; 21, 421

Exemptions, see HOMESTEADS AND EXEMPTIONS.

Exempt property, 21, 443

Foreclosure of mortgages, see FORECLOSURE OF MORTGAGES.

Forfeiture, see *infra*, Enforcement of penalties, forfeitures, and costs.

Fraud, 21, 443

Injunction, 21, 455

Homesteads, see HOMESTEADS AND EXEMPTIONS.

Indictment, 21, 497

Injunction (see INJUNCTIONS), 21, 451

Apprehended public wrongs increasing taxation, 21, 470

Certainty in pleading, 21, 453

Conclusion of law, 21, 454

Conditions precedent, 21, 456

Diligence in pursuit of statutory or legal remedy, 21, 458

Exhaustion of personal property, 21, 458

Payment of tax justly due or admitted, 21, 456

Where no part of taxes legal, 21, 456

Willingness to pay uncertain amount, 21, 458

Designation of legal and illegal parts of tax, 21, 460

Distinct individual interest, 21, 470

Erroneous taxation or assessment, 21, 451

Facts justifying relief, 21, 454

Fraud, 21, 455

Inadequacy of legal remedy, 21, 452

Irreparable injury, 21, 452, 453

Joinder, 21, 470

Apprehended public wrongs increasing taxation, 21, 470

Distinct individual interest, 21, 470

Rule that taxpayer's interest is sufficient, 21, 471

Jurisdiction, 21, 451

Relief based on excessive levy, 21, 459

Statement of cause for equitable relief, 21, 452

Sufficiency of taxpayer's interest, 21, 471

TAXATION, *cont'd.*

Internal revenue, see INTERNAL REVENUE.

Joinder, 21, 401

Erroneous taxation or assessment, 21, 463

Conflict of authority, 21, 464

Husband and wife, 21, 463

In general, 21, 463

Joint and common interest in subject-matter, 21, 463

In general, 21, 401

Injunction, 21, 470

Apprehended public wrongs increasing taxation, 21, 470

Distinct individual interest, 21, 470

Rule that taxpayer's interest is sufficient, 21, 471

In official and individual capacity, 21, 401

Joinder of different taxes, 21, 401

Mortgagee or *cestui que trust*, 21, 403

Setting aside sale or deed and removing cloud, 21, 486

State, county, and city taxes, 21, 402

Wife of owner of homestead, 21, 403

Judgment or decree (see JUDGMENTS), 21, 412

Action against defaulting collector, 21, 434

Action to foreclose lien and for personal judgment, 21, 413

Against one of joint defendants, 21, 419

Against person, 21, 412

Against property, 21, 413

Amount, 21, 417

Appeal, 21, 421

Certainty, 21, 415

Conclusiveness of judgment, 21, 419

Conformity with statute, 21, 415

Creditors, 21, 418

Designation of owner, 21, 416

Filing, 21, 414

Identification of land, 21, 416

In actions *in personam*, 21, 412

In proceedings *in rem*, 21, 412

Judgment unauthorized in part, 21, 418

Necessity for judgment:

Mandamus, 21, 371

Proceedings *in rem*, 21, 387

Pro confesso, 21, 415

Rendition and entry, 21, 414

Separation of legal from illegal assessment, 21, 419

Setting aside sale or deed and removing cloud, 21, 489

TAXATION, *cont'd.*

Judgment or decree, *cont'd.*

Several judgments against several parcels of land, 21, 418

Signing, 21, 414

Judicial proceedings, 21, 380

Application of general and special laws, 21, 380

In general, 21, 380

Jurisdiction, 21, 397, 406

Legal conclusions, 21, 454

Levy (see *infra*, Mandamus):

Bill, petition, and complaint, 21, 405

Libel, 21, 424

Liens, see infra, Proceedings *in rem*.

Local improvements, see LOCAL IMPROVEMENTS.

Mandamus (see MANDAMUS), 21, 366

Corporation, 21, 386

Erroneous taxation or assessment, 21, 468

Discretion cannot be controlled, 21, 468

When there is another remedy, 21, 469

Where there is no discretion, 21, 468

Execution of deed, 21, 489

In general, 21, 366

Joinder in mandamus proceedings relating to the collection of taxes, 13, 657

Private citizens, 13, 634

Recovery back of tax license paid, 21, 478

Return or answer, 13, 743

To compel acceptance of tender, 21, 378

To compel action in aid of collection, 21, 377

To compel collection, 21, 377

To compel levy, 21, 367

By whom instituted, 21, 375

Defendants, 21, 376

Direction of writ, 21, 376

Enforcement of judgment:

Collateral attack, 21, 373

In general, 21, 372

Inquiry into nature of debt, 21, 373

Jurisdiction, 21, 374

Sufficiency of pleading, 21, 373

For payment of interest and principal of bonds, 21, 370

In general, 21, 367

Judgment:

Enforcement of judgment, 21, 372

Necessity for judgment, 21, 371

TAXATION, *cont'd.***Mandamus, *cont'd.***To compel levy, *cont'd.*

Levy restricted to lawful limit, 21, 369

Liquidated and unliquidated claims, 21, 371

Necessity for judgment, 21, 371

Taxes due from one subdivision to another, 21, 367

To satisfy authorized indebtedness, 21, 368

Under permissive authority, 21, 369

Where another adequate remedy exists, 21, 369

To compel payment into proper treasury, 21, 378

To levying, assessing, and collecting officers, 21, 366

Mortgages, 21, 403

Municipal corporations, see *infra*, MANDAMUS.Notice (see *infra*, Proceedings *in rem*):

Action against defaulting collector, 21, 432

Official bonds (see OFFICIAL BONDS), 21, 428, 431

Ordinances, 21, 405

Ownership, 21, 406

Parties to actions:

Appeal, 21, 420

By and against whom proceedings instituted, see *infra*, Collection and enforcement.

Certiorari, 21, 447

Erroneous taxation or assessment, 21, 461

Corporation and stockholder, 21, 462

Defendant, 21, 467

Husband and wife, 21, 463

Joinder, 21, 463

Joint or common interest in subject-matter, 21, 463

Parties in interest generally, 21, 461

Plaintiff, 21, 461

Representative capacity, 21, 462

Right to complain restricted by statute, 21, 461

Special interest, 21, 461

Proceedings on behalf of purchaser to quiet and confirm title or foreclose redemption, 21, 493

Recovery back of tax license paid, 21, 477

Setting aside sale or deed and removing cloud, 21, 485

TAXATION, *cont'd.*Penalties and penal actions, see *infra*.

Enforcement of penalties, forfeitures, and costs.

Personal actions, see *infra*, Actions.Petition, see *infra*, Declaration, petition, bill, and complaint.

Plea, 21, 411

Probate, see SURROGATES.

Proceedings after sale, 21, 480

Amendment of return, 21, 480

Confirmation, 21, 480

Mandamus to compel execution of deed, 21, 489

Proceedings on behalf of owner, 21, 481

Proceedings on behalf of purchaser, 21, 489

Proceedings on behalf of purchaser to recover property, 21, 490

Proceedings to quiet and confirm title or foreclose redemption, 21, 491

Record, 21, 480

Redemption, 21, 481

In general, 21, 481

Interest of applicant, 21, 482

Plaintiff must do equity, 21, 483

Proceedings on behalf of purchaser to quiet and confirm title or foreclose redemption, 21, 491

Relief awarded, 21, 482

Reimbursement of purchaser of invalid tax title, 21, 494

Enforcement in other proceedings, 21, 495

In general, 21, 494

In suit to quiet title and remove cloud, 21, 494

Taxes not warranted by law, 21, 497

Report, 21, 480

Return, 21, 480

Setting aside sale or deed and removing cloud, see *infra*, Setting aside sale or deed and removing cloud.Proceedings *in rem*, 21, 387

Against estate of decedent, 21, 396

Application for judgment, 21, 387

Compliance with statute, 21, 393

In general, 21, 393

Strict construction, 21, 394

Time of application for judgment, 21, 394

Foreclosure of tax lien in equity, 21, 388

Forfeiture, 21, 387

In general, 21, 387

TAXATION, *cont'd.***Proceedings in rem, *cont'd.***

- Judgment or decree, 21, 412
- Necessity for judgment, 21, 387
- Notice, 21, 388
 - Compliance with statute, 21, 390
 - In general, 21, 388
 - Publication, 21, 388
 - Substantial compliance with statute, 21, 392
 - Waiver of insufficient notice, 21, 392
- Return of delinquent list, 21, 395
 - Filing, 21, 396
 - In general, 21, 395
 - List and publication in lieu of declaration and process, 21, 396

Prohibition:

Tax assessors or collectors, 16, 1107

Publication, 21, 389

Public officers, see *infra*, Action against defaulting collector.

Quieting title (see *infra*, Setting aside sale or deed and removing cloud):

Proceedings on behalf of purchaser to quiet and confirm title or foreclose redemption, 21, 491

Reimbursement of purchaser, 21, 494

Reassessment, 21, 444, 450, 451

Appeal, 21, 444

Recovery back, 21, 474

Customs duties, 21, 475

Declaration and complaint, 21, 478

Mandamus to compel action by proper officers, 21, 476

Parties, 21, 477

Remedy in general, 21, 474

Redemption, see *infra*, Proceedings after sale.

Rem and personam, see *infra*, Proceedings in rem.

Removal of causes (see REMOVAL OF CAUSES):

Proceedings relating to taxation, 18, 174

Removal of cloud, see *infra*, Setting aside sale or deed and removing cloud.

Rendition and entry of judgments, 21, 414

Return of delinquent list, see *infra*, Proceedings in rem.

Review, see *infra*, Appeal and review.

Sales, see *infra*, Proceedings after sale.

TAXATION, *cont'd.*

Setting aside sale or deed and removing cloud, 21, 484

Bill or complaint, 21, 487

Defendant, 21, 487

In general, 21, 480

Inherent equitable jurisdiction to quiet title and remove cloud, 21, 485

Joinder, 21, 486

Judgment or decree, 21, 489

Parties plaintiff, 21, 485

Special improvements, see LOCAL IMPROVEMENTS.

Statutory remedy (see *infra*, Erroneous taxation or assessment):

Action provided by statute, 21, 383

Exclusiveness of statutory remedy, 21, 378, 381

Proceedings in rem, see *infra*, Proceedings in rem.

Stock and stockholders:

Corporation and stockholder, 21, 462

Summary proceedings, see *infra*, Action against defaulting collector.

Supplementary proceedings:

Collection of tax, 21, 93

Tax sales, see *infra*, Proceedings after sale.

Trusts and trustees, 21, 403

Variance:

Enforcement of penalties, forfeitures, and costs, 21, 426

Venue, 21, 397

TAX DEEDS:

Appeals, 2, 46

TAX SALES, see TAXATION.

TAX TITLES:

Foreclosure of mortgages:

Holders of tax titles as parties, 9, 355

TEACHERS, see SCHOOLS.

TELEGRAPHS AND TELEPHONES, 21, 499

Abatement, 21, 535

Actions for damages concerning transmission or delivery of messages, 21, 506

Addressee as party plaintiff, 21, 509

Character and form of action, 21, 507

Declaration, petition, or complaint, see *infra*, Declaration, petition, or complaint.

Defendant, 21, 511

Demurrer, 21, 521

Husband and wife, 21, 511

Instructions, 21, 523

Jurisdiction, 21, 506

Nonsuit, 21, 523

TELEGRAPHS AND TELEPHONES, *cont'd.*

Actions for damages concerning transmission or delivery of messages, *cont'd.*

Parties, 21, 509

Plea or answer, 21, 521

Verdict and judgment, see infra,
Verdict and judgment.

Actions for statutory penalties, 21, 532

Abatement, 21, 535

Declaration, petition, or complaint, see infra, Declaration, petition, or complaint.

Extraterritorial enforcement of statute, 21, 532

Jurisdiction, 21, 532

Jurisdiction of particular courts, 21, 533

Nature of action, 21, 534

Parties, 21, 534

Plea or answer, 21, 540

Survival, 21, 535

Verdict, findings, and judgment, 21, 540

Agency:

Parties to actions, 21, 510

Answer, 21, 521, 540

Averment of damages, 21, 518

In general, 21, 518

Mental anguish, 21, 519

Remote, contingent, or speculative damages, 21, 519

Special damages, 21, 518

Cipher telegrams, 21, 517

Claims, presentation of, 21, 520, 522

Common carriers, 21, 504

Complaint, see infra, Declaration, petition, or complaint.

Construction and maintenance, 21, 500

Actions at law by landowner, 21, 502

Eminent domain, 21, 501

In general, 21, 500

Injunction by company, 21, 503

Injunction by landowner, 21, 503

Remedies of landowner, 21, 502

Restraining interference, 21, 503

Contributory negligence, 21, 514

Criminal procedure, 21, 506

Damages (*see infra,* Actions for damages concerning transmission or delivery of messages):

Award of damages, 21, 531

Mental anguish, 21, 516

Declaration, petition, or complaint:

Actions for damages concerning transmission or delivery of messages, 21, 511

Averment of damages in general, 21, 518

TELEGRAPHS AND TELEPHONES, *cont'd.*

Declaration, petition, or complaint, *cont'd.*

Actions for damages concerning transmission or delivery of messages, *cont'd.*

Averment of duty of or contract with company, 21, 511

Averment of knowledge of and notice to company, 21, 516

Averment of presentation of claim, 21, 520

Averment of wilfulness, negligence, and delay, 21, 513

Cipher telegrams, 21, 517

Consideration, 21, 512

Contract with connecting company, 21, 512

Contributory negligence, 21, 514

Definiteness and certainty, 21, 514

Description of message, 21, 513

Mental anguish, 21, 519

Message in writing, 21, 513

Notice from message itself, 21, 517

Particulars of damages, 21, 519

Proximate cause, 21, 514

Remote, contingent, or speculative damages, 21, 519

Special damages, 21, 518

Actions for statutory penalties, 21, 535

Allegation concerning residence of addressee, 21, 539

Allegation of tender or payment of charges, 21, 538

Allegations of delivery of message for transmission, 21, 537

Alleging only failure to deliver, 21, 539

Averments as to character and occupation, 21, 536

Averments showing illegality of Sunday contract, 21, 538

Charging merely negligence or delay, 21, 539

Describing and setting out message, 21, 537

Negating provisos and mentioning exculpatory matters, 21, 536

Payment of charges, 21, 538

**TELEGRAPHS AND TELE-
PHONES, *cont'd.***Declaration, petition, or complaint,
*cont'd.*Actions for statutory penalties,
*cont'd.*Statement of breach of duty
or wrong committed, 21,
538Stating case within statute,
21, 535Tender or payment of
charges, 21, 538

Demurrer, 21, 521

Dismissal, discontinuance, and non-
suit, 21, 523

Eminent domain, 21, 502

Enforcing service, 21, 504

By injunction, 21, 506

By mandamus, 21, 504

Findings, 21, 540

Husband and wife, 21, 511

Parties in action for failure to
deliver message, 21, 511

Indictment, 21, 506

Injunctions:

Company restraining interfer-
ence, 21, 503

Enforcing service, 21, 506

Injunction by landowner, 21,
503

Instructions, 21, 523

Assuming facts as proven, 21,
527Charges corrected or covered by
others, 21, 530Conditions and stipulations, 21,
525

Damages, 21, 525

Depending upon pleadings, is-
sues, and evidence, 21,
524Failure to deliver message, 21,
525Harmless and nonprejudicial
instructions, 21, 530Ignoring essential matters, 21,
528

In general, 21, 523

Invading province of jury, 21,
526Misleading and conflicting con-
structions, 21, 529

Negligence and delay, 21, 524

On weight of evidence, 21,
527*Judgments*, see *infra*, Verdict and
judgment.

Jurisdiction, 21, 506

Action for statutory penalties,
21, 532*Maintenance*, see *infra*, Construction
and maintenance.**TELEGRAPHS AND TELE-
PHONES, *cont'd.***

Mandamus:

Enforcing service, 21, 504

Adequate remedy at law,
21, 505

Answer, 21, 505

Application or petition, 21,
505

In general, 21, 504

Whether considered common
carriers, 21, 504

Mental anguish, 21, 516, 519

Messages, see *infra*, Actions for dam-
ages concerning transmission or
delivery of messages.

New trial, 21, 532

Nonsuit, 21, 523

Notice:

Knowledge of and notice to
company, 21, 516

Parties to actions:

Actions for damages concerning
transmission or delivery
of messages, 21, 509

Addressee, 21, 509

Benefited party, 21, 510

Defendant, 21, 511

Husband and wife, 21, 511

One who is neither sender
nor addressee, 21, 510

Plaintiff, 21, 509

Principal and agent, 21,
510Actions for statutory penalties,
21, 534Penalties and penal actions (see *in-
fra*, Actions for statutory pen-
alties):Criminal prosecutions and penal
actions, 21, 506*Petition*, see *infra*, Declaration, pe-
tition, or complaint.

Plea, 21, 521, 540

Presentation of claims, 21, 520, 522

Proximate cause, 21, 514

Sundays and holidays, 21, 538

Survival of actions, 21, 535

Verdict and judgment, 21, 530

Actions for damages concerning
transmission or delivery
of messages, 21, 530Affirmance or reversal, 21,
532

Award of damages, 21, 531

For plaintiff or defendant,
21, 530Verdict clearly erroneous,
21, 532Verdict supported by evi-
dence, 21, 532Actions for statutory penalties,
21, 540

TELEPHONES, see **TELEGRAPHS AND TELEPHONES**.

TENANTS, see **LANDLORD AND TENANT**.
TENANTS IN COMMON (see **JOINT TENANTS AND TENANTS IN COMMON**):

TENDER, 21, 542

See **TENDER**.

Accord and satisfaction, 1, 82

Additional allowances of costs, 1, 216, 229

Admiralty, 1, 268

Admissions:

Effect of tender as admission, 21, 582

Answers in code pleading, 1, 849

Appeals:

Effect of tender on right to appeal, 21, 585

Tendering back the money paid, 2, 177

Assumpsit, 2, 1032

Burden of proof, 21, 569

Conditions, see *infra*, **Tender as condition precedent in actions at law**;
Tender as condition precedent in suits in equity.

Conditions precedent, 4, 636

Costs where tender is pleaded, 21, 589

Actions for unliquidated damages, 21, 591

In equity, 21, 592

In general, 21, 589

Tender pending suit, 21, 590

Where recovery is less than statutory amount warranting costs, 21, 597

Where tender is insufficient or defective, 21, 595

Defect in plea or evidence, 21, 596

Failure to pay money into court, 21, 596

Irregular tender, 21, 596

Tender of insufficient amount, 21, 595

Where tender is refused, but plaintiff fails to recover more, 21, 593

Covenant, 5, 382, 383

Debt:

Book debt, 5, 930

Defense, see *infra*, **Tender as a defense**.

Definiteness and certainty in pleadings, 21, 567

Demurrers, 21, 567

Dismissal, discontinuance, and nonsuit, 21, 589

Distress, 7, 31

Double pleading:

General issue and tender, 16, 571

TENDER, *cont'd*.

Effect of tender, 21, 582

Admission of liability, 21, 582

Effect on right to appeal, 21, 585

Eminent domain:

Costs, 7, 668

Executions, 8, 322

Foreclosure of mortgages, see **FORECLOSURE OF MORTGAGES**.

Funds and deposits in court (see **FUNDS AND DEPOSITS IN COURT**), 21, 553, 554, 571

Acceptance and withdrawal of money paid into court, 21, 580

Withdrawal by opposite party, 21, 581

Withdrawal by party making payment, 21, 580

Amount of payment, 21, 578

Costs pending failure to pay money into court, 21, 596

Effect of tender and payment into court, 21, 582

Admission of liability, 21, 582

Effect on right of appeal, 21, 585

Necessity of order authorizing payment into court, 21, 580

Necessity of payment into court, 21, 571

Contracts of pledge, 21, 574

Effect of failure to pay into court, 21, 573

In general, 21, 571

Justice's court, 21, 572

Pleas of readiness to pay, 21, 573

Ponderous articles, 21, 573

Profert of deed, 21, 577

Rule in equity, 21, 575

Tender pending suit, 21, 572

Where tender operates to discharge lien, 21, 573

Necessity to keep money intact pending payment into court, 21, 579

Payment into court as a defense, 21, 565

Time of payment, 21, 578

To what court or officer payment should be made, 21, 577

Waiver of payment into court, 21, 580

General issue:

General issue and tender, 16, 571

Injunctions, see **INJUNCTIONS**.

Instructions, 21, 570

Joinder with other pleas, 21, 557

Judgments, see *infra*, **Verdict and judgment where tender is pleaded**.

Justices of the peace, 21, 555

TENDER, *cont'd.*

Negotiable instruments, 14, 654

Payment into court, see FUNDS AND DEPOSITS IN COURT.**Pledges:**

Actions at law by pledgor, 16, 649, 650

Practice on trial where tender is pleaded, 21, 569

Burden of proof, 21, 569

Instructions, 21, 570

Variance, 21, 569

Profert and oyer, 21, 566, 569, 577

Redemption, see REDEMPTION.

Replications and replies, 21, 567

Rescission, cancellation, and reformation of contracts, see RESCISSION, CANCELLATION, AND REFORMATION OF CONTRACTS.*Sales*, see SALES.

Specific performance, 20, 450

Supplemental pleadings, 21, 49

Tender as a defense, 21, 554

Demurrer, 21, 567

Joinder with other pleas, 21, 557

Motion to make more definite and certain, 21, 567

Nature of plea, 21, 556

Necessity to plead, 21, 554

Necessity to plead specially, 21, 555

Objection to plea, 21, 567

Replication to plea or answer, 21, 567

Requisites and sufficiency of allegations, 21, 557

After maturity, 21, 560

Amount tendered, 21, 562

Averment of readiness in lieu of tender, 21, 559

Convenient hour of tender, 21, 560

Description of money or property, 21, 561

In general, 21, 557

Place where tender was made, 21, 561

Premature tender, 21, 560

Production of money or property tendered, 21, 558

Tender pending suit, 21, 563

Time when tender was made, 21, 560

Time of pleading, 21, 555

Tender as condition precedent in actions at law, 21, 543

In general, 21, 543

Necessity to plead, 21, 544

Pleading tender of performance, 21, 544

Sufficiency of averments, 21, 546

TENDER, *cont'd.*

Tender as condition precedent in suits in equity, 21, 548

Continued readiness, 21, 553

Necessity to plead, 21, 549

Offer to do equity, 21, 548

Payment into court, 21, 553

Pleading tender, 21, 548

Sufficiency of averments in general, 21, 552

Tender made in bill, 21, 551

Time of tender, 21, 553

Tender pending suit:

Requisites and sufficiency of allegations:

Continued readiness to pay, 21, 563

Payment into court, 21, 565

Time of pleading, 21, 556

Trial, see *infra*, Practice on trial where tender is pleaded.

Variance, 21, 569

Vendor's liens, 22, 727

Verdict and judgment where tender is pleaded, 21, 585

In equity, 21, 586

In general, 21, 585

Nonsuit in proceeding to recover beyond tender, 21, 589

Where tender is accepted, 21, 586

Where tender is refused, 21, 587

TENOR:

Variance, 22, 623

TERMS AND SESSIONS OF COURT, 21, 598Adjournment (see ADJOURNMENT; and see *infra*, Postponement), 21, 626**Appeals:**

Consent of parties, 2, 25

Presumption on appeal or error, 21, 611

Appointment, 21, 612

How power to appoint exercised in general, 21, 614

How power to appoint special term exercised, see *infra*, Special terms.

Revoking order appointing special term, 21, 621

Who may appoint regular terms, 21, 612

Who may appoint special terms, 21, 613

Ball and recognizance, 3, 247

Bills of exceptions, see BILLS OF EXCEPTIONS.

Changing time and place, 21, 622

By court or judge, 21, 623

By legislature, 21, 622

Effect of change, 21, 624

TERMS AND SESSIONS OF COURT, *cont'd.*

Commencement, duration, and expiration of term or session, 21, 629

Determination by affirmative judicial act, 21, 631

Determination by commencement of term in another county, 21, 632

Duration and determination of term, 21, 630

Duration until business disposed of, 21, 630

General rule as to commencement of term, 21, 629

Nonjuridical days, 21, 635

Courts, see *infra*, Judges.

Definitions, 21, 599

Regular and special terms, 21, 600

Sessions of court, 21, 600

Terms of court, 21, 599

Dies non juridicus, 21, 635

Discretion of judge, 21, 608

Dismissal, discontinuance, and nonsuit, 6, 832

Time when motion must be made, 6, 881

Want of equity, 6, 894

Want of prosecution, 6, 913

Duration, see *infra*, Commencement, duration, and expiration of term or session.

Effect of holding in unauthorized manner, 21, 609

Acts at unauthorized time and place void, 21, 609

Compelling trial at unauthorized term, 21, 610

General rule, 21, 609

Executions:

Time of issuance, 8, 343

Expiration, see *infra*, Commencement, duration, and expiration of term or session.

Extension, see *infra*, Prolonging or extending.

Grand juries, 10, 383

Adjournment of term, 10, 383

Court specially convened, 10, 384

In general, 10, 383

Order of postponement, 10, 383

Special term, 10, 384

Term to which defendant is held, 10, 384

Judges:

Before whom held, 21, 609

Discretion of, 21, 608

Regulation of terms and sessions, see *infra*, Regulation of terms and sessions.

TERMS AND SESSIONS OF COURT, *cont'd.*

Judgments:

Rendition of judgment after expiration of court, 11, 813

Judicial notice, 21, 604

Lapse of term or session, 21, 637

Common law where term is not opened, 21, 637

Statutory provisions where term has not opened, 21, 638

Where term has been opened, 21, 640

Where term is not opened, 21, 637

Necessity of observing terms and sessions, 21, 603

Judicial notice, 21, 604

Notice by parties, 21, 603

Necessity of terms, 21, 603

Night sessions, 21, 605, 959

Notice, 21, 603

Special terms:

Manner of giving notice, 21, 621

Necessity of notice, 21, 620

Nunc pro tunc, 21, 601

Orders:

Special terms:

Filing and entering, 21, 620

Manner of giving notice, 21, 621

Necessity of order, 21, 619

Revoking order, 21, 621

Sufficiency of order, 21, 619

Place of holding, 21, 605

Changing time and place, see *infra*, Changing time and place.

County seats, 21, 605

Discretion of judge, 21, 608

Exceptional circumstances justifying holding at other than prescribed place, 21, 607

Holding at other than prescribed place, 21, 606

In general, 21, 605

Necessity for compliance with statutory provisions, 21, 607

Particular building, 21, 608

Postponement, 21, 624

How power should be exercised, 21, 624

In general, 21, 624

Presumption on appeal, 21, 611

Prolonging or extending, 21, 626

How power exercised, 21, 628

In general, 21, 626

Under statutory provisions, 21, 627

Regulation of terms and sessions, 21, 612

Adjournments, 21, 626

Appointment, see *infra*, Appointment.

- TERMS AND SESSIONS OF COURT, *cont'd.***
 Regulation of terms and sessions, *cont'd.*
 Changing time and place, see *infra*, *Changing time and place*.
 Postponement, see *infra*, *Postponement*.
 Power to hold simultaneous terms or sessions, 21, 629
 Prolonging or extending, see *infra*, *Prolonging or extending*.
 Relation:
 Relation of all proceedings in term to its first day, 21, 601
 How described, 21, 603
 In general, 21, 601
 Legal fiction, 21, 602
 Requisites of valid term or session, 21, 604
 Before whom held, 21, 609
 Effect of holding in unauthorized manner, 21, 609
 Place of holding, see *infra*, *Place of holding*.
 Presumption on appeal or error, 21, 611
 Time of holding, see *infra*, *Time of holding*.
 Rules of court (see **RULES OF COURT**):
 Designating terms and arranging business of court, 18, 1242
Sentence, see **SENTENCE**.
 Sessions:
 Definition of session, 21, 600
 Distinction between term and session, 21, 600
 Special terms:
 How power to appoint exercised, 21, 615
 Authority of judge, 21, 616
 Conformity with statutory provisions, 21, 615
 Exercise in term or vacation, 21, 616
 Exercise of discretionary power not reviewable, 21, 616
 Filing and entering, 21, 620
 Length of notice, 21, 621
 Manner of giving notice, 21, 621
 Nature of business, 21, 617
 Necessity of notice, 21, 620
 Necessity of written order, 21, 619
 Notice, 21, 620
 Order, 21, 619
 Revoking order appointing special term, 21, 621
 Where court or judge specifies the nature, 21, 618
 Who may appoint, 21, 613
- TERMS AND SESSIONS OF COURT, *cont'd.***
Summons and process, see **SUMMONS AND PROCESS**.
 Sundays and holidays, 21, 635
 Terms of court:
 Definition, 21, 599
 Distinction between term and session, 21, 600
 Time of holding (see *infra*, *Regulation of terms and sessions*), 21, 604
 Changing time and place, see *infra*, *Changing time and place*.
 In general, 21, 604
 Night sessions, 21, 605
 Uncertainty of date, 21, 605
 Time of trial, 21, 957
 Trial:
 Time of trial, 21, 957
Vacation, see **CHAMBERS AND VACATION**.
TERRETTENANTS, see **REVIVAL OF JUDGMENTS**.
TERRITORIAL COURTS, 21, 642
Removal of causes, see **REMOVAL OF CAUSES**.
TERRITORIES, 21, 644
 Habeas corpus, 9, 1015
 Jurisdiction of United States court in Indian territory, 21, 644
 Jury:
 Procuring attendance of jurors, 12, 358
 Selection of jurors, 12, 282
 Manner of exercising jurisdiction of United States supreme court over judgments of territorial courts, 21, 645
 Removal of causes:
 Transfer of causes to United States court on abolition of tribal courts, 21, 644
 Service of process, 21, 645
 Transfer of causes to United States court on abolition of tribal courts, 21, 644
 In general, 21, 644
 Manner of service, 21, 645
 Remedy for defective service, 21, 645
 Service in cases of such transfer, 21, 645
TESTAMENTARY CAPACITY:
 Probate and contest of wills, 16, 1023
TESTE (see **SUMMONS AND PROCESS**):
 Amendments, see **AMENDMENTS**.
 Executions, 8, 399
THEATRES AND SHOWS, 21, 646
 Conspiracy:
 Hiss, 4, 732
 Criminal procedure, 21, 646
 Indictments, 21, 646

THEATRES AND SHOWS, *cont'd.*

- Injunctions, 21, 647
- Licenses, 21, 646
- Proceedings for revocation of theatre licenses, 21, 646
- Remedy in case of revocation of license given by ticket, 21, 647

THEFT, see LARCENY.**THEORY OF THE CASE, 21, 649****Actions:**

- Whether action is at law or in equity, 21, 662

Appeals, see infra, Theory adopted on trial controlling on appeal.

Construction, see infra, Ex contractu or ex delicto.

Equity:

- Whether action is at law or in equity, 21, 662

Ex contractu or ex delicto, 21, 652

- Absence of customary averments in tort, 21, 661

- Absence of customary averments on contract, 21, 660

- Averments of breach and damages, 21, 660

- Averments of particular elements of contract, 21, 659

- Consideration of form of summons, 21, 661

- Consideration of plaintiff's pleading, 21, 655

- Determination of question, 21, 655

- Following precedents in books of form, 21, 661

- Materiality of question, 21, 652

- Pleading construed as entirety, 21, 657

- Prayer for relief, 21, 657

- Presumption and general principles of construction, 21, 656

- When averments *ex contractu* are not decisive, 21, 657

- When averments *ex delicto* are not decisive, 21, 658

How theory determined, 21, 652**Necessity of theory, 21, 649****Passengers, 15, 1140****Summons and process, 21, 661****Theory adopted on trial controlling on appeal, 21, 664**

- As to burden of proof, 21, 668

- As to construction or character of pleading, 21, 666

- As to damages recoverable, 21, 668

- As to issues, 21, 667

- As to law of case, 21, 668

- As to nature of action or suit, 21, 666

- How theory of trial ascertained, 21, 669

THEORY OF THE CASE, *cont'd.*

- Theory adopted on trial controlling on appeal, *cont'd.*

- Rule stated, 21, 664

- That certain facts are uncontroverted, 21, 667

Theory of pleading in general, 21, 649

Torts, see infra, Ex contractu or ex delicto.

Trial, 21, 664**Trover and conversion, 21, 1060****Trusts and trustees, 22, 125****Work and labor, 22, 1370****THREATS AND THREATENING****LETTERS, 21, 670****See EXTORTION.****Affidavits:**

- Prosecution for filing affidavits accusing of crime, 21, 677

Burglary, 3, 756***Extortion, see EXTORTION.***

Indictments (see *infra*, Threatening letters; Threats to accuse of crime):

- Threats of injury to person or property, 21, 674

Instructions, 21, 673**Intent, 21, 673, 674**

Letters, see infra, Threatening letters.

Marriage (annulment):

- Allegations of threats, 13, 876

Personal injuries, 21, 674**Questions of law and fact, 21, 677****Threatening letters, 21, 674**

- Averment as to person threatened, 21, 676

- Averment of sender's knowledge and intent, 21, 677

- Definiteness and certainty, 21, 675

- Description of letter, 21, 676

- General requisites of indictment, 21, 675

- Indictment, 21, 675

- Questions for jury, 21, 677

- Venue, 21, 675

Threats of injury to person or property, 21, 674

- Averment of intent, 21, 674

- General requisites of indictment, 21, 674

- Setting out words of threat, 21, 674

Threats to accuse of crime:

- Indictment, 21, 671

- Averment as to character of threat, 21, 672

- Averment as to crime of which accusation threatened, 21, 671

- Averment as to person against whom threat directed, 21, 672

THREATS AND THREATENING LETTERS, *cont'd.*

- Threats to accuse of crime, *cont'd.*
 - Indictment, *cont'd.*
 - Averment of innocence of party threatened, 21, 672
 - Averment of intent, 21, 673
 - Averment that threat was verbal or written, 21, 673
 - Conjunctive averment as to threats to accuse and threats to injure property, 21, 671
 - General rule as to charging offense, 21, 671
 - Instructions, 21, 673
 - Necessity to set out threatening words, 21, 673
- Threats to commit crime against property, 21, 675
- Threats to kill or injure, 21, 674
- Threats with intent to extort or compel, 21, 671
- Venue, 21, 675
- Written, 21, 673

TICKETS:

- Forgery*, see **FORGERY**.
- Larceny, 12, 995

TIMBER, see **LOGS AND LOGGING**.

TIME:

- Abbreviations, 1, 47
- Aider by verdict, 22, 945
- Definiteness and certainty in pleadings, 6, 525
 - Date of contract, 6, 356
 - In general, 6, 255
 - Particular periods of time, 6, 256
 - When material, 6, 256
 - When time is not material, 6, 256
- Indictments*, see **INDICTMENTS**.
- Terms and sessions of court*, see **TERMS AND SESSIONS OF COURT**.
- Variance*, see **VARIANCE**.

TIME, COMPUTATION OF:

- Appeals, 2, 256
- Bills of exceptions, 3, 482
- Bills of review, 3, 584
- Case made on appeal, 3, 892
- Elections, 7, 391
- Executions:
 - Return day, 8, 396
- Judicial sales:
 - Publication of notice, 12, 35
- Justices of the peace:
 - Time for taking an appeal, 12, 764
- Motions:
 - Notice of motion, 14, 144
- New trial, 14, 865
 - From or after certain day, 14, 865
 - Pendency of motion for judgment, 14, 867

TIME, COMPUTATION OF, *cont'd.*

- New trial, *cont'd.*
 - Pendency of motion for modification of judgment, 14, 867
 - Rendition of verdict, 14, 865
 - Sundays not included, 14, 866
 - Time of making motion, 14, 865
 - When time commences to run, 14, 866
- Publication of notice*, see **PUBLICATION**.
- Revival of judgments, 18, 1063
- Service of process, 19, 602
- Summons and process, 20, 1167
- Sundays and holidays, 20, 1202
 - Exclusion of intervening Sundays, 20, 1202
 - Inclusion or exclusion of Sunday in computing time, 20, 1202
 - Practice where prescribed period closes on Sunday, 20, 1204
- Time to plead, 21, 702
 - After certain proceedings, 21, 706
 - Forthwith, 21, 705
 - From or after particular time, 21, 703
 - In general, 21, 702
 - Instantly, 21, 705
 - On or before specified day, 21, 704
 - Sundays and legal holidays, 21, 705
 - When court is not in session, 21, 705
 - When the words "to," "until," or "by" a particular day are used, 21, 704

TIME TO PLEAD, 21, 678

- Abatement, 21, 679
- Abridgment of time to plead, 21, 683
- Affidavits, 21, 697
- Affidavits of merits and defense, 21, 697
- Appearances:
 - Obtaining extension of time to plead, 2, 637
- Bankruptcy, 22, 355
- Compliance with rules and orders, 21, 699
 - As to nature of pleading, 21, 701
 - As to time, 21, 699
 - How time computed in general, 21, 702
 - How time computed when court is not in session, 21, 705
 - Sundays and holidays, 21, 705
- Computation of time*, see *infra*, **Time, computation of**.
- Conditions, 21, 697
- Court, discretion of, 21, 688
- Dilatory pleas, 21, 687
- Discretion of court, 21, 688
- Entering, 21, 699

TIME TO PLEAD, *cont'd.*

- Extension of time, 21, 683
 - Additional pleas or answers, 21, 686
 - Defective or insufficient pleas, 21, 692
 - Dilatory pleas, 21, 687
 - Discretion of court, 21, 688
 - Extension by stipulation of parties, 21, 684
 - Extension of other acts of parties, 21, 685
 - In general, 21, 683
 - Limitations as to number of extensions, 21, 692
 - Limitations as to time, 21, 692
 - Meritorious defense, 21, 691
 - Orders of extension*, see *infra*, *Orders of extension*.
 - Pleas or answers not to the merits, 21, 686
 - Power of court to extend time, 21, 683
 - Reasonable excuse for delay, 21, 689
- Failure to plead in time, 21, 707
 - Pleading filed out of time without leave, 21, 708
 - Waiver of objections, 21, 709
 - Where there is no pleading, 21, 707
- Filing, 21, 699
- Imparance*, see *infra*, *Prayers of imparance and motions for time*.
- In general, 21, 679
- Motions*, see *infra*, *Prayers of imparance and motions for time*.
- Notice, 21, 682
 - Necessity of notice, 21, 693
 - Orders of extension, 21, 699
- Number of extensions, 21, 692
- Orders*, see *infra*, *Compliance with rules and orders*.
- Orders of extension, 21, 697
 - Filing and entering, 21, 699
 - Modification of orders, 21, 699
 - Notice and service, 21, 699
 - Terms and conditions, 21, 697
 - Vacation of orders, 21, 699
- Prayers of imparance and motions for time, 21, 692
 - Affidavit of support, 21, 697
 - Excuse for neglect, 21, 695
 - Grounds of motion, 21, 695
 - In general, 21, 692
 - Merits of proposed defense, 21, 696
 - Necessity of notice, 21, 693
 - Place of moving, 21, 694
 - Presentation of proposed pleading, 21, 697
- Puis darrain continuance*, see *PUIS DARREIN CONTINUANCE*.

TIME TO PLEAD, *cont'd.*

- Rules of court (see *infra*, *Compliance with rules and orders*):
 - Validity of rules of court, 18, 1244
 - Rules to declare and plead, 21, 680
 - In general, 21, 680
 - Notice and service of rule, 21, 682
 - Notice of motion for rule, 21, 681
 - Renewal of rules, 21, 683
 - When rules may be entered, 21, 682
 - Service of process, 21, 682
 - Orders of extension, 21, 697
 - Stipulations:
 - Extension of time by stipulation of parties, 21, 684
 - Terms, 21, 697
 - Time, computation of, 21, 702
 - After certain proceedings, 21, 706
 - Forthwith, 21, 705
 - From or after particular time, 21, 703
 - In general, 21, 702
 - Instantly, 21, 705
 - On or before specified day, 21, 704
 - Sundays and legal holidays, 21, 705
 - When court is not in session, 21, 705
 - When the words "to," "until," or "by" a particular day are used, 21, 704
 - Vacation of orders, 21, 699
- TIPPLING HOUSE:**
- Intoxicating liquors, 11, 566
- TITLE OF PLEADINGS AND INSTRUMENTS:**
- Affidavits, 1, 311
 - Affidavits of merits or defense, 1, 374
- TITLE, OWNERSHIP, AND POSSESSION, 21, 710**
- See *ANSWERS IN CODE PLEADING; BURGLARY; RIGHT OF PROPERTY. TRIAL OF; VENDOR AND PURCHASER.*
 - Admissions, 21, 735
 - Adversary's title, 21, 731
 - Certainty in allegation, 21, 731
 - Commencement of particular estate, 21, 731
 - Stating title of adversary, 21, 731
 - Adverse possession*, see *ADVERSE POSSESSION*.
 - Adverse title:
 - Assertion of adverse title, 21, 735
 - Affidavits*, see *AFFIDAVITS*.
 - Aider by verdict, 21, 732; 22, 945
 - Aider of defective and omitted statements of title, 21, 732
 - By pleading, 21, 732

TITLE, OWNERSHIP, AND POSSESSION, *cont'd.*

Aider of defective and omitted statements of title, *cont'd.*
 By verdict, 21, 732
 Denials of title, 21, 733
 Amendments, 21, 716, 743
 Appeals, 2, 47
 Questions affecting titles, 2, 44
 Assignment of errors, 2, 958
 Assumpsit:
 Defective title, 2, 1019
 Burden of proof, 21, 739
Burglary, see *BURGLARY*.
 Consistency of titles, 21, 717
Costs, see *COSTS*.
 Declaration or complaint, 4, 616
 Decrees:
 Decrees vesting or divesting title to property, 5, 964
 In general, 5, 964
 Land in another state, 5, 965
 Personalty, 5, 964
 Real estate, 5, 964
 Definiteness and certainty in pleading, 6, 258; 21, 715
 Consistency of title alleged, 21, 717
 Departure from earlier pleading, 21, 717
 In general, 21, 715
 Representative rights, 21, 717
 Where time is material, 21, 716
 Derivation of title, 21, 726
 Alienation, 21, 730
 Conveyance, 21, 730
 Future interests, 21, 730
 In general, 21, 726
 Inheritance, 21, 729
 Necessity of deriving title, 21, 728
 Personal property, 21, 726
 Real property, 21, 727
 Sufficiency of averment, 21, 729
 Unnecessarily deriving or setting out title, 21, 731
 Variance, 21, 730
 Detinue, 6, 657
Disclaimers, see *DISCLAIMERS*.
 Ejectment, 7, 267
 Allegation of seizin or title, 7, 333
 Estoppel to deny title to property, 7, 324
 Pleas, 7, 340, 342
Escheat, see *ESCHEAT*.
 Evidence (see *infra*, Pleading and proof):
 Pleading evidence, 21, 720
 Failure to allege title, see *infra*, Necessity of alleging some kind of title.
 Foreclosure of mortgages, see *FORECLOSURE OF MORTGAGES*.

Index Pl. & Pr. — 70

TITLE, OWNERSHIP, AND POSSESSION, *cont'd.*

Freehold, 21, 725
 General denial, 21, 737
 General issue, 21, 738
 How stated, 21, 725
 Incorporeal hereditaments, 21, 723
 Inheritance, 21, 729
Injunctions, see *INJUNCTIONS*.
 Instructions, 21, 743
 Justices of the peace, 21, 841
Larceny, see *LARCENY*.
 Legal conclusions, 21, 718
 "By virtue of," 21, 719
 Entitled to exclusive possession, 21, 719
 In general, 21, 718
 "Owner of," or "seized of," 21, 718
 What are conclusions of law, 21, 718
Mortgages, see *FORECLOSURE OF MORTGAGES*.
 Necessity of alleging some kind of title, 21, 711
 At common law, 21, 711
 Effect of failure to allege title, 21, 714
 In equity, 21, 712
 In general, 21, 711
 Liability arising in respect of property, 21, 712
 Possessory title, 21, 715
 Under code, 21, 712
Partition, see *PARTITION*.
Parties to actions, see *PARTIES TO ACTIONS*.
 Pleading and proof, 21, 736
 Burden of proof, 21, 739
 General denials, 21, 737
 General issue, 21, 738
 Variance, see *infra*, *Variance*.
 What may be shown under allegations of title, 21, 736
 What may be shown under denials of title, 21, 737
 Possession:
 When allegation of mere possession not sufficient, see *infra*, *When allegation of mere possession not sufficient*.
 When allegation of mere possession sufficient, see *infra*, *When allegation of mere possession sufficient*.
 Possessory title, 21, 715
 Replications and replies, 21, 717
 Representative rights, 21, 717
 Requisites and sufficiency of allegations, 21, 715
 Actions on statutes, 21, 720
 Definiteness and certainty, 21, 715

TITLE, OWNERSHIP, AND POSSESSION, *cont'd.*

Requisites and sufficiency of allegations, *cont'd.*

Derivation of title, see *infra*,
Derivation of title.

How stated, 21, 725

In general, 21, 715

Pleading evidence, 21, 720

Pleading legal conclusions, 21, 718

Stating title of adversary, 21, 731

When allegation of mere possession not sufficient, see *infra*, When allegation of mere possession not sufficient.

When allegation of mere possession sufficient, see *infra*, When allegation of mere possession sufficient.

When title must be alleged in its full extent, 21, 724

Where interest joint, 21, 720

Riparian rights:

Suits to determine title, 18, 1215

Robbery, 18, 1223

Scope of article, 21, 711

Statutes:

Actions on statutes, 21, 720

Survival of actions, see SURVIVAL OF ACTIONS.

Time:

Where time is material, 21, 716

Trade-marks and trade names, 21, 755

Slander of title, see SLANDER OF TITLE.

Trespass, see TRESPASS.

Trespass to try title, see TRESPASS TO TRY TITLE.

Trial of the right of property, see RIGHT OF PROPERTY, TRIAL OF.

Variance, 21, 740; 22, 602

Avoiding variance by amendment, 21, 743

Criminal procedure, 22, 604

Defendant's ownership, 22, 604

General and special rights, 21, 741

In general, 21, 740

Joint and several titles, 21, 742

Legal and equitable titles, 21, 742

Ownership and possession in civil actions, 22, 603

Plaintiff's ownership, 22, 603

Proof of ownership of property, 21, 741

Title, 22, 602

Waiver of objection for variance, 21, 743

Vendor's liens, 22, 729

Plea of want of title or defect in title, 22, 736

Title superior to vendor's, 22, 733

TITLE, OWNERSHIP, AND POSSESSION, *cont'd.*

When allegation of mere possession not sufficient, 21, 723

In general, 21, 723

When title must be alleged in its full extent, 21, 724

Where actual possession necessary, 21, 723

Where ownership necessary, 21, 724

When allegation of mere possession sufficient, 21, 721

How stated, 21, 722

Incorporeal hereditaments, 21, 723

In general, 21, 721

Personal property, 21, 722

Real property, 21, 722

When title must be alleged in its full extent, 21, 724

Derivation of title, see *infra*,
Derivation of title.

Freehold title, 21, 725

How stated, 21, 725

In general, 21, 724

Specific allegations control, 21, 725

Writ of possession, see POSSESSION, WRIT OF.

TOLLROADS, see TURNPIKES AND TOLLROADS.

TOLLS, 21, 745

See TURNPIKES.

Actions for exacting excessive or unlawful toll, 21, 748

In general, 21, 748

Jurisdiction, 21, 749

Actions to recover tolls, 21, 745

Declaration and complaint, 21, 746

In general, 21, 745

Parties, 21, 746

Plea or answer, 21, 746

Set-off, 21, 746

Answers, 21, 746

Costs, 21, 750

Declaration and complaint, 21, 746, 747

Extortion, see *infra*, Actions for exacting excessive or unlawful toll.

Injunctions:

Suits to enjoin collection of toll, 21, 749

Costs, 21, 750

In general, 21, 749

Pleadings, 21, 750

Mandamus, 21, 750

Parties, 21, 746, 747

Penal actions for evading payment, 21, 746

Declaration and complaint, 21, 747
In general, 21, 746

TOLLS, *cont'd.*

Penal actions for evading payment, *cont'd.*

Necessity for recovery of amount of penalty, 21, 748

Parties, 21, 747

Pleas, 21, 746

Set-off, recoupment, and counter-claim, 21, 746

TOOLS, see COUNTERFEITING.**TORTS (see EX CONTRACTU AND EX DELICTO):**

Affidavits of merits or defense, 1, 349

Agency, see AGENCY.

Amendments:

Changing contract to tort and *vice versa*, 1, 567

Amount in controversy, 1, 705

Answers in code pleading, 1, 800

General denials, 1, 821

Specific denial, 1, 788

Assumpsit:

Waiver of tort, 2, 1022

Bills of particulars, 3, 550

Confession of judgment, 11, 978

Joinder of counts and causes:

Ex contractu and *ex delicto*, 1, 170

Joinder of parties, see JOINDER OF PARTIES.

Judgments:

Confession of judgment, 11, 978

Municipal corporations, see MUNICIPAL CORPORATIONS.

Parties to actions, see PARTIES TO ACTIONS.

Partnership, see PARTNERSHIP.

Personal injuries, see PERSONAL INJURIES.

Poor debtor acts, 16, 704

Set-off, see SET-OFF, RECOUPMENT, AND COUNTERCLAIM.

Splitting causes of action, 1, 159

Trespass, see TRESPASS.

Variance, 22, 563, 566

TOWAGE, 20, 259

See SHIPPING.

TOWNS AND TOWNSHIPS (see MUNICIPAL CORPORATIONS):

Appeal bonds and undertakings, 1, 969

Bastardy:

Complaint, 3, 277

Institution of proceedings by town authorities, 3, 271

Ejectment, 7, 300

Eminent domain, 7, 513

Venue, 22, 808

TRADE-MARKS AND TRADE NAMES, 21, 751

Accounts and accounting, 21, 770

Allegations, 21, 771

Amount and nature of profits and from whom recoverable, 21, 771

TRADE-MARKS AND TRADE NAMES, *cont'd.*

Accounts and accounting, *cont'd.*

Dependence upon injunction, 21, 772

In general, 21, 770

Injunction without accounting, 21, 772

Actions at law, 21, 758

Appeals, 21, 773

Assignments, 21, 756

Bill in equity, 21, 760

Averments relating to infringement, 21, 761

Averments relating to trade-mark, 21, 760

For fraudulent and unfair competition, 21, 762

For infringement of trade-mark, 21, 760

For use of name, 21, 761

Multifariousness, 21, 762

Costs, 21, 772

Criminal procedure, 21, 774

Declaration and complaint, 21, 758

Decree, 21, 768

Nature, scope, and requisites, 21, 769

Demurrer, 21, 762

Establishment of rights at law, 21, 764

Findings, 21, 768

Fraud, 21, 760, 763

Hearing, 21, 767

Indictments, 21, 774

Infringement, see *infra*, Suits for infringement and analogous wrongs.

Injunctions (see *infra*, Preliminary injunctions):

Accounting, 21, 772

Granting or denying injunction, 21, 768

Cessation of infringement, 21, 768

In general, 21, 768

Nature, scope, and requisites of decree, 21, 769

Joinder of parties:

Parties defendant, 21, 758

Parties plaintiff, 21, 757

Judgment, 21, 768

Jurisdiction, 21, 753

Multifariousness, 21, 762

Parties, 21, 755

Defendant, 21, 758

Plaintiff, 21, 755

Assignees, 21, 756

Joinder, 21, 757

Ownership, title, and interest, 21, 755

Partnership, 21, 756

Trade unions, 21, 756

Partnership, 21, 756

TRESPASS, *cont'd.*Declaration and complaint, *cont'd.*Manner of committing trespass,
21, 817*De bonis asportatis*, 21, 818

In general, 21, 817

Quare clausum fregit, 21, 817

Quality and quantity, 21, 821

Quare clausum fregit, 21, 818The trespass should not be laid
by way of recital, 21, 810

Time, 21, 811

Allegations and proof, 21,
814*Continuando* for whole time,
21, 813*Continuando* in general, 21
812Divers days and times, 21,
813

Necessity to allege, 21, 811

Requisites and sufficiency
of allegations, 21, 814Where by statute a form is pro-
vided, 21, 811Where the trespass committed
is actionable under a statute,
21, 809Definiteness and certainty in plead-
ing, 21, 843

Definition, 21, 783

De injuria, 21, 855

Directing verdict, 6, 707; 21, 864

Dismissal, discontinuance, and non-
suit:

Joinder, 21, 809

Dogs, see TRESPASSING, VICIOUS, AND
DISEASED ANIMALS.

Double or treble costs, 21, 878

Double or treble damages, 16, 238;
21, 830

Double pleading, 21, 851

Easements, 21, 849

Ejectment:

Joinder, 21, 802

Election of remedies, see ELECTION OF
REMEDIES.

Eminent domain, 7, 716

Judgment, 7, 718

Landowner's rights, 7, 716

Parties, 7, 716

Parties defendant, 7, 717

Plaintiff's pleadings, 7, 717

Pleadings, 7, 717

Plea or answer, 7, 718

Right of action, 7, 716

Statutory remedy, 7, 716

Title or possession necessary in
plaintiff, 7, 717

When trespass will lie, 7, 716

Who may sue, 7, 716

Equity, 21, 791

Escape, 7, 929

TRESPASS, *cont'd.*

Exceptions and objections:

Joinder of counts and causes,
21, 802

Jurisdiction and venue, 21, 797

Misjoinder, 21, 808

Nonjoinder, 21, 808

Executions:

Acts otherwise amounting to a
trespass, 8, 532Executors and administrators, 21,
804Forcible entry and detainer, 9, 50, 54
Former adjudication, 9, 616; 21, 849

General issue, 21, 832

In general, 21, 832

Lawful authority, 21, 834

Mitigation of damages, 21, 833

Not guilty, 21, 832

Notice of defense under general
issue, 21, 841

Possession, 21, 834

Scope of plea, 21, 832

Title, 21, 834

What plea puts in issue in tres-
pass to personality, 21, 836What plea puts in issue in tres-
pass to realty, 21, 834What plea puts in issue in tres-
pass to the person, 21, 836

Harmless errors, 21, 861

Homesteads and exemptions, 10, 103

Husband and wife, 21, 805

Indictment, see *infra*, Criminal prose-
cutions for trespass.*Injuries to animals trespassing on rail-
road lands*, see RAILROADS.

Instructions, 21, 859

Assuming facts, 21, 861

As to damages, 21, 862

Criminal prosecutions, 21, 883

Directing verdict, 21, 864

Harmless errors, 21, 861

In general, 21, 859

Where the action is against joint
trespassers, 21, 860*Interest of plaintiff*, see *infra*, Decla-
ration and complaint.

Joinder of counts and causes, 21, 797

Assumpsit, 21, 800

Case, 21, 800

Debt and actions on statutes,
21, 802

Ejectment, 21, 802

In general, 21, 797

Joinder with other forms of ac-
tion, 21, 800

Matter in aggravation, 21, 798

Objections, 21, 802

Removal of goods and trespass
to realty, 21, 798

Trespass on the case, 21, 906

Trover, 21, 802

TRESPASS, *cont'd.*

- Joinder of parties, 21, 805, 808
 - Joinder of plaintiffs, 21, 805
 - Defendants, 21, 806
 - Husband and wife, 21, 805
 - In general, 21, 805
 - Objections for misjoinder, 21, 808
 - Objections for nonjoinder, 21, 808
 - Tenants in common, 21, 805
- Joint and several pleas, 21, 852
- Joint tenants and tenants in common, 21, 805
 - Between joint tenants and tenants in common, 11, 763
 - Joinder of parties, 11, 777
- Joint trespass:
 - Costs, see *infra*, Costs.
 - Joint or several assessment of damages, 21, 868
 - Judgment, 21, 872
 - Verdict, 21, 864
- Judgment 21, 869
 - Conformity to pleadings and proof, 21, 869
 - Conformity to verdict or findings, 21, 870
 - Election *de melioribus damnis*, 21, 872
 - Form of action, 21, 870
 - Form of judgment, 21, 871
 - In general, 21, 869
 - Joint judgment, 21, 872
 - Joint trespass, 21, 872
 - Limitation of relief, 21, 870
- Jurisdiction and venue, 21, 792
 - Jurisdiction of inferior courts, 21, 794
 - Amount in controversy, 21, 794
 - In general, 21, 794
 - Removal of cause, 21, 796
 - Trespass to realty, 21, 795
- Objections, 21, 797
- Trespass to personality and to the person, 21, 793
 - Change of venue, 21, 794
 - In general, 21, 793
- Trespass to realty, 21, 792
 - In general, 21, 792
 - Materiality of venue, 21, 793
 - Under statutes, 21, 792
- Justices of the peace:
 - Pleading title before justice, 21, 841
- Justification (see *infra*, Special defenses):
 - Replication, 21, 856
- Landlord and tenant, 12, 902
- Legal conclusions, 21, 842
- Liberum tenementum*, 21, 835, 839, 850
 - Effect of pleading, 21, 840

TRESPASS, *cont'd.*

- Liberum tenementum, cont'd.*
 - In general, 21, 839
 - Replication, 21, 859
 - Use of plea, 21, 840
- License (see LICENSE), 21, 849
- Locality, see *infra*, Declaration and complaint.
- Malicious mischief (see MALICIOUS MISCHIEF), 13, 400
- Malicious prosecution*, see MALICIOUS PROSECUTION.
- Master and servant, 21, 787
- Military authority, 21, 849
- Molliter manus imposuit*, 21, 845
- Negligence, 21, 789
- Not guilty*, see *infra*, General issue.
- Notice of defense under general issue, 21, 841
- Objections, see *infra*, Exceptions and objections.
- Open and close, 15, 197
- Ownership (see *infra*, *Liberum tenementum*), 21, 823, 824
 - General issue, 21, 834
- Parties, 21, 803
 - Defendants, 21, 806
 - Discontinuance, 21, 809
 - Executors and administrators, 21, 804
 - Husband and wife, 21, 805
 - Joinder of plaintiffs, 21, 805
 - Objections for misjoinder, 21, 808
 - Objections for nonjoinder, 21, 808
 - Plaintiffs, 21, 803
 - Tenants in common, 21, 805
- Trespass to personality, 21, 804
- Trespass to realty, 21, 803
- Penalties and penal actions, 16, 238
- Personal injuries, 16, 374
- Place, 21, 818
- Plea or answer, 21, 831
 - Double pleadings, 21, 851
 - General and special pleas, 21, 852
 - General issue, see *infra*, General issue.
 - Special defenses, see *infra*, Special defenses.
- Possession, 21, 823, 851
 - General issue, 21, 834
- Privilege, 16, 983
- Public officers, 17, 175; 21, 848
- Quality, 21, 921
- Quantity, 21, 821
- Quare clausum fregit*, 21, 817
- Rejoinders, 21, 858
- Removal of causes, 21, 796
- Replication and reply, 21, 853
 - Declaration general in description, 21, 854

TRESPASS, *cont'd.*

- Replication and reply, *cont'd.*
 - De injuria* improper, 21, 855
 - In general, 21, 853
 - To plea of excuse, 21, 855
 - To plea of justification, 21, 856
 - To plea of *liberum tenementum*, 21, 854
 - Where plaintiff derives title under defendant, 21, 855
 - Where title of plaintiff is not inconsistent, 21, 855

Sales, see SALES.

Seduction, 19, 403

Separate trials, 21, 859

Sheriffs, see SHERIFFS AND CONSTABLES.

Special defenses, 21, 837

Acts justified must be those complained of, 21, 847

Authority of law, 21, 848

Color, 21, 846, 851

Express color, 21, 851

Former recovery, 21, 849

Illustrations of matters that must be specially pleaded, 21, 838

Leave, license, or easements, 21, 849

Liberum tenementum, 21, 839, 850

License to enter a close, 21, 838

Military authority, 21, 849

Necessity of complete defense, 21, 843

Notice of defense under general issue, 21, 841

Notice used instead of plea, 21, 847

Plea to part of the count, 21, 844

Public officers, 21, 848

Requisites and sufficiency of plea or notice, 21, 842

Res judicata, 21, 849

Title, 21, 841, 851

Where act complained of would *prima facie* appear to be trespass, 21, 837

Where necessary or appropriate, 21, 837

Where plea is special, 21, 846

Splitting causes of action, 1, 161

Street railways, see STREET RAILWAYS.

Time, see *infra*, Declaration and complaint.

Title, 21, 823, 851

Costs where the title to real property is the principal matter in dispute, 21, 876

General issue, 21, 834

Liberum tenementum, 21, 839

Plea of title, 21, 841

Plea of title instead of *liberum tenementum*, 21, 841

Possession, 21, 851

TRESPASS, *cont'd.*

Transitory actions, see *infra*, Jurisdiction and venue.

Trespass on the case:

Act done by servants, 21, 787

Distinction between trespass on the case and trespass abolished, 1, 170

Incorporeal rights, 21, 788

Joinder, 21, 800, 906

Joinder of counts and causes, 1, 169

Remedy either *vi et armis* or case, 21, 788

Whether a remedy for trespass is by trespass *vi et armis* or by trespass on the case, 21, 784, 785

Trespass *quare clausum fregit*:

Answers in code pleading:

General denials, 1, 826

Bills of particulars, 3, 554

Trespass vi et armis, see *infra*, *Vi et armis*.

Trover and conversion, 21, 1014

Election of remedies, 21, 1027

Trespass *de bonis asportatis*, 21, 1027

Trespass *quare clausum fregit*, 21, 1028

Trespass *vi et armis*, 21, 1027

Joinder, 21, 802

Joinder of counts and causes, 21, 1033

Trespass and trover concurrent remedies, 21, 789

Trusts and trustees:

Parties, 22, 184

Value, 21, 821, 822

Variance:

Damages, 21, 828

Locality, 21, 820

Place, 21, 820

Possession, 21, 823

Time, 21, 814

Necessity of election, 21, 816

Where one trespass is charged, 21, 814

Where the plaintiff has declared with a *continuando* on a specific day and on divers days, 21, 815

Where two or more trespasses are alleged, 21, 815

Value, 21, 822

Vendor and purchaser:

Vendor's remedies, 22, 663

Venue (see *infra*, Jurisdiction and venue), 22, 778

Verdict, 21, 864

Conformity of judgment, 21, 870

Criminal prosecutions, 21, 884

In general, 21, 864

TRESPASS, *cont'd.*Verdict, *cont'd.*

- Joint or several assessment of damages, 21, 868
- Repugnancy of findings, 21, 866
- Surplusage, 21, 867
- Where trespass was joint, 21, 867

Vi et armis, 21, 784

- Forms of *vi et armis*, 21, 785
- Trespass *vi et armis* or case, 21, 784
- Usual remedy, 21, 784

- When the remedy is by trespass *vi et armis*, 21, 785

TRESPASSING, VICIOUS, AND DISEASED ANIMALS, 21, 886

Answer, 21, 896

Civil remedies for injuries by animals, 21, 887

Complaint, see *infra*, Declaration, petition, or complaint.

Criminal procedure, 21, 899

Damages, 21, 896

Declaration, petition, or complaint, 21, 890

- Averment and proof, 21, 891
- Contributory negligence, 21, 892
- Damages, 21, 896
- Fencing, 21, 895
- In general, 21, 890
- Injury to sheep, 21, 891
- Negating exceptions, 21, 891
- Negating negligence of plaintiff, 21, 892
- Negligence of defendant, 21, 892
- Scienter, see *infra*, Scienter.

Disease:

- Scienter, 21, 894

Dogs:

- Form of action, 21, 887
- Scienter, 21, 894

Fences, 21, 895

Form of action, 21, 887

- Animals *feræ naturæ*, 21, 887
- Animals *mansuetæ naturæ*, 21, 887
- Diseased animals, 21, 887
- Dogs, 21, 887

Instructions, 21, 897

Joinder of counts and causes, 21, 889

- Continuous trespasses, 21, 890
- In general, 21, 889

Joinder of parties, 21, 889

Jurisdiction, 21, 888

Negligence:

- Averment of negligence of defendant, 21, 892

Parties defendant, 21, 888

Parties plaintiff, 21, 888

Petition, see *infra*, Declaration, petition, or complaint.

Plea or answer, 21, 896

Questions of law and fact, 21, 898

Railroads, see RAILROADS.

TRESPASSING, VICIOUS, AND DISEASED ANIMALS, *cont'd.*

Scienter, 21, 893

Action on the case, 21, 893

Animals *feræ naturæ*, 21, 892, 893Animals *mansuetæ naturæ*, 21, 887, 892, 893

Averment and proof, 21, 895

Averring negligence of defendant, 21, 892

Disease, 21, 894

Questions of law and fact, 21, 898

Sufficiency of allegation, 21, 894

Trespass, 21, 893

Variance, 21, 895

Vicious dogs, 21, 894

Variance, 21, 895, 919

Venue, 21, 888

Verdict, 21, 899

TRESPASS ON THE CASE, 3, 674; 21, 901

See TRESPASS.

Answers, see *infra*, Plea or answer.

Assumpsit:

- Distinction between declaration in case and in assumpsit in actions against carriers, 3, 821
- Joinder, 21, 906

Boundaries and fences, 3, 674

Conspiracy, 4, 738

Contracts:

- Obligations originating in contract, 21, 913
- In general, 21, 913
- Necessity of formal statement, 21, 913
- Variance, 21, 916

Damages:

- Declaration and complaint, 21, 919
- In general, 21, 919
- Matter in aggravation, 21, 920

Declaration and complaint, 21, 906

Actions upon statutes, 21, 909

Conclusion of declaration, 21, 909

Conformity with process, 21, 906

Damages, 21, 919

In general, 21, 919

Matter in aggravation, 21, 920

Demand and refusal, 21, 908

Description of personal property, 21, 910

Description of real property, 21, 909

Description of reversionary interest, 21, 910

Description of subject of injury, 21, 909

TRESPASS ON THE CASE, *cont'd.*

- Declaration and complaint, *cont'd.*
 - In general, 21, 906
 - Interest originating from defendant's obligation, 21, 912
 - Matter of inducement, 21, 908
 - Necessity of full statement of facts, 21, 907
 - Obligations not originating in contract, 21, 915
 - Obligations originating in contract, 21, 913
 - Plaintiff's interest where the injury is to property, 21, 911
 - Possessory interest, 21, 911
 - Reversionary interest, 21, 910, 912
 - Statement of injury, 21, 916
 - Allegation of force, 21, 916
 - Breach of duty, 21, 917
 - Consequential character of injury, 21, 917
 - Motive or intent, 21, 918
 - Scienter, 21, 918
 - Sufficiency of averment, 21, 919
 - Variance, 21, 919
 - Vi et armis*, 21, 916
 - Whereas, 21, 917
 - Wherefore, 21, 917
 - Statement of plaintiff's interest, 21, 911
 - Time, 21, 908
 - Variance from contract stated, 21, 916
- Definition, 21, 902
- Demand, 21, 908
- Directing verdict, 6, 707
- False representations and deceit, 8, 885
 - Effect of express contract, 8, 885
 - In general, 8, 885
 - Warranty, 8, 885
 - Writing without representations, 8, 886
- Findings, 21, 923
- Force, 21, 916
- Former adjudication, 9, 616
- General issue, 21, 920
- Instructions, 21, 923
- Joinder of counts and causes, 1, 169; 21, 905
 - Assumpsit and case, 21, 906
 - Trover and case, 21, 906
 - Vi et armis* and case, 21, 906
- Jurisdiction, 21, 903
- Malicious prosecution*, see **MALICIOUS PROSECUTION**.
- Nature of action, 21, 902
- Parties, 21, 905
 - Defendants, 21, 905
 - Plaintiffs, 21, 905

TRESPASS ON THE CASE, *cont'd.*

- Patents, 16, 79
 - Infringement, 16, 79
- Personal injuries, 16, 374
- Pleadings subsequent to plea or answer, 21, 922
- Plea or answer, 21, 920
 - General issue, 21, 920
 - Pleadings subsequent to plea or answer, 21, 922
 - Proof under plea, 21, 921
 - Requisites and sufficiency of special pleas, 21, 920
 - Special pleas, 21, 920
- Pledges, 16, 641, 649
- Privilege, 16, 985
- Public officers, 17, 175
- Remainders*, see *infra*, **Reversionary interest**.
- Reversionary interest:
 - Description of subject of interest, 21, 910
 - Statement of plaintiff's interest, 21, 912
- Seduction, 19, 403
- Sheriffs and constables, 20, 124
- Statutes:
 - Actions upon statutes, 21, 909
- Stock and stockholders:
 - Dividends and new or bonus stock, 20, 810
 - Proceedings respecting transfer of stock and certificates, 20, 812
- Time, 21, 908
- Transitory actions, 21, 905
- Trespass:
 - Act done by servants, 21, 787
 - Distinction between case and trespass abolished, 1, 170
 - Incorporeal rights, 21, 788
 - Joinder, 21, 800, 906
 - Joinder of counts and causes, 1, 169
 - Remedy either *vi et armis* or case, 21, 788
 - Whether a remedy for trespass is by trespass *vi et armis* or by trespass on the case, 21, 784, 785
- Trover and conversion:
 - Election of remedies, 21, 1027
 - Joinder, 1, 168; 21, 906
 - Joinder of counts and causes, 21, 1032
- Variance, 21, 916
 - Contract, 21, 916
- Venue, 21, 903; 22, 778
- Verdict, 21, 923
 - Vi et armis*, 21, 916
- Whereas, 21, 917
- Wherefore, 21, 917

- TRESPASS TO TRY TITLE, 21.**
- 924
- See TRESPASS.
- Abstract of title, 21, 942
- Aider by verdict:
- Description of land, 21, 934
- Alabama, 21, 926
- Answers*, see *infra*, Plea or answer.
- Complaint*, see *infra*, Declaration, petition, or complaint.
- Costs, 21, 951
- Damages:
- Declaration, petition, or complaint, 21, 937
- Judgment, 21, 951
- Verdict or findings, 21, 947
- Declaration, petition, or complaint, 21, 931
- Damages, 21, 937
- Description of land, 21, 933
- Aider of insufficient description, 21, 934
- Averment and proof, 21, 933
- In general, 21, 933
- Dispossession of defendant, 21, 936
- Indorsements, 21, 932
- In general, 21, 931
- Interest of plaintiffs, 21, 934
- In general, 21, 934
- Setting out title, 21, 935
- Sufficiency of allegation, 21, 935
- Names and residences of parties, 21, 932
- Prayer for relief, 21, 937
- Description of land (see *infra*, Declaration, petition, or complaint):
- Judgment, 21, 950
- Verdict or findings, 21, 946
- Directing verdict, 21, 945
- Dismissal, discontinuance, and nonsuit, 21, 929
- Indorsements, 21, 932
- Instructions, 21, 943
- Description of land, 21, 944
- Directing verdict, 21, 945
- Improper instructions, 21, 945
- Question of title to land, 21, 944
- Requisites of charge, 21, 943
- Special instructions, 21, 944
- Written evidence of title, 21, 944
- Interest of plaintiffs*, see *infra*, Declaration, petition, or complaint.
- Joinder of counts and causes, 21, 928
- Joinder of parties:
- Defendants, 21, 930, 931
- Misjoinder and nonjoinder, 21, 931
- Plaintiffs, 21, 929
- TRESPASS TO TRY TITLE, *cont'd.***
- Joint tenants and tenants in common:
- Between joint tenants and tenants in common, 11, 767
- Judgment, 21, 948
- Damages, 21, 951
- Description of land, 21, 950
- Determination of and conformity with issues, 21, 948
- Form of judgment, 21, 949
- In general, 21, 948
- Jurisdiction, 21, 927
- Local and transitory, 21, 927
- Names:
- Names and residences of parties, 21, 932
- Nature of action, 21, 925
- Order of survey, 21, 943
- Parties defendant, 21, 929
- In general, 21, 929
- Joinder of defendant, 21, 930
- Misjoinder and nonjoinder, 21, 931
- Real owners, 21, 929
- Tenant in possession, 21, 930
- Transfer of interest *pendente lite*, 21, 930
- Warrantors, 21, 929
- Who may be let in to defend, 21, 929
- Parties plaintiff, 21, 928
- Discontinuance, 21, 929
- Interest of plaintiffs*, see *infra*, Declaration, petition, or complaint.
- Joinder of plaintiffs, 21, 929
- Real parties in interest, 21, 928
- Transfer of interest *pendente lite*, 21, 928
- Petition*, see *infra*, Declaration, petition, or complaint.
- Plea or answer, 21, 937
- Admission by plea, 21, 940
- Averment and proof under plea of not guilty, 21, 940
- Averment and proof under special pleas, 21, 941
- Claims for improvements, 21, 938
- Disclaimer, 21, 939
- In general, 21, 937
- Severance, 21, 940
- Sufficiency of special pleas, 21, 938
- Withdrawal of answer, 21, 940
- Possession:
- Dispossession of defendant, 21, 936
- Possession of plaintiff, 21, 936
- Possession, writ of, 21, 951
- Replications and replies, 21, 942
- Residence of parties, 21, 932
- Scope of action, 21, 926

TRESPASS TO TRY TITLE, *cont'd.*

- Second suits, 21, 952
- Separate trials, 21, 943
- South Carolina, 21, 926
- Texas, 21, 926
- Variance, 21, 940
 - Description of land, 21, 933
- Vendor and purchaser:
 - Vendor's remedies, 22, 664
- Venue, 21, 927
- Verdict or findings, 21, 946
 - Conformity with declaration, 21, 946
 - Damages, 21, 947
 - Description of lands, 21, 946
 - In general, 21, 946
 - Prejudicial errors, 21, 947
 - Responsiveness to charge and issues, 21, 946
- Where action must be brought, 21, 927

TRIAL, 21, 953

- Adjournments*, see ADJOURNMENTS.
- Admiralty, 1, 274
- Agreed case*, see AGREED CASE.
- Appearances*, see APPEARANCES.
- Arguments of counsel*, see ARGUMENTS OF COUNSEL.

Arraignment and plea in criminal cases, see ARRAIGNMENT AND PLEA IN CRIMINAL CASES.

Attorneys:

- Rights and duties of attorneys, 21, 974
- Admissions and agreements, 21, 975
- Improper argument, 21, 975
- Presumption as to performance of duty by attorney appointed, 21, 975
- Rights and obligations as officers of court, 21, 974

Calendars and trial dockets, see CALENDARS AND TRIAL DOCKETS.

Calling cases for trial, 21, 968.

Chambers and vacation, see CHAMBERS AND VACATION.

Change of presiding judge during trial, 21, 1002

Change of venue, see CHANGE OF VENUE.

Consolidation of actions, see CONSOLIDATION OF ACTIONS.

Constitutional law:

- Presence of accused, 21, 971
- Publicity of trial, 21, 969

Contempt (see CONTEMPT):

- Failure of witness to comply with order, 21, 989

Continuances, see CONTINUANCES.

Control over introduction of evidence:

- Duty in ruling upon evidence, 21, 992

TRIAL, *cont'd.*

Court, see *infra*, Duties and powers of court.

Criminal procedure:

- Necessity of presence of judge, 21, 978
- Statement by accused to jury, 21, 973

Decisions, see DECISIONS.

Decrees, see DECREES.

Definition, 21, 956

Demurrers to evidence, see DEMURRERS TO EVIDENCE.

Directing verdict, see DIRECTING VERDICT.

Discovery, production, and inspection, see DISCOVERY, PRODUCTION, AND INSPECTION.

Discretion of court in limiting number of witnesses, 21, 980

Distinction between chief and collateral issues, 21, 981

General rule, 21, 980

Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.

Disqualification of judge, 21, 1002

Duties and powers of court, 21, 975

Attorneys, 21, 992

Cautioning witnesses, 21, 991

Control over appointment and conduct of attorneys, 21, 992

Control over arguments of counsel, 21, 994

Control over introduction of evidence, 21, 980

Discretion in limiting number of witnesses, see *infra*, Discretion of court in limiting number of witnesses.

Order of proof, 21, 980

Discretion in conduct of trial, 21, 975

Duty in ruling upon evidence, 21, 992

Duty to administer law and protect rights of litigants, 21, 976

Duty to be present during trial, 21, 977

Continuous presence necessary in criminal prosecutions, 21, 978

Effect of absence in criminal prosecutions, 21, 979

Effect of absence of judge, 21, 977

In civil trials, 21, 977

In criminal prosecutions, 21, 978

Duty to check demonstration in court room, 21, 1001

TRIAL, cont'd.

Duties and powers of court, *cont'd.*

Duty to refrain from prejudicial remarks or conduct, see infra,

Duty to refrain from prejudicial remarks or conduct.

General rules as to control of court over conduct of trial, 21, 975

Power to examine witnesses, 21, 990

Putting witnesses under rule, see infra, Putting witnesses under rule.

Right of court to take down testimony, 21, 991

Duty to refrain from prejudicial remarks or conduct, 21, 994

Arrest of witness for perjury in presence of jury, 21, 998

Care to be exercised, 21, 995

Communication of judge with jury, 21, 999

Correction of improper remark by subsequent instruction, 21, 1001

Expression of opinion as to credibility of witness, 21, 997

Expression of opinion as to facts, 21, 997

General rule, 21, 994

Improper remarks not affecting result, 21, 998

Miscellaneous improprieties, 21, 1000

Remarks in hearing of jury equivalent to instruction, 21, 995

Remarks of conduct held prejudicial and subject to review, 21, 997

Remarks or conduct of court in discharging jury, 21, 999

Statutory provision as to immediate commitment of witness for perjury, 21, 999

Suggestion of judge to prosecuting attorney, 21, 999

Test as to prejudicial remarks, 21, 996

Time of objection to judge's remarks, 21, 1001

Evidence, see infra, Duties and powers of court.

Examination of witnesses (see EXAMINATION OF WITNESSES):

Exclusion from the court room, 8, 92

Contempt, 8, 93

Effect of disobedience, 8, 93

Of attorney, 8, 93

Of party, 8, 93

Of witness, 8, 92

TRIAL, cont'd.

Examination of witnesses, *cont'd.*

Exclusion from the court room, *cont'd.*

Rejection of testimony, 8, 93, 95

Right to reject testimony of witness for disobedience, 8, 93

Exceptions and objections, see EXCEPTIONS AND OBJECTIONS.

Exhibits, see EXHIBITS.

Expert witnesses, see EXPERT WITNESSES.

Findings of court, see FINDINGS OF COURT.

Hearing, see HEARING.

Hearing apart, see infra, Putting witnesses under rule.

Impeachment and corroboration of witnesses, see IMPEACHMENT AND CORROBORATION OF WITNESSES.

Instructions, see INSTRUCTIONS.

Issues to the jury, see ISSUES TO THE JURY.

Judge (see *infra*, Duties and powers of court; and see JUDGE):

Change of presiding judge during trial, 21, 1002

Disqualification of, 21, 1002

Judgments, see JUDGMENTS.

Jury, see JURY.

Jury trial, see JURY.

Justices of the peace, see JUSTICES OF THE PEACE.

Mandamus, see MANDAMUS.

Marriage (annulment), 13, 882

Minutes, see MINUTES.

Mistrial, 21, 1007

Definition, 21, 1007

Effect of mistrial, 21, 1008

Necessity for rearraignment, 21, 1008

Ordering mistrial as matter of discretion, 21, 1008

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

New trial, see NEW TRIAL.

Night sessions, 21, 959

Notes of issue (see NOTES OF ISSUE), 21, 963

Notice of trial, 21, 961

Definition, 21, 961

Form and requisites of notice, 21, 964

Necessity of notice, 21, 961

Amendments, 21, 963, 964

Form and requisites of notice, 21, 964

In general, 21, 962

New notice of trial, 21, 963

Notice to codefendant, 21, 962

TRIAL, *cont'd.*

- Notice of trial, *cont'd.*
 - Necessity of notice, *cont'd.*
 - Voluntary appearance, 21, 963
 - Waiver of notice, 21, 962
 - New trial, 21, 964
 - No particular form necessary, 21, 964
 - Service of notice, 21, 966
 - Manner of service, 21, 967
 - Substituted attorney, 21, 967
 - Time of service, 21, 967
 - Who may serve, 21, 966
 - Specification of place, 21, 964
 - Specification of time, 21, 964
 - Test of sufficiency, 21, 965
 - Waiver of irregularity by retention of notice, 21, 95
 - Where two actions are pending, 21, 965
- Open and close*, see OPEN AND CLOSE.
- Order of proof*, see ORDER OF PROOF.
- Orders*, see ORDERS.
- Perjury (see PERJURY):
 - Arrest of witness for perjury in presence of jury, 21, 998, 999
- Personal injuries:
 - Physical examination, 16, 487
- Place of trial, 21, 959
 - House in which trial held, 21, 960
 - In general, 21, 959
 - Notice of trial, 21, 964
- Presence of court*, see *infra*, Duties and powers of court.
- Presence of parties, 21, 970
 - Constitutional right of accused, 21, 971
 - In civil cases, 21, 970
 - In criminal cases, 21, 971
 - Inference in record that prisoner was present, 21, 972
 - Necessity for affirmative showing of presence in record, 21, 972
 - Presence of accused to appear from record, 21, 971
- Probate and contest of wills*, see PROBATE AND CONTEST OF WILLS.
- Profert and oyer*, see PROFERT AND OYER.
- Prosecuting attorneys*, see PROSECUTING ATTORNEYS.
- Publicity of trial, 21, 969
 - Construction of provision guaranteeing public trial, 21, 969
 - In general, 21, 969
- Putting witnesses under rule, 21, 982
 - Classes of witnesses usually exempted, 21, 985
 - Compelling party to testify before examining other witnesses, 21, 987

TRIAL, *cont'd.*

- Putting witnesses under rule, *cont'd.*
 - Discretionary order, 21, 983
 - Discretion of court as to exemption of witnesses, 21, 985
 - Discretion of court as to witnesses not under rule, 21, 990
 - Effect of disobedience as affecting admission of testimony, 21, 987
 - Effect of disobedience as affecting credit of witness, 21, 989
 - Exemption of certain witnesses from operation of rule, 21, 985
 - Exemption of party to suit, 21, 986
 - In general, 21, 982
 - Procedure in putting under rule, 21, 982
 - Punishment for contempt, 21, 989
- Quo warranto*, see QUO WARRANTO.
- References*, see REFERENCES.
- Rehearing*, see REHEARING.
- Rendition and entry of judgments*, see RENDITION AND ENTRY OF JUDGMENTS.
- Reopening case*, see ORDER OF PROOF.
- Rules of court*, see RULES OF COURT.
- Sentence and judgment (in criminal cases)*, see SENTENCE AND JUDGMENT (IN CRIMINAL CASES).
- Separate trials*, see SEPARATE TRIALS.
- Service of notice*, see *infra*, Notice of trial.
- Special and struck juries*, see SPECIAL AND STRUCK JURIES.
- Special interrogatories to juries*, see SPECIAL INTERROGATORIES TO JURIES.
- Statement by accused to jury, 21, 973
- Stipulations*, see STIPULATIONS.
- Striking out*, see STRIKING OUT.
- Summary proceedings*, see SUMMARY PROCEEDINGS.
- Sundays and holidays (see SUNDAYS AND HOLIDAYS), 20, 1192
- Suretyship*, see SURETYSHIP.
- Termination, 21, 957
- Terms and sessions of court:
 - Time of trial, 21, 957
- Theory of the case, 21, 664
- Time of trial, 21, 957
 - Discharge for failure to bring to trial within prescribed time, 21, 958
 - In general, 21, 957
 - Night sessions during criminal trials, 21, 959
 - Notice of trial, 21, 964
 - Postponement of trial, 21, 959
 - Reaching case on docket, 21, 957
 - Setting day for trial, 21, 958

TRIAL, *cont'd.**Time to plead, see TIME TO PLEAD.***Venue** (see **VENUE**):

Place of trial, 21, 959

*Verdict, see VERDICT.**View by jury, see VIEW BY JURY.***Withdrawing juror, 21, 1002**

Costs, 21, 1005

Definition, 21, 1002

Effect of withdrawal, 21, 1005

Imposition of terms on granting leave, 21, 1005

Propriety in both civil and criminal cases, 21, 1004

Purpose, 21, 1002

Witnesses (see *infra*, Discretion of court in limiting number of witnesses; and see **WITNESSES**):

Cautioning witnesses, 21, 991

Putting witnesses under rule, see infra, Putting witnesses under rule.

Work and labor, 22, 1379

TRIAL DE NOVO, see NEW TRIAL.**TRIAL DOCKETS, see CALENDARS AND TRIAL DOCKETS.****TRIAL OF THE RIGHT OF PROPERTY, see RIGHT OF PROPERTY, TRIAL OF.****TROVER AND CONVERSION, 21, 1009****Admissions:**

Admissions in plea or answer, 21, 1107

Agency:

Joinder of parties defendant, 21, 1054

Parties defendant, 21, 1051

Parties to actions, 21, 1048

Amendments:

Declaration and complaint, 21, 1091

Addition of other counts, 21, 1093

Illustrations, 21, 1092, 1095

In general, 21, 1091

Introduction of new cause of action, 21, 1094

In what particulars, 21, 1092

Striking out parties, 21, 1093

Plea or answer, 21, 1108

Amount in controversy, 21, 1035

*Answers, see infra, Plea or answer.***Answers in code pleading:**

General denials, 1, 821

Asportation, 21, 1019

Assignment for benefit of creditors:

Action against assignee, 2, 913

Assignments:

Parties to actions, 21, 1042

Assignee for benefit of creditors, 21, 1044

TROVER AND CONVERSION, *con.***Assignments, *cont'd.***Parties to actions, *cont'd.*

Assignee in bankruptcy, 21, 1044

Assignment after conversion, 21, 1042

Assignment of property before conversion, 21, 1042

Assignor and assignee, 21, 1042

Statutes permitting assignment of cause of action for tort, 21, 1042

Assumpsit:

Joinder of counts and causes, 21, 1031

*Averments and proof, see infra, Variance.***Awards, 3, 132****Bailment:**

Parties to actions, 21, 1044

Banknotes:

Description, 21, 1072

Bills of exchange and promissory notes, 21, 1021**Bills of particulars, 3, 551****Bonds, 21, 1021**

Description, 21, 1072

Certificates of stock, 21, 1021**Chattel mortgages, 4, 513****Code:**

Effect of abolition of forms of action by the code, 21, 1014

General requisites of complaint, 21, 1060

Confession and avoidance, 21, 1101*Constables, see SHERIFFS AND CONSTABLES.***Contracts:**

Action for breach of contract, 21, 1022

Breach of, 21, 1020

Election of remedies, 21, 1022

Conversion, 21, 1074

Argumentative averment of conversion, 21, 1074

Averment of place, 21, 1076

Averment of time, 21, 1076

Averment of wrongfulness of conversion, 21, 1075

By whom property was converted, 21, 1076

Complaint, 21, 1074

Declaration, 21, 1074

Definiteness and certainty, 21, 1074

Denial of conversion, 21, 1105

Fiction as to loss of property by plaintiff and finding by defendant, 21, 1075

General issue, 21, 1098

TROVER AND CONVERSION, *con.*Conversion, *cont'd.*

Instruction as to what constitutes, 21, 1121

Mode of conversion, 21, 1077

Averment of facts excusing demand, 21, 1086

Averment of facts making demand and refusal necessary, 21, 1085

Averment of refusal without demand, 21, 1086

Demand and refusal, 21, 1083

Fraud, 21, 1087

Necessity to allege mode of conversion, 21, 1077

Propriety and sufficiency of averment of particulars, 21, 1079

Sufficiency of averment of wrongful taking, 21, 1082

Sufficiency of bare averment of conversion, 21, 1081

Surplusage, irrelevant and redundant allegations, 21, 1081

Taking by defendant, 21, 1081

Necessity to allege, 21, 1074

Place of conversion, 21, 1076

Requisites and sufficiency of allegations, 21, 1074

Time of conversion, 21, 1076

Variance, 21, 1116

What constitutes conversion, 21, 1014

Wrongfulness of conversion, 21, 1075

Costs, 5, 172; 21, 1131

Counts, paragraphs, and separate statements, 21, 1034

Cross-complaint, 21, 1109

Damages and value of property (see *infra*, Verdict and findings), 21, 1087

Amendments, 21, 1089

Denial of damages and value of property, 21, 1106

Measure of damages, 21, 1121

Necessity of allegation, 21, 1087

Necessity to allege value of property, 21, 1088

Special damages, 21, 1089

Sufficiency of averment of value, 21, 1089

Variance, 21, 1118

Where property is restored before institution of action, 21, 1090

Death:

Death of defendant, 5, 827

Declaration and complaint, 21, 1055

Amendments, 21, 1091

TROVER AND CONVERSION, *con.*Declaration and complaint, *cont'd.*

Anticipation of defenses, 21, 1058

Conclusion *contra statutum*, 21, 1059

Damages and value of property, 21, 1087

In general, 21, 1087

Special damages, 21, 1089

Definiteness and certainty, 21, 1058

Description of property, 21, 1068

Averment of kind, 21, 1070

Banknotes, 21, 1072

Definiteness and certainty, 21, 1068

Description of money, 21, 1072

Irrelevant allegations, 21, 1069

Money, 21, 1072

Necessity to allege, 21, 1068

Number, 21, 1070

Objections waived, 21, 1073

Particularity required in *detinue* and *replevin*, 21, 1069

Quantity, 21, 1070

Requisites and sufficiency of allegations, 21, 1068

Schedule of property, 21, 1073

Weight, 21, 1070

Written instruments, 21, 1072

Formal defects, 21, 1057

General requisites under code, 21, 1060

In general, 21, 1055

Legal conclusions, 21, 1059

Material averments, 21, 1056

Objections waived, 21, 1091

Plaintiff's property and right to possession, 21, 1062

Averments showing lien superior to plaintiff's right to possession, 21, 1067

Definiteness and certainty, 21, 1063

Insufficient averment of facts as to ownership and right to possession, 21, 1065

Necessity to allege, 21, 1062

Necessity to allege particulars as to plaintiff's ownership and right to possession, 21, 1063

Ownership and right to possession as of what time, 21, 1065

Requisites and sufficiency of allegations, 21, 1063

TROVER AND CONVERSION, *con.*

- Declaration and complaint, *cont'd.*
 - Plaintiff's property and right to possession, *cont'd.*
 - Sufficiency of allegation of ownership without alleging possession or right to possession, 21, 1067
 - Sufficiency of averment of possession without averring ownership, 21, 1068
 - Prayer, 21, 1087
 - Surplusage, 21, 1059
 - Theory of declaration or complaint, 21, 1060
- Defenses*, see *infra*, Plea or answer; Special pleas and defenses.
- Definiteness and certainty in averring demand, 21, 1087
- Definiteness and certainty in pleading, 21, 1058
 - Allegations of conversion, 21, 1074
 - Demand, 21, 1087
 - Description of property, 21, 1068
- Definitions, 21, 1012
- Demand and refusal, 21, 1018, 1083
 - Averment of facts excusing demand, 21, 1086
 - Averment of facts making demand and refusal necessary, 21, 1085
 - Necessity of allegations, 21, 1083
 - Propriety and sufficiency of averment of demand and refusal, 21, 1084
 - Sufficiency of averment of refusal without demand, 21, 1086
 - Sufficiency of bare averment of conversion, 21, 1083
 - Waiver of failure to aver demand, 21, 1086
- Demurrers, 21, 1095
- Detinue, 21, 1013
 - Description of property, 21, 1069
 - Election of remedies, 21, 1025
- Ejectment, 21, 1014
- Election of remedies (see ELECTION OF REMEDIES), 21, 1022
- Embezzlement*, see EMBEZZLEMENT.
- Equitable actions:
 - Election of remedies, 21, 1029
- Equitable defenses, 21, 1107
- Equitable or legal action, 21, 1013
- Evidence*, see *infra*, Variance.
- Exceptions and objections, 21, 1091, 1107, 1119
- Executions against the body and arrest in civil cases, 8, 597
 - Moving papers, 8, 602
- Executors and administrators:
 - Parties to actions, 21, 1045
 - Conversion after death of decedent, 21, 1045

TROVER AND CONVERSION, *con.*

- Executors and administrators, *cont'd.*
 - Parties to actions, *cont'd.*
 - Conversion before administration granted, 21, 1045
 - Conversion before death of decedent, 21, 1045
- Fiction as to finding, 21, 1013
- Fiction of finding and loss, 21, 1075
- Finder of lost property, 21, 1046
- Finding, fiction as to, 21, 1013
- Fixtures, 9, 16
- Former adjudication, 21, 1103
- Fraud, 21, 1087
- General issue, 21, 1095
 - Conversion, 21, 1098
 - Damages and value of property, 21, 1099
 - Denial of conversion, 21, 1099
 - Denial of plaintiff's property, 21, 1099
 - In general, 21, 1095
 - Plaintiff's property and right to possession, 21, 1096
 - Purposes and sufficiency of general issue, 21, 1095
 - Special pleas or defenses amounting to general issue, 21, 1099
- Gist of the action, 21, 1013
- Guardian and ward:
 - Parties to actions, 21, 1046
- Husband and wife:
 - Joinder of parties, 21, 1054
 - Joinder of parties plaintiff, 21, 1050
 - Parties to actions, 21, 1046
- Instructions, 21, 1119
 - As to measure of damages, 21, 1121
 - As to title and right to possession, 21, 1120
 - As to what constitutes conversion, 21, 1121
 - In general, 21, 1119
- Intervention, 21, 1054
- Joinder of counts and causes, 21, 1031
 - Conversions by several defendants, 21, 1033
 - Necessity for separate counts and paragraphs, 21, 1034
 - Several causes of action in trover, 21, 1033
 - Several conversions by one defendant, 21, 1034
 - Trover and assumpsit, 21, 1031
 - Trover and penal action, 21, 1033
 - Trover and replevin, 21, 1032
 - Trover and trespass on the case, 21, 1032
 - Trover and trespass *vi et armis*, 21, 1033

TROVER AND CONVERSION, *con.*

- Joinder of parties:
 - Parties defendant, 21, 1052
 - Buyer and seller, 21, 1053
 - Effect of misjoinder, 21, 1054
 - Husband and wife, 21, 1054
 - In general, 21, 1052
 - Joinder of defendants who have committed separate wrongs, 21, 1052
 - Joint tortfeasors, 21, 1053
 - Master and servant, 21, 1054
 - Principal and agent, 21, 1054
- Plaintiff, 21, 1049
- Joint tenants and tenants in common:
 - Action between joint tenants and tenants in common, 11, 765
 - Conversion by sale, 11, 766
 - Destruction by chattels, 11, 766
 - General rules, 11, 765
 - Mere detention, 11, 765
 - Property of divisible nature, 11, 766
 - Parties to actions, 21, 1046
- Judgment, 21, 1128
 - Application of ordinary rules, 21, 1130
 - Appropriate form of judgment in trover, 21, 1128
 - Judgment *nil dicet*, 21, 1129
- Jurisdiction, 21, 1034
 - Amount in controversy, 21, 1035
 - Conversion in another state, 21, 1034
 - In general, 21, 1034
 - Justices of the peace, 21, 1036
 - State and federal courts, 21, 1035
- Justices of the peace, 21, 1036
- Landlord and tenant, 21, 1046
- Legal conclusions, 21, 1059
- Liens, 21, 1047
- Limitations, 13, 187
- Logs and lumber, 13, 346
- Loss, fiction, 21, 1075
- Lost instruments and records, 13, 350
- Lost property:
 - Finder of lost property, 21, 1046
- Master and servant:
 - Parties defendant, 21, 1052
 - Parties to actions, 21, 1048
- Money, 21, 1021
 - Description, 21, 1072
- Mortgages:
 - Mortgagor and mortgagee as parties to actions, 21, 1047
- Negligence, 21, 1020
- Negotiable instruments, 14, 582
 - Declaration and complaint, 14, 582

TROVER AND CONVERSION, *con.*

- Negotiable instruments, *cont'd.*
 - Finding, 14, 583
 - General sufficiency of allegations, 14, 582
 - Ownership, 14, 573
 - Value, 14, 583
- Nonfeasance, 21, 1020
- Parties defendant, 21, 1050
 - Fiduciaries, 21, 1052
 - In general, 21, 1050
 - Joinder of parties defendant, 21, 1052
 - Master and servant, 21, 1052
 - Principal and agent, 21, 1051
 - Purchaser of property after conversion, 21, 1050
 - Trustees, 21, 1052
- Parties plaintiff, 21, 1037
 - Assignee for benefit of creditors, 21, 1044
 - Assignee in bankruptcy, 21, 1044
 - Assignment of cause of action for tort, 21, 1042
 - Assignment of property after conversion, 21, 1042
 - Assignment of property before conversion, 21, 1042
 - Assignor and assignee, 21, 1042
 - Bailor and bailee, 21, 1044
 - Equitable title, 21, 1039
 - Executors and administrators, 21, 1045
 - Finder of lost property, 21, 1046
 - General or special property, 21, 1038
 - Guardian and ward, 21, 1046
 - Husband and wife, 21, 1046
 - Joinder of parties plaintiff, 21, 1049
 - Joint tenants and tenants in common, 21, 1046
 - Lessor and lessee, 21, 1046
 - Lienor and general owner of property, 21, 1047
 - Master and servant, 21, 1048
 - Mortgagor and mortgagee, 21, 1047
 - Necessity to have had right of possession, 21, 1041
 - Particular persons, 21, 1042
 - Pledgor and pledgee, 21, 1048
 - Possession of land, 21, 1041
 - Principal and agent, 21, 1048
 - Receivers, 21, 1048
 - Requisite title and right to possession, 21, 1037
 - Sheriff who has levied process, 21, 1048
 - Sufficiency of constructive possession, 21, 1041
 - Sufficiency of mere possession without property, 21, 1039

TROVER AND CONVERSION, *con.*

Penalties and penal actions:
 Joinder of counts and causes, 21, 1033
Personal property, 21, 1020
Place of conversion, 21, 1076
 Variance, 21, 1118
 Plea or answer, 21, 1095
 Admissions, 21, 1107
 Amendments, 21, 1108
General issue, see infra, General issue.
 Objections waived, 21, 1107
Special pleas or defenses, see infra, Special pleas and defenses.
 Pledges, 16, 642
 Pledgor and pledgee as parties to action, 21, 1048
 Possession (see *infra, General issue; Parties plaintiff*):
 Instructions, 21, 1120
Plaintiff's property and right to possession, see infra, Declaration and complaint.
 Variance, 21, 1114
 Prayers for relief, 21, 1087
 Property (see *infra, General issue*):
Description of property, see infra, Declaration and complaint.
 General and special property, 21, 1038
 Instructions, 21, 1120
Plaintiff's property and right to possession, see infra, Declaration and complaint.
 Variance, 21, 1114
 Property subject to the action, 21, 1020
 Bonds, 21, 1021
 Certificates of stock, 21, 1021
 In general, 21, 1020
 Money, 21, 1021
 Notes, 21, 1021
 Property which is not personal property, 21, 1020
 Tangible personal property, 21, 1021
 Public officers, 17, 175
 Quality, 21, 1070
 Quantity, 21, 1070
 Real property, 21, 1020
 Receivers:
 Parties to actions, 21, 1048
 Remittitur, 21, 1126
 Replevin, 18, 534; 21, 1013
 Description of property, 21, 1069
 Election of remedies, 21, 1025
 Joinder of counts and causes, 21, 1032
 Replications and replies, 21, 1109
Restitution, see infra, Return of property by defendant pending action.

TROVER AND CONVERSION, *con.*

Return of property by defendant pending action, 21, 1110
 Discretion of court, 21, 1111
 In general, 21, 1110
 Necessity to obtain rule of court, 21, 1111
 Power of court to order return of property, 21, 1111
Sales, see SALES.
 Schedule of property, 21, 1073
 Set-off, recoupment, and counterclaim, 21, 1106
 Sheriffs (see *SHERIFFS AND CONSTABLES*):
 Parties to actions, 21, 1048
 Special pleas and defenses.
 Confession and avoidance, 21, 1101
 Denial of conversion, 21, 1105
 Denial of damages and value of property, 21, 1106
 Denial of plaintiff's property and right to possession, 21, 1103
 Duplicity, 21, 1101
 Equitable defenses, 21, 1107
 Estoppel, 21, 1103
 Former adjudication, 21, 1103
 In general, 21, 1100
 Justification under judicial process, 21, 1101
 Set-off, counterclaim, and recoupment, 21, 1106
 What special pleas allowable, 21, 1100
 Splitting causes of action, 1, 161
 Stock, 21, 1021
 Stock and stockholders:
 Transfer of stock and certificates, 20, 817
 Summons, 21, 1055
 Surplusage, irrelevant or redundant matter, 21, 1059, 1081
 Survival of actions, 21, 332
 Taking by defendant, 21, 1081
 Theory of the case, 21, 1060
 Time of conversion, 21, 1076
 Variance, 21, 1118
 Title (see *infra, General issue; Parties plaintiff*):
 Instructions, 21, 1121
 Variance, 21, 1114
 Tort, 21, 1013
 Trespass, 21, 1014
 Election of remedies, 21, 1027
Trespass de bonis asportatis, 21, 1027
Trespass quare clausum fregit, 21, 1028
Trespass vi et armis, 21, 1027
 Joinder, 21, 802

TROVER AND CONVERSION, *con.*Trespass, *cont'd.*

Joinder of counts and causes, 21, 1033

Trespass and trover concurrent remedies, 21, 789

Trespass on the case:

Election of remedies, 21, 1027

Joinder, 1, 168; 21, 906

Joinder of counts and causes, 21, 1032

Trusts and trustees:

Parties defendant, 21, 1052

Trover against trustee, 22, 136

United States courts, 21, 1035

Value of property, see *infra*. Damages and value of property.

Variance, 21, 1112

As to conversion, 21, 1116

As to goods converted, 21, 1112

As to plaintiff's property and right to possession, 21, 1114

By whom property was converted, 21, 1117

Damages and value of property, 21, 1118

In general, 21, 1112

Objections waived, 21, 1119

Place of conversion, 21, 1118

Time of conversion, 21, 1118

Venue, 21, 1037; 22, 784

Verdict and findings (see **VERDICT AND FINDINGS**), 21, 1122

Against some or all defendants, 21, 1124

Amount dependent upon plaintiff's interest in property, 21, 1126

For what amount, 21, 1125

In general, 21, 1122

Necessity to find value or assess damages, 21, 1123

Remittitur, 21, 1126

Special verdict and findings, 21, 1127

Statutes permitting alternative verdict, 21, 1124

Value of part of property declared for, 21, 1125

Warehousemen, 22, 1065, 1066

When trover lies, 21, 1014

Asportation of chattel, 21, 1019

Breach of contract, 21, 1020

Classification of conversions, 21, 1015

Demand and refusal, 21, 1018

Negligence, 21, 1020

Nonfeasance, 21, 1020

What constitutes conversion, 21, 1014

What property may be subject to action, see *infra*. Property subject to action.**TRUST AND TRADE COMBINATIONS**, see **MONOPOLIES**.**TRUST DEED**, see **ASSIGNMENT FOR BENEFIT OF CREDITORS**.**TRUSTEE PROCESS:**Equitable attachment (see **EQUITABLE ATTACHMENT**), 7, 788

Judgments:

Actions on judgments, 11, 1114

TRUSTS AND TRUSTEES, 22, 1

Abatement:

Actions between trustees and beneficiaries or their representatives, 22, 148

Accounting, 1, 96

Appeals, 22, 107

Bill in equity, 22, 94

Bill, petition, or complaint, 22, 101

Anticipation of defenses, 22, 102

Fraud, negligence, or breach of trust, 22, 102

In general, 22, 101

Multifariousness, 22, 102

Prayer for relief, 22, 103

Costs and allowances, 22, 108

Costs imposed on *cestui que trust*, 22, 109

Counsel fees, 22, 110

Extra allowance, 22, 110

Referee's fees, 22, 110

Right to and liability for costs, 22, 108

Decree, 22, 106

Equitable jurisdiction, 22, 137

Interlocutory proceedings, 22, 104

Decree directing accounting, 22, 104

Exceptions and objections to account, 22, 105

Reference, 22, 104

Security and receivers, 22, 106

Jurisdiction, 22, 90

Concurrent jurisdiction of probate courts, 22, 93

Concurrent jurisdiction under statutes, 22, 91

Exclusiveness of equitable jurisdiction, 22, 91

Of equity, 22, 90

Of parties or subject-matter, 22, 94

Probate court, 22, 92

Where executor named in will is also a trustee, 22, 93

Necessary and proper parties, 22, 97

Applications of rule, 22, 97

Beneficiaries not vested with a present interest, 22, 97

TRUSTS AND TRUSTEES, *cont'd.*Accounting, *cont'd.*Necessary and proper parties, *cont'd.*

Beneficiaries of ascertained shares, 22, 100

Beneficiaries very numerous, 22, 100

Cestuis que trustent and their representatives, 22, 97

Exceptions to rule, 22, 100

Personal representatives of donor, 22, 98

Persons whom the pleader is excused from joining, 22, 100

Statement of rule, 22, 97

Trustees and other representatives, 22, 98

Notice, 22, 95

Opening and correcting settled accounts, 22, 110

Parties and notice, 22, 95

Who may maintain proceedings, 22, 95

Cestui que trust, 22, 95

Contingent interests, 22, 95

Joinder of parties, 22, 96

Requisite interest of plaintiff, 22, 95

Trustee, 22, 95

Parties to bill in equity, 1, 105

Plea or answer, 22, 103

Process, 22, 95

Remedy in equity exclusive where accounting is involved, 22, 137

Resignation of trustees, 22, 58

Venue, 22, 94

Actions against society:

Parties:

In United States, 22, 243

Actions between trustees, 22, 134

Actions at law, 22, 134

Contribution, 22, 135

Costs, 22, 135

Counterclaim, 22, 135

Parties, 22, 134

Suit in equity, 22, 134

Actions between trustees and beneficiaries or their representatives, 22, 135

Abatement, 22, 148

Action on bond, 22, 150

Appellate review, 22, 149

Bill, petition, or complaint, 22, 146

Formal bill, 22, 146

In general, 22, 146

Joinder, 22, 147

Multifariousness, 22, 147

TRUSTS AND TRUSTEES, *cont'd.*Actions between trustees and beneficiaries or their representatives, *cont'd.*Bill, petition, or complaint, *con.*

Necessary allegations, 22, 146

Offer or tender in bill, 22, 146

Prayer for relief, 22, 146

Costs, fees, and allowances, 22, 150

Decree, 22, 149

Execution, 22, 149

Injunctions, 22, 152

Judgment, 22, 149

Jurisdiction, 22, 135

Accounting, 22, 137

Action at law on contract creating trust, 22, 137

Assumpsit for money had and received, 22, 138

Breach of trust, 22, 136

Concurrent jurisdiction, 22, 136

Damages for breach of trust, 22, 137

Detinue, 22, 139

Ejectment, 22, 138

Ejectment by *cestui que trust*, 22, 138

Ejectment by trustee, 22, 138

Remedy at law in general, 22, 137

Remedy generally in equity, 22, 135

Remedy in equity exclusive where accounting is involved, 22, 137

Remedy in probate court, 22, 139

Trover, 22, 136

Parties, 22, 141

Interest and capacity to sue, 22, 141

Joinder of defendants, 22, 144

Joinder of plaintiffs, 22, 143

Necessary and proper parties, 22, 141

Parties by representation, 22, 143

Raising and waiving objections, 22, 145

Representatives of deceased trustee, 22, 145

Suit for distributive share, 22, 141

Plea or answer, 22, 148

Receivers, 22, 151

Revival, 22, 148

Scope of section, 22, 135

Set-off, 22, 148

Venue, 22, 140

TRUSTS AND TRUSTEES, *cont'd.*

- Actions with third persons, 22, 152
- Appeal, 22, 197
- Attachment, 22, 199
- Bill, petition, or complaint, 22, 192
- Action to charge trust estate, 22, 194
- Averment as to authority of trustee, 22, 194
- Averment as to parties, 22, 192
- Averment of refusal of trustee to sue, 22, 194
- Averment of trusteeship, 22, 192
- Joinder of causes of action, 22, 195
- Prayer for relief, 22, 194
- Control of suit, 22, 152
- Decree, 22, 196
- Execution, 22, 197
- Judgment or decree, 22, 196
- Jurisdiction, 22, 153
 - Action by beneficiary at law, 22, 154
 - Action by trustee at law, 22, 153
 - At law, 22, 153
 - In equity, 22, 155
 - Suit against constructive trustee, 22, 155
 - Suits involving title to land, 22, 156
 - United States courts, 22, 156
- Leave of court to sue, 22, 152
- Parties, 22, 156
 - Action by beneficiary in name of trustee, 22, 157
 - Actions on contracts, 22, 179
 - Agent of trustee, 22, 177
 - Allowance for beneficiaries' support, 22, 178
 - Amendments, 22, 190
 - At law, 22, 157
 - Attachment, 22, 184
 - Cancellation of instruments, 22, 179
 - Cestui que trust* not a proper party at law, 22, 157
 - Condemnation proceedings, 22, 184
 - Death or removal of trustee or beneficiary, 22, 190
 - Before action brought, 22, 190
 - Of beneficiary, 22, 192
 - Of trustee, 22, 191
 - Pendente lite*, 22, 191
 - Ejectment, 22, 184
 - Establishment of title under burnt records act, 22, 179

TRUSTS AND TRUSTEES, *cont'd.*

- Actions with third persons, *cont'd.*
- Parties, *cont'd.*
 - Foreclosure of mechanics' liens, 22, 180
 - Foreclosure of mortgages and bills to redeem, 22, 180
 - General rules at common law, 22, 156
 - In particular proceedings, 22, 176
 - Intervention by beneficiary, 22, 189
 - Joinder, 22, 189
 - Partition, 22, 183
 - Quieting title, 22, 182
 - Reformation of trust, 22, 182
 - Removal of cloud, 22, 182
 - Specific performance, 22, 183
 - Subjecting trust property to payment of claims, 22, 176
 - Suits affecting existence and enjoyment of trust estate, 22, 177
 - Taking property out of trustee's hands, 22, 177
 - Trespass, 22, 184
 - Use and occupation, 22, 189
 - Waste, 22, 189
- Parties in equity, 22, 158
 - Averment of demand and refusal necessary, 22, 159
 - Cases where the trustee cannot represent the beneficiaries, 22, 165
 - Cestui que trust*, 22, 158, 163, 164
 - Cestui que trust* proper party, 22, 161
 - Exceptions to general rule as to who are necessary and proper parties, 22, 162
 - Executed trusts, 22, 162
 - Fraudulent trustee, 22, 165
 - Interest and capacity to sue, 22, 158
 - Necessary and proper parties, 22, 159
 - Numerous beneficiaries, 22, 165
 - One beneficiary as representative of others, 22, 165
 - Parties by representation, 22, 164
 - Persons against whom no relief is sought, 22, 162
 - Persons not *in esse*, 22, 165
 - Persons without interest in result, 22, 162
 - Reducing trust property to possession, 22, 163

TRUSTS AND TRUSTEES, *cont'd.*Actions with third persons, *cont'd.*Parties in equity, *cont'd.*Refusal of trustee to sue,
22, 158Trustee a necessary party,
22, 161Trustee does not ordinarily
represent the beneficiaries.
22, 160Trustee may maintain bill,
22, 158Trustees and beneficiaries
necessary parties, 22, 159

Unborn persons, 22, 165

Unknown persons, 22, 165

Parties under codes and practice
acts, 22, 166

Agents, 22, 173

Assignor who retains inter-
est, 22, 170

Auctioneer, 22, 173

Bankers, 22, 173

Defendants, 22, 175

Factors, 22, 173

Illustrations of trustees, 22
170

Obligee in bond, 22, 169

Payee of check, 22, 170

Person in whose name con-
tract is made, 22, 171Provisions permissive only,
22, 175Real party in interest 22,
166Trustees of express trusts,
22, 167Where trustee is necessary
party, 22, 167Who are trustees of express
trusts, 22, 169

Plea or answer, 22, 196

Right to sue in another state,
22, 152Set-off and counterclaim, 22,
196

Venue, 22, 156

Administration under direction and
control of court, 22, 113

Appellate review, 22, 115

Bringing funds and deposits into
court, 9, 743; 22, 114

Equitable jurisdiction, 22, 113

Form of proceedings, 22, 114

Order at chambers or in vaca-
tion, 22, 115

Parties, 22, 114

Pleadings, 22, 114

*Allowances, see infra, Costs.***Amendments:**Establishment and enforcement
of trusts, 22, 129

Parties, 22, 190

TRUSTS AND TRUSTEES, *cont'd.*Appeal bonds and undertakings, 1,
969**Appeals:**

Accounting, 22, 107

Actions between trustees and
beneficiaries or their repre-
sentatives, 22, 149Actions with third persons, 22,
197Administration under direction
and control of court, 22, 115

Bonds, 22, 117

Costs, 22, 214

Establishment and enforcement
of trusts, 22, 134

Instructions of court, 22, 71

Removal and substitution of
trustees, 22, 52

Review of appointment, 22, 37

Review of vacation, 22, 37

Sale, mortgage, or lease of trust
property, 22, 85

Appointment of trustee, 22, 24

Appellate review, 22, 37

Appointment without prejudice,
22, 35Bill, petition, or complaint, 22,
31

Consent, 22, 32

Form of application, 22, 31

Motion in pending proceed-
ings, 22, 33Petition for the appointment
of a trustee to sell land,
22, 34Petition and bill alternative
remedies, 22, 32

Petition or motion, 22, 32

Proceeding for the appoint-
ment of testamentary
trustees, 22, 33Sufficiency of application,
22, 33

Costs, 22, 37

Determination, 22, 34

Directing conveyance or vesting
title, 22, 35Direction as to accounting, 22,
36

Hearing, 22, 34

Jurisdiction, 22, 27

Necessary parties, 22, 25

Necessity of notice, 22, 25

Notice, 22, 24

Notice to parties in interest
necessary, 22, 25Notice of supplemental pe-
tition, 22, 30

Notice unnecessary, 22, 26

Service of notice, 22, 31

Where no accounts involved,
22, 27

TRUSTS AND TRUSTEES, *cont'd.*

- Appointment of trustee, *cont'd.*
 - Notice discretionary with court, 22, 27
 - Notice unnecessary, 22, 26
 - Order of appointment, 22, 35
 - Parties, 22, 24
 - Creator of trust, 22, 29
 - Examples, 22, 28, 31
 - Executors, 22, 29
 - Heirs of a deceased person, 22, 29
 - Infants, 22, 30
 - Life tenants and remaindermen, 22, 30
 - Necessary parties, 22, 25
 - Notice of supplemental petition, 22, 30
 - Particular persons, 22, 28
 - Who may maintain proceedings, 22, 24
 - Power to appoint, 22, 24
 - Reference, 22, 35
 - Vacating order of appointment, 22, 36
 - Vacation of trustee, 22, 36, 37
 - Who may maintain proceedings, 22, 24
- Assumpsit:
 - Assumpsit against trustee, 22, 138
- Attachment:
 - Actions with third persons, 22, 199
 - Parties, 22, 184
- Attorney-general:
 - Charitable trusts, 22, 204
- Bill (see *infra*, Appointment of trustee):
 - Accounting, 22, 94, 101
 - Actions between trustees and beneficiaries or their representatives, see *infra*, Actions between trustees and beneficiaries or their representatives.
 - Actions with third persons, see *infra*, Actions with third persons.
 - Administration under direction and control of court, 22, 114
 - Averments in bill as to representative character of suit, 15, 631
 - Establishment and enforcement of trusts, see *infra*, Establishment and enforcement of trusts.
 - Instructions of court, 22, 65
 - Removal and substitution of trustees, 22, 40
 - Requisites of a bill for instructions of court, 22, 69
 - Resignation of trustees, 22, 56
 - Sale, mortgage, or lease of trust property, 22, 75, 81

TRUSTS AND TRUSTEES, *cont'd.*

- Bill of interpleader:
 - Instructions of court, 22, 66
- Bonds, 3, 640; 22, 115
 - Action on bond, 22, 150
 - Allegations in application, 22, 117
 - Appellate review, 22, 117
 - Form of proceedings, 22, 116
 - In general, 22, 115
 - Jurisdiction, 22, 116
 - Motion, 22, 116
 - Notice, 22, 116
 - Petition, 22, 116
 - Reference, 22, 117
- Breach of trust, see *infra*, Actions between trustees and beneficiaries or their representatives.
- Chambers and vacation:
 - Administration under direction and control of court, 22, 115
 - Power over trust estates, 4, 350
 - Resignation, 22, 55
 - Sale, mortgage, or lease of trust property, 22, 74
- Charitable trusts, 22, 203
 - Attorney-general as party, 22, 204
 - Costs, 22, 207
 - Decree, 22, 206
 - Form of remedy, 22, 203
 - Jurisdiction of equity, 22, 203
 - Jurisdiction of probate or orphans' courts, 22, 203
 - Parties in general, 22, 203
 - Pleading, 22, 206
- Citations, 4, 540
- Compelling payment of money by testamentary trustee under New York statute, 22, 200
 - Costs, 22, 202
 - Hearing and determination, 22, 201
 - In general, 22, 200
 - Parties, 22, 201
 - Petition, 22, 201
- Complaint (see *infra*, Appointment of trustee), 4, 599
 - Accounting, 22, 101
 - Actions between trustees and beneficiaries or their representatives, see *infra*, Actions between trustees and beneficiaries or their representatives.
 - Actions with third persons, see *infra*, Actions with third persons.
 - Establishment and enforcement of trusts, see *infra*, Establishment and enforcement of trusts.
 - Resignation of trustees, 22, 56
 - Sale, mortgage, or lease of trust property, 22, 81

TRUSTS AND TRUSTEES, *cont'd.*

Confession of judgment, 22, 87

Conflict of law:

Right to sue in another state,
22, 152Conversion of realty into person-
alty, and *vice versa*, 22, 88Costs (see *infra*, Resignation of
trustees), 5, 156; 22, 207*Accounting*, see ACCOUNTING.Actions between trustees and
beneficiaries or their repre-
sentatives, 22, 150Allowances out of trust fund,
22, 211

Appellate review, 22, 214

General rules, 22, 211

Proceedings to obtain allow-
ance of counsel fees, 22, 213

Reimbursement, 22, 212

Charitable trusts, 22, 207

Compelling payment of money
by testamentary trustee under
New York statute, 22, 202Establishment and enforcement
of trusts, 22, 134

Instructions of court, 22, 70

Liability of trustee for costs, 22,
207Costs as penalty for mis-
management or bad faith,
22, 209

Discretion of court, 22, 208

General rule, 22, 207

Judgment for costs, 22, 210

Motion to charge trustee in-
dividually, 22, 209Motion to set aside execu-
tion against trustee indi-
vidually, 22, 210

Personal liability, 22, 207

Proceedings for appointment,
22, 37Removal and substitution of
trustees, 22, 53Sale, mortgage, or lease of trust
property, 22, 85

Counsel fees:

Accounting, 22, 110Establishment and enforcement
of trusts, 22, 134

Instructions of court, 22, 71

Proceedings to obtain allowance
of counsel fees, 22, 213

Resignation of trustees, 22, 60

Sale, mortgage, or lease of trust
property, 22, 85Court (see *infra*, Instructions of
court; Resignation of trustees):*Administration under direction
and control of court*, see *infra*,
*Administration under direc-
tion and control of court*.**TRUSTS AND TRUSTEES, *cont'd.***Creditors' bills (see CREDITORS'
BILLS):

Enforcement of trusts, 5, 464

Death:

Actions with third persons, 22,
190Before action brought, 22,
190Effect of death or removal,
22, 190*Pendente lite*, 22, 191Declaration, see *infra*, Complaint,

Decree:

Accounting, 22, 106Actions between trustees and
beneficiaries or their repre-
sentatives, 22, 149Actions with third persons, 22,
196

Charitable trusts, 22, 206

Establishment and enforcement
of trusts, 22, 132

Instructions of court, 22, 70

Removal and substitution of
trustees, 22, 51Removal of trust funds to an-
other state, 22, 113

Resignation of trustees, 22, 58

Sale, mortgage, or lease of trust
property, 22, 82, 87

Demand:

Necessity of averments of de-
mand and refusal, 22, 159

Demurrers:

Establishment and enforcement
of trusts, 22, 130

Detinue, 6, 647; 22, 139

Discharge of trust and distribution
or transfer of assets, 22, 202Dismissal, discontinuance, and non-
suit, 15, 637

Ejectment, 22, 138

By *cestui que trust*, 22, 139

By trustee, 22, 138

Parties, 22, 184

After trust is partly satisfied
or executed, 22, 186Beneficiary cannot maintain
ejectment, 22, 184

In general, 22, 184

Instances where presump-
tion of legal title cannot
be made, 22, 188Joinder of trustee and *cestui
que trust*, 26, 187

Satisfied trusts, 22, 188

Surrender of legal estate
presumed, 22, 187

Trustee proper party, 22, 185

When trustees do and when
they do not take the legal
estate, 22, 187

TRUSTS AND TRUSTEES, *cont'd.*

- Election of remedies:
 - Following trust funds or property, 22, 199
- Eminent domain:
 - Parties, 7, 513; 22, 184
- Enforcement of trusts, see infra, Establishment and enforcement of trusts.*
- Equity jurisdiction, 22, 9, 23
 - Accounting, 22, 90
 - Actions between trustees and beneficiaries or their representatives, see infra, Actions between trustees and beneficiaries or their representatives.*
 - Actions with third persons, 22, 155
 - Adequate remedy at law, 22, 14
 - Administration under direction and control of court, 22, 113
 - Bailment, 22, 17
 - Charitable trusts, 22, 203
 - Death of trustee, 22, 23
 - Declaring, enforcing, and supervising trusts, 22, 10
 - Demand for a specific sum of money, 22, 17
 - Diversion of trust property, 22, 11
 - Establishment and enforcement of trusts, 22, 117
 - Exclusiveness of jurisdiction, 22, 12
 - Executed and executory trusts, 22, 17
 - Following trust funds or property, 22, 199
 - Georgia, 22, 20
 - Instances of jurisdiction, 22, 11
 - Instructions of court, 22, 61
 - Massachusetts, 22, 17
 - Mere delivery of property or money, 22, 16
 - Nature of trust cognizable in equity, 22, 15
 - Officers of corporations, 22, 16
 - Pennsylvania, 22, 20
 - Protection of trust estate, 22, 11
 - Removal and substitution of trustees, see infra, Removal and substitution of trustees.*
 - Removal of trust funds to another state, 22, 112
 - Removing impediments to the execution of the trust, 22, 11
 - Resignation of trustees, see RESIGNATION OF TRUSTEES.*
 - Retaining jurisdiction to do complete equity, 22, 20
 - Sale, mortgage, or lease of trust property, 22, 72
 - Setting aside sale, 22, 85

TRUSTS AND TRUSTEES, *cont'd.*

- Equity jurisdiction, *cont'd.*
 - Specific performance, 22, 15
 - Statement of rule, 22, 9
 - Statutory jurisdiction, 22, 17
 - Supervision and distribution of trust funds, 22, 11
 - Trust in favor of third person, 22, 13
 - Violation of trust, 22, 12
- Establishment and enforcement of trusts, 22, 117
 - Abatement, 22, 131
 - Answer, 22, 130
 - Appellate review, 22, 133
 - Bill, petition, or complaint, 22, 125
 - Amendments, 22, 129
 - Averments as to existence or creation of trust, 22, 126
 - Averments as to interest of parties, 22, 127
 - Averments avoiding statute of frauds, 22, 127
 - Averments by volunteers, 22, 128
 - Averments of fraud, 22, 128
 - Averments to excuse laches, 22, 129
 - Charging grantee in absolute deed with trust, 22, 128
 - Description of property, 22, 127
 - Equity jurisdiction limited by statute, 22, 127
 - In general, 22, 125
 - Multifariousness, 22, 129
 - Offers and tenders in bill, 22, 128
 - Prayer for relief, 22, 129
 - Theory of the case, 22, 125
- Consolidation of actions, 22, 131
- Controlling discretion of trustee, 22, 132
- Counsel fees, 22, 134
- Decree, 22, 132
- Demurrer, 22, 130
- Discretion of court, 22, 132
- Findings, 22, 132
- Hearing and determination, 22, 131
- Instructions, 22, 132
- Jurisdiction, 22, 117
 - At law, 22, 118
 - In equity, 22, 117
 - Probate and orphans' court, 22, 118
- Jury, 22, 131
- Local and transitory actions, 22, 119

TRUSTS AND TRUSTEES, *cont'd.***Establishment and enforcement of trusts, *cont'd.***

- Parties, 22, 119
 - Any person interested, 22, 120
 - Cestui que trust*, 22, 120, 121
 - Complainants, 22, 119
 - Executor or administrator, 22, 123
 - Heirs or devisees, 22, 123
 - Husband and wife, 22, 121
 - Joinder, 22, 124
 - Necessary and proper parties, 22, 121
 - Parties by representation, 22, 124
 - Persons wholly without interest, 22, 122
 - Trustee, 22, 122
 - Volunteers, 22, 120

Plea, 22, 130

Process, 22, 119

Reference, 22, 132

Revival, 22, 131

Trial, 22, 131

Venue, 22, 119

Exceptions and objections:

Accounting, 22, 105

Executions, 22, 149

Actions with third persons, 22, 197

Following trust funds or property, 22, 199

Election of remedies, 22, 199

Equity jurisdiction, 22, 199

Parties, 22, 199

Pleading, 22, 199

Reference, 22, 200

Foreclosure of mortgages*, see FORECLOSURE OF MORTGAGES.*Funds and deposits in court (see *infra*, Administration under direction and control of court), 9, 743; 22, 114*****Guardians*, see GUARDIANS.**

Infants, 22, 30, 48, 56

Sale, mortgage, or lease of trust property, 22, 77, 81

Injunctions, 22, 52

Power of court of equity to restrain trustee, 22, 152

Instructions of court, 22, 60

Appellate review, 22, 71

Bill, 22, 65, 69

Bill of interpleader, 22, 66

Cestui que trust as party, 22, 68

Complaint, 22, 69

Costs, 22, 71

Counsel fees, 22, 71

Decree, 22, 70

Establishment and enforcement of trusts, 22, 132

Form of application, 22, 65

TRUSTS AND TRUSTEES, *cont'd.***Instructions of court, *cont'd.*****Jurisdiction, 22, 60**

Construction of wills, 22, 61

Equity jurisdiction, 22, 61

In general, 22, 60

Statutory provisions, 22, 62

Wills, 22, 61

Necessary and proper parties, 22, 67

Numerous parties, 22, 69

Order, 22, 70

Parties, 22, 66

Persons unborn, 22, 68

Petition, 22, 65

Remaindermen, 22, 68

Trustee as party, 22, 68

When instructions may be asked, 22, 62

Conflicting claims, 22, 64

Discretionary with trustee, 22, 64

Future rights, 22, 65

General rule, 22, 62

Investments, 22, 65

Other adequate remedy, 22, 64

Particular questions, 22, 63

Questions *dehors* trust instrument, 22, 65

Who may maintain proceedings, 22, 66

Interlocutory proceedings, see *infra*, Accounting.

Investments, 22, 87

Instructions of court, 22, 65

Jurisdiction, 22, 87

Conversion of realty into personalty, and *vice versa*, 22, 88

In general, 22, 87

Right to advice and direction of court, 22, 65, 88

Decree, 22, 90

Form of proceedings, 22, 89

Order, 22, 90

Parties, 22, 89

Pleadings, 22, 90

Reference, 22, 90

Who may maintain proceedings, 22, 89

Joinder of counts and causes, 22, 195

Joinder of parties, 22, 44

Accounting, 22, 96

Actions between trustees and beneficiaries or their representatives, 22, 143

Co-trustees, 22, 144

Parties defendant, 22, 144

Parties plaintiff, 22, 143

Representatives of deceased trustee, 22, 145

Third persons, 22, 144

TRUSTS AND TRUSTEES, *cont'd.*

- Joinder of parties, *cont'd.*
 - Actions with third persons, 22, 189
 - Establishment and enforcement of trusts, 22, 124
 - Sale, mortgage, or lease of trust property, 22, 76
- Judgments:
 - Actions between trustees and beneficiaries or their representatives, 22, 149
 - Actions with third persons, 22, 196
- Judicial sales:
 - Trustees' sales, 12, 9
- Jurisdiction, 22, 9
 - Accounting, see infra, Accounting.*
 - Actions between trustees and beneficiaries or their representatives, see infra, Actions between trustees and beneficiaries or their representatives.*
 - Actions with third persons, see infra, Actions with third persons.*
 - Administration under direction and control of court (see *infra, Administration under direction and control of court*), 22, 113
 - Admiralty courts, 22, 24
 - Appointment of trustee, 22, 27
 - Bonds, 22, 116
 - Charitable trusts, 22, 203
 - Courts of general original jurisdiction, 22, 21
 - Death of trustee, 22, 23
 - Equity jurisdiction, see infra, Equity jurisdiction.*
 - Establishment and enforcement of trusts, see infra, Establishment and enforcement of trusts.*
 - Federal courts, 22, 24
 - Instructions of court, 22, 60
 - Investments, see infra, Investments.*
 - Jurisdiction *in personam*, 22, 20
 - Jurisdiction of subject-matter, 22, 21
 - Particular courts, 22, 21
 - Probate courts, 22, 22
 - Removal and substitution of trustees, see infra, Removal and substitution of trustees.*
 - Removal of trust funds to another state, 22, 112
 - Resignation of trustees, see infra, Resignation of trustees.*
 - Sale, mortgage or lease of trust property, see infra, Sale, mortgage, or lease of trust property.*

TRUSTS AND TRUSTEES, *cont'd.*

- Jurisdiction, *cont'd.*
 - Setting aside sale, 22, 85
 - Testamentary trusts, 22, 24
 - Venue, 22, 22
- Jury:
 - Establishment and enforcement of trusts, 22, 131
 - Lease, see infra, Sale, mortgage, or lease of trust property.*
 - Leave of court, 22, 152
 - Life tenants and remaindermen, 22, 30, 44, 48, 56, 68, 79
 - Mechanics' liens.
 - Trustee and *cestui que trust*, 13, 961
 - Mortgages, see infra, Sale, mortgage, or lease of trust property.*
- Motion:
 - Removal and substitution of trustees, 22, 42
- Multifariousness, 22, 102
 - Actions between trustees and beneficiaries or their representatives, 22, 147
 - Establishment and enforcement of trusts, 22, 129
- Notice (see *infra, Appointment of trustee*):
 - Bonds, 22, 116
 - Removal and substitution of trustees, 22, 43
 - Resignation, 22, 56
 - Sale, mortgage, or lease of trust property, 22, 80
- Order (see *infra, Sale, mortgage, or lease of trust property*):
 - Instructions of court, 22, 70
 - Investments, 22, 90
 - Necessity of order of court, 22, 72
 - Order of appointment, 22, 35
 - Removal and substitution of trustees, 21, 51
 - Removal of trust funds to another state, 22, 113
 - Resignation of trustees, 22, 58
 - Sale, mortgage, or lease of trust property, 22, 82, 83, 87
 - Necessity of order of court, 22, 72
- Parties to actions (see *infra, Actions between trustees and beneficiaries or their representatives; Appointment of trustee*). 15, 480, 724
 - Accounting, see infra, Accounting.*
 - Actions between trustees, 22, 134
 - Actions with third persons, see infra, Actions with third persons.*
 - Charitable trusts, 22, 203
 - Attorney-general, 22, 204
 - In general, 22, 203

TRUSTS AND TRUSTEES, *cont'd.*Parties to actions, *cont'd.*

Compelling payment of money
by testamentary trustee under
New York statute, 22, 201

Doctrine of representation, 15,
627

Doctrine of representation in
equity, 15, 639

Equity, 15, 662

*Establishment and enforcement of
trusts*, see *infra*, *Establishment
and enforcement of
trusts*.

Following trust funds or prop-
erty, 22, 199

Instructions of court, 22, 66

Beneficiaries may maintain
bill, 22, 67

Cestuis que trustent, 22, 68

Necessary and proper par-
ties, 22, 67

Persons unborn, 22, 68

Remaindermen, 22, 68

Trustee, 22, 68

Who may maintain proceed-
ings, 22, 66

Investments, 22, 89

Legal interest of plaintiff at
common law, 15, 485

Necessary parties:

All persons interested, 22,
45

Beneficiaries very numer-
ous, 22, 47

Cestuis que trustent, 22, 47

Infants, 22, 48

Raising and waiving objec-
tions, 22, 48

Remaindermen, 22, 48

Trustee an alien enemy, 22,
47

Trustees, 22, 46

When trustees not necessary
parties, 22, 46

Removal of trust funds to
another state, 22, 112

Resignation of trustees, 22, 56

Sale, mortgage, or lease of trust
property (see *infra*, *Sale, mort-
gage, or lease of trust prop-
erty*), 22, 86

Partition:

Cestuis que trustent as parties de-
fendant, 15, 793

Trustees and equitable owners
as parties plaintiff, 15, 787

Payment into court, 9, 743

Penalties and penal actions, 16, 265

Persons unborn, 22, 68

Parties in equity, 22, 165

Sale, mortgage, or lease of trust
property, 22, 78

TRUSTS AND TRUSTEES, *cont'd.*Petition (see *infra*, *Appointment of
trustee*):

Accounting, 22, 101

*Actions between trustees and bene-
ficiaries or their representatives*,
see *infra*, *Actions between
trustees and beneficiaries or
their representatives*.

Actions with third persons, see
infra, *Actions with third per-
sons*.

Administration of trusts, 16, 506

Administration under direction
and control of court, 22, 114

Appointment of trustee, 16, 506

Bonds, 22, 116

Compelling payment of money
by testamentary trustee under
New York statute, 22, 201

Discharge of trustees, 16, 514

*Establishment and enforcement of
trusts*, see, *ESTABLISHMENT AND
ENFORCEMENT OF TRUSTS*.

Parties, 22, 183

Petition as substitute for bill,
16, 513

Removal and substitution of
trustees, 22, 40

Resignation of trustees, 22, 56

Sale, mortgage, or lease of trust
property, 22, 75, 81

Plea or answer:

*Actions between trustees and
beneficiaries or their repre-
sentatives*, 22, 148

Actions with third persons, 22,
196

Prayer for relief, 22, 103

Quieting title:

Parties, 22, 182

Ratification of sale, 22, 84

Receivers, see *RECEIVERS*.

Redemption, 17, 950, 961

References:

Accounting, 22, 104

Appointment of trustee, 22, 35

Bonds, 22, 117

*Establishment and enforcement
of trusts*, 22, 132

Following trust funds or prop-
erty, 22, 200

Investments, 22, 90

Removal and substitution of
trustees, 22, 50

Resignation of trustees, 22, 57

Remaindermen, 22, 30, 44, 48, 56,
68

Sale, mortgage, or lease of trust
property, 22, 79

Removal and substitution of trustees,
22, 37

Appeals, 22, 52

TRUSTS AND TRUSTEES, *cont'd.*

- Removal and substitution of trustees, *cont'd.*
 - Averment of grounds for removal, 22, 49
 - Bill, 22, 48
 - Bill or petition, 22, 40
 - Complaint, 22, 48
 - Costs, 22, 53
 - Decree, 22, 51
 - Determination, 22, 50
 - Form of proceedings, 22, 40
 - Hearing, 22, 50
 - In general, 22, 37
 - Injunction, 22, 52
 - Jurisdiction, 22, 38
 - Of equity, 22, 38
 - Of particular courts, 22, 39
 - Of person or subject-matter, 22, 40
 - Probate courts, 22, 40
 - Misjoinder of causes, 22, 50
 - Motion, 22, 40
 - Notice, 22, 43
 - Order, 22, 51
 - Parties who may maintain proceedings, 22, 43
 - Beneficiaries, 22, 44
 - Co-trustee, 22, 44
 - Grantor in deed of trust, 22, 44
 - In general, 22, 43
 - Joinder, 22, 44
 - Life tenants and remaindermen, 22, 44
 - Persons interested, 22, 43
 - Petition, 22, 41, 48
 - Prayer for relief, 22, 49
 - Process, 22, 43
 - Reference, 22, 50
 - Removal from part of trust, 22, 52
 - Removal incidental to other relief, 22, 42
 - Vacation of order of appointment, 22, 36, 37
 - Venue, 22, 40
- Removal of causes:
 - Citizenship, 18, 189
 - Diverse citizenship, 18, 199, 200
- Removal of trustee:
 - Actions with third persons, 22, 190
 - Before action brought, 22, 190
 - Effect of death or removal, 22, 190
 - Pendente lite*, 22, 190
- Removal of trust funds to another state, 22, 112
 - Decree, 22, 113
 - Hearing and determination, 22, 112

TRUSTS AND TRUSTEES, *cont'd.*

- Removal of trust funds to another state, *cont'd.*
 - Jurisdiction, 22, 112
 - Order, 22, 113
 - Parties, 22, 112
 - Pleading, 22, 112
- Rescission, cancellation, and reformation of contracts:
 - Parties, 22, 182
- Resignation of trustees, 22, 54
 - Acceptance by court, 21, 54
 - Accounting, 22, 58
 - Appointment of successor, 22, 58
 - Bill, 22, 56
 - Compensation of trustee, 22, 59
 - Complaint, 22, 56
 - Costs and allowances, 22, 59
 - Counsel fees, 22, 60
 - Extra allowances, 22, 60
 - Liability for costs, 22, 59
 - Decree, 22, 58
 - Determination, 22, 57
 - Discretion of court, 22, 57
 - Form of proceedings, 22, 55
 - Hearing, 22, 57
 - Jurisdiction, 22, 54
 - At chambers, 22, 55
 - Of equity, 22, 54
 - Of particular courts, 22, 55
 - Necessity of acceptance by court, 22, 54
 - Notice, 22, 56
 - Opening or vacating decree or order, 22, 59
 - Order, 22, 58
 - Parties, 22, 56
 - Petition, 22, 55, 56
 - Reference, 22, 57
 - Title and possession of trust property, 22, 58
- Revivor of suits and actions, 22, 148
- Sale, mortgage, or lease of trust property, 22, 72
 - Appeal, 22, 85
 - Bill, 22, 75, 81
 - Compelling payment of purchase money, 22, 85
 - Complaint, 22, 81
 - Confirmation, 22, 84
 - Costs, 22, 85
 - Counsel fees, 22, 85
 - Decree, 22, 82
 - Decree designating beneficiaries, 22, 82
 - Decree distributing property, 22, 82
 - Determination, 22, 81
 - Form of proceedings, 22, 75
 - Hearing, 22, 81
 - Infant, 22, 81

TRUSTS AND TRUSTEES, *cont'd.*Sale, mortgage, or lease of trust property, *cont'd.*

Jurisdiction, 22, 72

Chambers, 22, 74

Infant trustees, 22, 73

Of equity, 22, 72

Of person or subject-matter, 22, 74

Particular courts, 22, 73

Probate or orphans' court, 22, 73

Statutory provisions, 22, 73

Vacation, 22, 74

Where no trust exists, 22, 74

Necessity of order of court, 22, 72

Notice, 22, 80

Order, 22, 82

Parties, 22, 75

Necessary parties, 22, 76

All persons in interest, 22, 76

Cestuis que trustent, 22, 76Contingent remaindermen *in esse*, 22, 79

Effect of failure to join proper parties, 22, 79

General rule, 22, 76

Infant beneficiaries, 22, 77

Parties by representation, 22, 77

Persons unborn, unas-
certained, or contin-
gent, 22, 78

Provisions of the code, 22, 77

Remaindermen, 22, 78

Trustees, 22, 77

Who may maintain proceed-
ings, 22, 75*Cestui que trust*, 22, 75

Joinder, 22, 76

Statement of rule, 22, 75

Trustee, 22, 75

Petition, 22, 75, 81

Private sale, 22, 84

Proceedings under order, 22, 83

Execution by officer of court, 22, 83

Private sale, 22, 84

Purchase by trustee under
leave, 22, 84

Terms of mortgage, 22, 84

Process, 22, 80

Purchase by trustee under leave,
22, 84

Ratification, 22, 84

Setting aside sale, 22, 85

Decree, 22, 87

Jurisdiction, 22, 85

TRUSTS AND TRUSTEES, *cont'd.*Sale, mortgage, or lease of trust property, *cont'd.*Setting aside sale, *cont'd.*Necessary and proper par-
ties, 22, 86

Order, 22, 87

Parties, 22, 86

Pleadings, 22, 86

Purchase by trustee at his
own sale, 22, 85Who may maintain proceed-
ings, 22, 86

Terms of mortgage, 22, 84

Trustee purchasing at his own
sale, 22, 84, 85Set-off, recoupment, and counter-
claim, 22, 196Actions between trustees and
beneficiaries or their repre-
sentatives, 22, 148*Setting aside sale*, see *infra*, Sale,
mortgage, or lease of trust prop-
erty.

Specific performance:

Parties, 22, 183

Substitution of parties:

New trustee, 20, 1039

Substitution of trustees, see *infra*, Re-
moval and substitution of trustees.Surplusage, irrelevant, or redundant
matter, 21, 295

Surrogates, 22, 22, 40

Accounting, 22, 92

Actions between trustees and
beneficiaries or their repre-
sentatives, 22, 139

Charitable trusts, 22, 203

Establishment and enforcement
of trusts, 22, 118

Resignation, 22, 55

Sale, mortgage, or lease of trust
property, 22, 73

Survival of actions, 21, 319

Taxation, 21, 403

Theory of the case, 22, 125

Trespass:

Parties, 22, 184

Trove and conversion:

Parties defendant, 21, 1052

Trove against trustee, 22, 136

Unborn, see *infra*, Persons unborn.

United States courts, 22, 24

Actions with third persons, 22,
156

Venue, 22, 22, 40

Actions between trustees and
beneficiaries or their repre-
sentatives, 22, 140Actions with third persons, 22,
156Establishment and enforcement
of trusts, 22, 119

TURNPIKES AND TOLLROADS

- (see **TOLLS**), 22, 215
- Actions by and against turnpike companies in general, 22, 215
- Averments of pleadings, 22, 216
- Enforcement of judgments against turnpike companies, 22, 217
- Parties, 22, 215
- Actions for personal injuries resulting from defects in road, 22, 223
- Averments of declaration or complaint, 22, 223
- Instructions, 22, 224
- Pleading and proof, 22, 224
- View by jury, 22, 224
- Actions relating to construction of roads, 22, 217
- Actions for injuries resulting from construction, 22, 220
- Actions on construction contracts or contractor's bonds, 22, 217
- Suits to enjoin construction, 22, 218
- Actions to determine title to road, 22, 225
- Criminal procedure*, see *infra*, Indictment.
- Improvements*, see *infra*, Repairs and improvements.
- Indictment:
- Indictment for failure to repair, 22, 220
- In general, 22, 220
- Instructions, 22, 222
- Requisite averments, 22, 221
- Indictment of directors for failure to publish annual reports, 22, 225
- Injunctions:
- Suits to enjoin construction, 22, 218
- Judgments:
- Enforcement of judgments against turnpike companies, 22, 217
- Parties:
- Actions by and against turnpike companies in general, 22, 215
- Personal injuries*, see *infra*, Actions for personal injuries resulting from defects in road.
- Quo warranto* proceedings, 22, 225
- Averments of pleadings, 22, 226
- Burden of proof, 22, 227
- By whom instituted, 22, 226
- In general, 22, 225
- Parties defendant, 22, 226
- Repairs and improvements, 22, 220
- Indictment for failure to repair*, see *infra*, Indictment for failure to repair.

TURNPIKES AND TOLLROADS.

- cont'd.*
- Repairs and improvements, *cont'd.*
- Statutory proceedings by complaint or inquisition, 22, 222
- Scire facias, 22, 225
- ULTRA VIRES** (see **CORPORATIONS**; **MUNICIPAL CORPORATIONS**; **STOCK AND STOCKHOLDERS**):
- UNDERTAKING** (see **APPEAL BONDS AND UNDERTAKINGS**):
- Attachment*, see *ATTACHMENT*.
- Executions against the body and arrest in civil cases, 8, 610
- Forcible entry and detainer, 9, 79
- UNDUE INFLUENCE**:
- Answers in equity pleading, 1, 882
- Change of venue, 4, 410
- Issues to the jury, 11, 645
- Probate and contest of wills:
- Averment of, 16, 1022
- Rescission, cancellation, and reformation of contracts, 18, 763
- Averment of, 18, 819
- Instructions, 18, 852
- UNINCORPORATED ASSOCIATIONS**, see **PARTNERSHIP**; **SOCIETIES AND CLUBS**, 22, 228
- Actions against society, 22, 242
- Declaration and complaint*, see *infra*, Declaration, petition, or complaint.
- Parties, 22, 242
- Actions in name of association, 22, 245
- At common law, 22, 242
- Officer sued, and not association, party defendant, 22, 244
- Parties by representation in equity and under codes, 22, 247
- Raising, waiving, and curing objections to defect of parties, 22, 247
- Strict construction of statute, 22, 246
- Suit against officers as prerequisite to suit against members, 22, 245
- Suits against officers or association, 22, 243
- Under statute, 22, 242
- Service of process*, see *infra*, Service of process.
- Actions between societies and their members, 22, 252
- In absence of statute, 22, 252
- Under statute authorizing actions by and against unincorporated societies, 22, 252

UNINCORPORATED ASSOCIATIONS, *cont'd.*

Actions by society, 22, 230

Declaration, petition, or complaint,
see *infra*, Declaration, petition, or complaint.

Objections to parties plaintiff,
22, 238

Raising, waiving, and curing
objections to incapacity to sue, 22, 238

Raising, waiving, and curing
objections to nonjoinder
of plaintiffs, 22, 239

Parties by representation, 22, 237

In equity, 22, 237

Under codes, 22, 238

Who may sue, 22, 230

Actions in name of officers,
22, 233

At common law, 22, 230

Name of association, 22, 235

Name of officers, 22, 233

Statutes in England, 22, 232

Statutes in the United
States, 22, 233

Strict construction of statute,
22, 235

Suit by agent or trustee appointed
for such purpose,
22, 232

Trustees of express trusts,
22, 236

Declaration, petition, or complaint:

Actions against society, 22, 250

Amendment of summons
and complaint, 22, 251

Averment of cause of action
against association, 22,
250

Facts bringing case within
statute, 22, 250

Requisites, 22, 250

Setting out names of members,
22, 250

Actions by society, 22, 240

Averment as to number of
associates, 22, 241

Averments bringing case
within statute, 22, 240

Averment that plaintiff is
public officer of association,
22, 241

Setting out names of individual
members, 22,
240

General rule, 22, 240

Under statute authorizing
suit in association
name, 22, 240

Under statute authorizing
suit in name of
officer, 22, 240

UNINCORPORATED ASSOCIATIONS, *cont'd.*

Exceptions and objections:

Objections to parties plaintiff,
22, 238

Raising, waiving, and curing
objections to defect of parties in
action against society, 22, 247

Executions, 22, 252

Judgments:

Actions against society, 22, 251

At common law, 22, 251

Effect of judgment, 22, 251

Enforcement of judgment,
22, 252

Under statutes, 22, 251

Name in which suit is brought (see *infra*,
Actions by society; Declaration,
petition, or complaint).

Parties (see *infra*, Actions by society):
Actions against society, see *infra*,
Actions against society.

Petition, see *infra*, Declaration,
petition, or complaint.

Scope of article, 22, 230

Service of process, 22, 248

In absence of statute, 22, 248

Motion to set aside service, 22,
249

Statutory provisions, 22, 249

Upon whom served, 22, 248

UNITED STATES, 22, 254

Admiralty, see ADMIRALTY.

Conspiracy:

Conspiracy against the United
States, 4, 729

Costs, 5, 151

Counterfeiting, see COUNTERFEITING.

Ejectment:

Who may be sued, 7, 303

Escheat, see ESCHATE.

Extradition, see EXTRADITION.

Foreclosure of mortgages:

Conflict of jurisdiction between
state and federal practice, 9,
266

Immigration, 10, 278

Negotiable instruments, see NEGOTIABLE
INSTRUMENTS.

Obscenity, see OBSCENITY.

Patents, see PATENTS.

Penalties and penal actions, 16, 255

Actions against property, 16, 255

Compounding penal actions, 16,
247

Confiscation cases, 16, 255

Exclusive original jurisdiction,
16, 255

Remission or mitigation of penalties,
16, 247

Seizure of land, 16, 255

Pensions, see PENSIONS.

Post offices, see POST OFFICES.

UNITED STATES, *cont'd.*

- Public lands, see PUBLIC LANDS.*
- Suits against United States, 22, 254
- Suits by United States, 22, 254

UNITED STATES COMMISSIONER:

- Admiralty, 1, 275
 - Commissioner's report, 1, 276
 - Confirming report, 1, 276
 - Exception to commissioner's report, 1, 276
 - Proceedings before commissioner, 1, 275
- Holding preliminary examination, 16, 837

UNITED STATES COURTS, 256

- See BANKRUPTCY; REMOVAL OF CAUSES.

- Abatement, 22, 300
- Actions by and against states, see infra.*
- Practice of supreme court in exercise of original jurisdiction.
- Admiralty, see ADMIRALTY.*

- Aliens, 22, 275
 - Averment of alienage, 22, 267
- Amendments, 22, 301
 - Amendment of process, 1, 660
 - Amendments to cure omissions or defects, 22, 270
- Appeals, 1, 607
 - How far federal practice is controlled by state practice, 1, 660
 - Relation between federal and state practice, 1, 510

- Amount in controversy:
 - Averment of amount in controversy, 22, 270

- Appeals, 2, 38
 - Adverse determinations, 2, 39
 - Costs on dismissal or reversal for want of jurisdiction, see infra.*
 - Costs on dismissal or reversal for want of jurisdiction.
 - Federal questions, 2, 38
 - Jurisdictional questions, 2, 40
 - Jurisdictional requisites, 2, 39
 - Reversal where jurisdiction is not shown on the record, 22, 274
 - Supreme courts, 2, 38

- Appearances, 2, 671
 - In general, 2, 661
 - Receivers, 2, 662
 - Residents, 2, 661
 - Special appearance, 2, 662
 - State legislation, 2, 596
 - Waiver of jurisdiction, 2, 661

- Arrest of judgment:
 - Lack of jurisdictional averments, 22, 274
- Arrest on civil process, 22, 300
- Attachment, 22, 297

UNITED STATES COURTS, *cont'd.*

- Bankruptcy (see BANKRUPTCY), 22, 340
- Banks and banking:

- National banks, 3, 262

- Bills of exceptions, 22, 309

- Bills of review, 3, 574

- Lack of jurisdictional averments, 22, 276

- Bills to enforce decrees, 3, 604

- Bills to impeach decrees and judgments, 3, 624

- Boundaries, 22, 314

- Burden of proof:

- Where jurisdictional averments are put in issue, 22, 279

- Certified cases, 3, 919

- Abstract questions, 3, 937

- Act of April 29, 1802, 3, 919

- Act of 1869, 3, 920

- Act of 1872, 3, 921

- Amount in controversy, 3, 931

- Answers to questions not certified, 3, 926

- Certifying whole record, 3, 936

- Circuit courts of appeal act, 3, 922, 939

- Certiorari to the circuit court of appeals, 3, 942

- Question of jurisdiction, 3, 939

- Questions certified by circuit court of appeals, 3, 940

- Sending up whole record, 3, 941

- Criminal procedure, 3, 921

- Distinct statements, 3, 935

- Division *pro forma*, 3, 932

- Final judgments, 3, 931

- Form of the certificate, 3, 935

- History of the statutes, 3, 919

- Indefinite, 3, 936

- Irrelevancy, 3, 937

- Matters of discretion, 3, 933

- Nature of question, 3, 938

- Nature of the proceedings, 3, 923

- Necessity of suit in court, 3, 925

- Opinion on the whole facts, 3, 928

- Points not arising upon trial, 3, 924

- Questions of fact, 3, 930

- Questions recast by the supreme court, 3, 939

- Splitting up whole case, 3, 929

- Supreme court divided on the merits of the question, 3, 935

- Under the acts of 1802 and 1872, 3, 923

- Whether bar to error or appeal, 3, 926

- Whole case cannot be certified, 3, 927

- Who may certify, 3, 927

UNITED STATES COURTS, *cont'd.***Certiorari:**

Habeas corpus, 4, 128

Certiorari from supreme court to circuit court of appeals, 4, 13, 22, 319

Certiorari table, 22, 320

Discretion in issuance of writ, 22, 319

Effect of supersedeas, 22, 323

Hearing and examination, 22, 323

Jurisdiction to issue writ, 22, 319

Petition and rule to show cause, 22, 322

Time for application, 22, 321

Change of venue, 22, 293

Circuit court of appeals, see *infra*, Certiorari from supreme court to circuit court of appeals.

Citizenship, 22, 262

Averment of residence in particular federal district, 22, 267

Necessity of averment, 22, 262

Executors and administrators, 22, 263

Guardian, 22, 263

In general, 22, 262

Next friend, 22, 263

Partnership, 22, 263

Plaintiff's assignor, 22, 262

Reversal for insufficient averments of citizenship, 22, 275

Sufficiency of averment, 22, 263

As to corporations, 22, 266

As to individuals, 22, 265

Averments implying residence merely, 22, 265

In general, 22, 263

Proper place of averment of citizenship, 22, 264

Time of alleged citizenship, 22, 263

Comity between federal courts, 22, 337

Comity between state courts, 22, 339

Concurrent jurisdiction with state courts, 22, 339

Conflicting and concurrent jurisdiction between state and federal courts, 22, 339

Conformity with state practice:

Revised statutes of the United States, section 914, see *infra*,

Practice in civil causes other than equity and admiralty.

Consolidation of actions, 4, 698

Consolidation on removal of causes, 4, 699

General rule, 4, 698

Question of fact, 4, 699

Question of law, 4, 698

UNITED STATES COURTS, *cont'd.***Constitutional law:**

Revised statutes of the United States, section 914, 22, 287

State decisions, 22, 326

Corporations:

Averments as to corporations, 22, 266

Costs, 22, 305

Suits against states, 22, 319

Costs on dismissal or reversal for want of jurisdiction, 22, 284

On dismissal to circuit court, 22, 284

On reversal by appellate court, 22, 285

Creditors' bills:

Exhaustion of ordinary legal remedies, 5, 462

Judgment at law, 5, 477

Judgments of United States courts, 5, 490

Jurisdiction, 5, 435

Supplementary proceedings, 5, 434

Criminal procedure, 22, 312

State decisions, 22, 336

Cross-bills:

Answer as cross-bill, 5, 627

Death, 5, 788

Decisions, see *infra*, State decisions.**Decrees:**

Opening decrees, 5, 1011

Opening orders and decrees *pro confesso* and allowing defenses, 5, 1003

State practice not followed as to amendment or modification of decree, 5, 1050

Defaults:*Res adjudicata*, 6, 142

Definiteness and certainty in pleadings:

Federal follows state practice, 6, 278

Demurrer:

Jurisdictional defects, 22, 273

Demurrer to evidence, 22, 304

Depositions, 6, 612; 22, 302

Caption, 6, 624

Certificate, 6, 625

Commissions, 6, 612

Commission returned as evidence, 6, 614

Common usage, 6, 614

Discretion in appointing commissioner, 6, 613

Equity, 6, 615

Foreign depositions, 6, 614

General authority, 6, 612

How executed, 6, 614

Judiciary act of 1789, 6, 612

Notice, 6, 614

UNITED STATES COURTS, *cont'd.*

- Depositions, *cont'd.*
 - Commissions, *cont'd.*
 - Power to act, 6, 614
 - Several commissioners, 6, 615
 - Where returned, 6, 616
 - Who may appoint commissioner, 6, 613
 - Witnesses within reach of process, 6, 612
 - Contempt of court, 5, 522
 - Costs, 6, 633
 - Attendance of witness at trial, 6, 634
 - Bill of costs, 6, 635
 - Deposition in another suit, 6, 634
 - Of attorney, 6, 634
 - Of officer, 6, 633
 - Cross-examination, 6, 623
 - De bene esse*, 6, 616
 - Before whom taken, 6, 617
 - By whom written, 6, 618
 - Foreign depositions, 6, 618
 - Publication, 6, 618
 - Residence of witness, 6, 616
 - Return, 6, 618
 - Return as evidence of officer's authority, 6, 618
 - Temporary absence, 6, 617
 - When they may be taken, 6, 616
 - Depositions in other suits, 6, 632
 - Depositions lost or destroyed, 6, 633
 - Depositions must be complete, 6, 623
 - Foreign depositions, 6, 619
 - How attendance of witness enforced, 6, 621
 - Depositions in American courts, 6, 621
 - Foreign depositions, 6, 622
 - Introduction in evidence, 6, 631
 - Letters rogatory, 6, 619
 - Notice, 6, 619
 - Adjournment, 6, 621
 - Contents, 6, 621
 - Depositions *de bene esse*, 6, 619
 - Depositions on commission, 6, 621
 - How served, 6, 620
 - Time, 6, 620
 - Oath, 6, 624
 - Objections, 6, 629
 - By whom decided, 6, 631
 - Cross-examination, 6, 630
 - Deposition read, 6, 630
 - In general, 6, 629
 - Interested witnesses, 6, 630
 - Laches, 6, 631

UNITED STATES COURTS, *cont'd.*

- Depositions, *cont'd.*
 - Objections, *cont'd.*
 - Motion to suppress, 6, 630
 - Motion to suppress before trial, 6, 630
 - When waived, 6, 629
 - Proceedings before officer taking deposition, 6, 621
 - Signature, 6, 625, 627
 - Amending certificate, 6, 625
 - By whom written, 6, 626
 - Depositions *de bene esse*, 6, 625
 - Depositions under commission, 6, 628
 - In general, 6, 625
 - Interest of officer, 6, 626
 - Oath, 6, 627
 - Re-examination, 6, 629
 - Requisites, 6, 628
 - Residence of witness, 6, 625
 - Seal, 6, 628
 - Want of notice, 6, 626
 - Subpoena *duces tecum*, 6, 622
 - When deposition may be read, 6, 631
 - After death of party, 6, 631
 - Of parties, 6, 631
 - Re-examination, 6, 632
 - Second deposition, 6, 632
 - Who may read, 6, 632
 - Who may read, 6, 632
- Directing verdict, 22, 304
- Dismissal, discontinuance, and nonsuit, 22, 304
 - Costs on dismissal or reversal for want of jurisdiction*, see *infra*.
 - Costs on dismissal or reversal for want of jurisdiction*.
- Dismissal under act of 1875, 22, 279
- Lack of jurisdictional averments, 22, 274
- Nonsuit for want of evidence, 6, 933
- Time when the plaintiff must act, 6, 842
- Eminent domain, 22, 310
 - Injunction, 7, 712
 - Jurisdiction, 7, 479
- Equitable assignments:
 - Real party in interest, 7, 754
- Equitable defenses, 7, 801
- Equity:
 - Practice in equity, 22, 310
 - State decisions, 22, 334
- Error, writ of, 22, 309
- Evidence, 22, 302
 - Rules of evidence, 22, 325
- Examination of parties before trial, 8, 37

UNITED STATES COURTS, *conf'd.*
 Exceptions and objections (see *infra*,
 Jurisdictional objections), 22
 309
 For absence or insufficiency of
 jurisdictional averments, 22,
 273
Executions, 22, 308
 Following state practice in
 levies, 8, 504
 Injunctions, 8, 483
**Executions against the body and
 arrest in civil cases, 22, 300**
Federal district:
 Averment of residence, 22, 267
 Where suit is brought in wrong
 federal district, 22, 282
Federal question:
 Averment of federal question,
 22, 269
 Reversal for insufficient aver-
 ment of federal question, 22, 275
Foreclosure of mortgages, 9, 264
 Deficiency judgments, 9, 453
 Following state practice, 9, 265
 Jurisdiction of federal courts in
 foreclosure cases, 9, 264
 Order of sale, 9, 414
Garnishment, 9, 813, 814; 22, 297
Guardian:
 Citizenship, 22, 263
Habeas corpus, 9, 1003
 Appeals, 9, 1074
 From circuit court of appeals
 to supreme court, 9, 1079
 From district and circuit
 courts to circuit court of
 appeals, 9, 1078
 From district and circuit
 courts to supreme court,
 9, 1076
 From inferior courts to cir-
 cuit courts, 9, 1074
 From state courts to su-
 preme court, 9, 1078
 From territorial courts to
 circuit court of appeals, 9,
 1079
 From territorial courts to
 supreme court, 9, 1078
 Circuit and district courts, 9,
 1012
 Circuit court of appeals, 9, 1012
 Concurrent jurisdiction, 9, 1010
 Extradition proceedings, 9,
 1010
 Of federal courts, 9, 1011
 Of state and federal courts,
 9, 1010
 Conflicting jurisdiction, 9, 1006,
 1044
 Jurisdiction refused by state
 court, 9, 1007

UNITED STATES COURTS, *conf'd.*
Habeas corpus, *conf'd.*
 Conflicting jurisdiction, *conf'd.*
 Person held under military
 authority, 9, 1008
 Release from federal custody
 by state courts, 9, 1006
 Release from state custody
 by federal courts, 9, 1008
 Conflicting jurisdiction of federal
 courts into state custody, 9,
 1044
 Conflicting jurisdiction of state
 and federal courts, 9, 1044
 Conflicting jurisdiction of state
 courts into federal custody, 9,
 1044
 Constitutionality of the law, 9,
 1046
 Discharge for defects in commit-
 ment, 9, 1043
 Discharge from sentence of
 court, 9, 1044
 Error as to law, evidence, or
 facts, 9, 1047
 Errors and irregularities, 9, 1046
 Examination into commitments,
 9, 1048
 Examination into errors and
 irregularities, 9, 1046
 Examination into jurisdictional
 questions, 9, 1045
 Extent of inquiry into commit-
 ment, 9, 1049
 General federal jurisdiction, 9,
 1003
 Color of authority of the
 United States, 9, 1003
 Imprisonment for violation
 of ordinance, 9, 1005
 Laws of the United States,
 9, 1004
 Prisoner in state custody, 9,
 1006
 State custody in violation of
 United States constitution
 or laws, 9, 1004
 Summary of habeas corpus
 acts, 9, 1003
 General principles relating to
 procedure and action by court,
 9, 1043
 Inquiry and determination of
 case by federal courts, 9, 1043
 Inquiry in cases of conflicting
 jurisdiction, 9, 1044
 Legal evidence, 9, 1048
 Necessity of commitment, 9, 1048
 Particular federal tribunals, 9,
 1011
 Removal from state courts, 9,
 1013
 Rule *nisi*, 9, 1025

UNITED STATES COURTS. *cont'd.*

- Habeas corpus, *cont'd.*
 - Sufficiency of indictment, 9, 1047
 - Supreme court, 9, 1011
 - Void judgments, 9, 1046
 - Where writ may be sent, 9, 1025
- Homicide:
 - Jurisdiction, 10, 111
 - Venue, 10, 111
- Injunctions, 10, 883
 - Whether United States courts follow state practice, 10, 885
- Instructions:
 - Invading province of jury, 11, 96
- Insurance, 11, 387
- Interstate commerce, 11, 491
 - Actions to recover damages, 11, 492
 - Civil actions to enforce orders of commission, 11, 491
 - Criminal proceedings, 11, 493
 - Proceedings in general, 11, 491
- Issues to the jury:
 - Chancery, 11, 608
- Joinder of counts and causes, 22, 296
- Joinder of parties, 15, 701
 - Following state practice, 15, 706
 - In general, 15, 701
 - Making parties under fictitious names, 15, 707
 - Parties collusively joined, 15, 706
- Judge, 22, 304
- Judgments, 22, 307
 - Enforcement of judgment, 23, 308
 - Leave to sue upon judgment, 11, 1006
- Jurisdiction:
 - Conflicting and concurrent jurisdiction between state and federal courts, 22, 339
 - Costs on dismissal or reversal for want of jurisdiction*, see *infra*,
 - Costs on dismissal or reversal for want of jurisdiction*.
 - Original jurisdiction of supreme court, 22, 312
 - Patents*, see **PATENTS**.
 - Statute impairing federal jurisdiction, 22, 326
- Jurisdictional averments in suits in federal courts, 22, 260
 - Amendments to cure omissions or defects, 22, 270
 - Averment of alienage, 22, 267
 - Averment of amount in dispute, 22, 270
 - Averment of citizenship*, see *infra*, **Citizenship**.
 - Averment of federal question, 22, 269

UNITED STATES COURTS. *cont'd.*

- Jurisdictional averments in suits in federal courts, *cont'd.*
 - Necessity of averments in general, 22, 260
 - Necessity of averments on collateral attack, 22, 261
 - Necessity of averments on direct attack, 22, 260
- Objections for absence or insufficiency of averments, 22, 273
 - Demurrer, 22, 273
 - In circuit court, 22, 273
 - Motion in arrest of judgment, 22, 274
 - Motion to dismiss, 22, 274
 - Reversal on appeal or error, 22, 274
 - Reversal on bill of review, 22, 276
- Residence in particular federal district, 22, 267
- Stipulations containing specific admissions of jurisdictional facts, 22, 261
- Where jurisdictional averments are sufficient on their face
 - In equity, 22, 278
 - Trial of issue and burden of proof, 22, 279
 - Where there are several defendants, 22, 278
- Jurisdictional objections:
 - Dismissal under act of 1875, 22, 279
 - For absence or insufficiency of averments*, see *infra*, **Jurisdictional averments in suits in federal courts**.
 - Where jurisdictional averments are sufficient on their face, 22, 276
 - At law, 22, 276
 - Where suit is brought in wrong federal district, 22, 282
- Jury:
 - Drawing and selection of jurors, 12, 280
 - Peremptory challenges, 12, 489
 - Procuring attendance of jurors at trial court, 12, 356
 - Talesmen, 12, 411
 - Venire facias, 12, 358
 - Waiver of right to jury trial, 12, 263
- Lien of judgments, 22, 307
- Liens, 13, 130
- Limitation of actions, 22, 325
- Lost instruments and records, 22, 307
- Mandamus, 13, 507; 22, 310
 - Circuit court of appeals, 13, 508

UNITED STATES COURTS, *cont'd.***Mandamus, *cont'd.***

Conflict of jurisdiction between federal and state courts, 13, 519

District courts, 13, 510

Supreme court, 13, 507

Mines and mining, see MINES AND MINING.

Monopolies, 14, 58

Municipal corporations.

Mandamus to enforce payment of judgment, 14, 249

Municipal securities:

Federal jurisdiction in actions on municipal securities, 14, 267

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

New trial, 14, 837; 22, 306

Next friend.

Citizenship, 22, 263

Nuisances, 14, 1105

Suits in equity, 14, 1122

Obscenity, see OBSCENITY.

Opening, amending, and vacating judgments, 22, 306

Opinions of courts (see OPINIONS OF COURTS):

Examination of opinion by appellate court, 15, 313

Parties to actions, 15, 701; 22, 294

Actions *ex contractu* under codes and practice acts, 15, 716

Codes and practice acts, 15, 716

Following state practice, 15, 706

Forty-seventh equity rule, 15, 703

In general, 15, 701

Making parties under fictitious names, 15, 707

Omission of absence, 15, 705

Omission of indispensable parties unauthorized, 15, 705

Omitting parties who cannot be joined, 15, 702

Parties conclusively joined, 15, 706

Retaining case until rights of absent parties are determined in proper forum, 15, 706

Statute of 1839, 15, 704

Transportation of parties to support jurisdiction, 15, 707

Partition, 15, 776

Partnership:

Citizenship, 22, 263

Patents, see PATENTS.

Penalties and penal actions:

Summons and process, 16, 288

United States and state courts, 16, 250

Piracy, 16, 537

UNITED STATES COURTS, *cont'd.*

Pleas in abatement:

Jurisdictional facts, 22, 276

Practice in admiralty, 22, 312

Practice in civil causes other than equity and admiralty (see *infra*, State laws as rules of decision), 22, 286

Abatement, 22, 300

Amendments, 22, 301

Arrest on civil process, 22, 300

Attachment, 22, 297

Change of venue, 22, 293

Condemnation proceedings, 22, 310

Conformity with state practice, 22, 287

Costs, 22, 305

Demurrer to evidence, 22, 304

Depositions, 22, 302

Directing verdict, 22, 304

Dismissal, discontinuance, and nonsuit, 22, 304

Early conformity acts, 22, 286

Error, writ of, 22, 309

Evidence, 22, 302

Exceptions and bills of exceptions, 22, 309

Form of action or remedy, 22, 296

Forms and modes of proceeding in general, 22, 293

Form, scope, construction, and sufficiency of pleadings, 22, 296

Garnishment, 22, 297

In general, 22, 286

Joinder of causes of action, 22, 296

Judgments, 22, 306

Jury, 22, 302

Lien of judgments, 22, 307

Mandamus, 22, 310

Manner of submitting cases to jury, 22, 305

Motions for new trial, 22, 306

Opening, amending, and vacating judgments, 22, 306

Parties to actions, 22, 294

Personal conduct and administration of judge, 22, 304

Proceedings to enforce judgments, 22, 308

Process, 22, 295

Record, 22, 306

References, 22, 302

Remedies on judgments, 22, 307

Rendition of judgments, 22, 306

Restoration of lost records, 22, 307

Return, 22, 295

UNITED STATES COURTS, *cont'd.*

- Practice in civil causes other than equity and admiralty, *cont'd.*
- Revised statutes of the United States, section 914, 22, 287
- Confined to civil causes other than equity and admiralty, 22, 289
- Conformity as near as may be, 22, 290
- Conformity in cases removed from state to federal courts, 22, 289
- Conformity in like causes, 22, 290
- Federal constitutional and statutory provisions, 22, 292
- Peremptory character of provisions, 22, 288
- Regulation by federal court rules, 22, 293
- Remedial purpose of act, 22, 288
- State practice affecting inherent power of court, 22, 291
- Text and constitutionality, 22, 287
- Revivor, 22, 300
- Security for costs, 22, 305
- Service of process, 22, 295
- Set-off, recoupment, and counterclaim, 22, 301
- Venue, 22, 293
- Verdict, 22, 305
- Writs, 22, 295
- Practice in criminal cases, 22, 312
- Practice in equity, 22, 310
- Practice of supreme court in exercise of original jurisdiction, 22, 312
- Boundaries, 22, 314
- Costs in suits against states, 22, 319
- In general, 22, 312
- In suits against states, 22, 315
- Original jurisdiction, 22, 312
- Privilege, 16, 974
- Process, 22, 295
- Prohibition, 16, 1101
 - Appeals, 16, 1102
 - Circuit and district courts, 16, 1102
 - Discretion, 16, 1110
 - Removal proceedings, 16, 1118
 - Supreme court of the United States, 16, 1101
 - To circuit courts, 16, 1101
 - To district courts, 16, 1101
 - Where court is without special or appellate authority, 16, 1102
- Publication*, see PUBLICATION.

UNITED STATES COURTS, *cont'd.*

- Public lands, 17, 130
- Criminal procedure, 17, 136
- Quieting title:
 - Jurisdiction, 17, 293
- Railroads:
 - Injuries to animals, 17, 551
- Receivers, 17, 766
 - Actions against United States receivers, 17, 771
 - Ancillary jurisdiction, 17, 768
 - Ancillary receiverships, 17, 769
 - Application for discharge, 17, 849
 - Bankruptcy law, 17, 767
 - Citizenship of parties, 17, 766
 - Control and disposition of estate, 17, 766
 - Independent actions, 17, 769
 - Intervention proceedings, 17, 768
 - Receivers for national banks, 17, 767
- References, 17, 984, 987; 22, 302
 - Compulsory reference, 17, 993
- Rendition and entry of judgments, 22, 306
- Replevin, 18, 502
- Residence (see *infra*, Citizenship):
 - Averment of residence in particular federal district, 22, 267
- Returns, 22, 295
- Revivor, 22, 300
- Rules of court (see RULES OF COURT), 22, 293
- Security for costs, 2, 305
 - Nonresidents, 19, 345
- Service of process (see PUBLICATION), 19, 597; 22, 295
 - Corporations, 19, 669
 - Following state practice, 19, 669
 - Officer or agent of foreign corporation temporarily within jurisdiction, 19, 682
 - Service on state, 19, 651
 - Substituted service in ancillary proceedings, 19, 623
- Set-off, recoupment, and counterclaim, 22, 301
- Sheriffs and constables, 20, 131
- Shipping*, see SHIPPING.
- State courts:
 - Conflicting and concurrent jurisdiction between state and federal courts, 22, 339
- State decisions, 22, 326
 - Commercial law, 22, 332
 - Construction given to a statute, 22, 327
 - Construing constitutional statutory provisions, 22, 326
 - Dicta, 22, 328
 - Local customs, 22, 331
 - Only latest decisions of highest state courts, 22, 333

UNITED STATES COURTS, *cont'd.*State decisions, *cont'd.*

Qualification of rule, 22, 330

Questions of general jurisprudence, 22, 331

Rules of property, 22, 331

State laws as rules of decision (see *infra*, Practice in civil causes other than equity and admiralty; State decisions), 22, 324

In actions at law, 22, 324

In admiralty, 22, 336

In criminal cases, 22, 336

In equity, 22, 334

Rules of evidence, 22, 325

Rules of property, 22, 325

State constitutional and statutory provisions, 22, 324

Statute impairing federal jurisdiction, 22, 326

Statute of limitation, 22, 325

Survival of actions, 22, 325

State practice followed:

Revised statutes of the United States, section 914, see *infra*, Practice in civil causes other than equity and admiralty.States (see *infra*, Practice of supreme court in exercise of original jurisdiction), 20, 588

State statutes:

Enforcement of new rights created by state statutes, 22, 336

Stipulations:

Stipulation containing specific admission of requisite jurisdictional facts, 22, 261

Stock and stockholders:

Demand upon directors, 20, 781

Enforcement of liability, 20, 716

Enforcement of stockholders' liability, 20, 713, 716

Joinder, 20, 718

Necessity of joining corporation in actions to enforce stockholders' liability to creditors, 20, 728

Relief from fraud, *ultra vires*, illegal conduct, etc., 20, 768

Substitution of parties, 20, 1065

Summons and process, 22, 295

Supplementary proceedings, 21, 106; 22, 309

Supreme court, see *infra*, Certiorari from supreme court to circuit court of appeals; Practice of supreme court in exercise of original jurisdiction.

Survival of actions (see SURVIVAL OF ACTIONS), 22, 325

Territorial courts, 21, 642

UNITED STATES COURTS, *cont'd.**Territories*, see TERRITORIES.

Trade-marks and trade names, 21, 753

Trove and conversion, 21, 1035

Trusts and trustees, 22, 24

Actions with third persons, 22, 156

Vendor's liens, 22, 706

Venue, 22, 293, 788

In absence of statute, 22, 788

Statutory provisions as to suits in district of defendant's residence, 22, 789

Verdict, 22, 305

Waters and watercourses, 22, 1166

Criminal procedure for obstruction of navigation, 22, 1176

Wills:

Construction of wills, 22, 1196

Winding up corporations, 22, 1249

Writs, 22, 295

UNITED STATES DISTRICT ATTORNEY, see PROSECUTION ATTORNEYS.**UNITED STATES MARSHALS**, see SERVICE OF PROCESS; SHERIFFS AND CONSTABLES.**UNLAWFUL ASSEMBLY**, 22, 403

See RIOT.

Criminal procedure, 22, 404

Riot:

The unlawful assembly, 18, 1199

UNLAWFUL DETAINER, see FORCIBLE ENTRY AND DETAINER.**UNNATURAL CRIMES**, see SODOMY.**USAGES AND CUSTOMS**, 22, 405

Amendments, 22, 410

Burden of proof, 22, 408

Factors and brokers, 8, 831

Instructions, 22, 412

Interpretation of contract, 22, 408

Issues to the jury, 11, 652

Judicial notice, 22, 406

Manner of pleading, 22, 409

Alleging exception to usage or custom, 22, 409

Amendment of pleading, 22, 410

Averments to bring case within rule, 22, 409

Necessity for pleading, 22, 405

Admissibility under general issue to interpret contract or

prove title, 22, 408

Burden of proof, 22, 408

General usages and customs, 22, 405

Interpretation of contract, 22, 408

Particular usages or customs, 22, 406

Proof of title, 22, 409

USAGES AND CUSTOMS, *cont'd.*

- Necessity for pleading, *cont'd.*
 - Whether available under general denial, 22, 407
- Pleadings and proof, 22, 410
- Questions of law and fact, 22, 410
 - Question of fact, 22, 411
 - Question of law, 22, 410
- Title, ownership, and possession, 22, 409
- Variance, 22, 410

USE AND OCCUPATION:

- Assumpsit, 2, 1026
 - Origin of the action, 2, 1026
- What plaintiff must show, 2, 1026

USURY, 22, 415

- Actions and suits to enforce usurious contracts, 22, 506
- Equitable relief, 22, 507
- Offer to do equity, 22, 507
- Recovery on original consideration, 22, 506

- Actions and suits to recover back usury paid, 22, 481

- Actions at law, 22, 481
- Bill, declaration, and complaint, see infra*, Bill, declaration, and complaint.

- Demand, 22, 483
- Election, 22, 482
- Form of remedy, 22, 481
- Jurisdiction, 22, 483
- Parties defendant, 22, 484
- Parties plaintiff, 22, 483
- Plea or answer, 22, 486
- Province of court and jury, 22, 487

- Statutory remedy not exclusive, 22, 482

- Suits in equity, 22, 482

- Variance, 22, 487

- Actions for penalties and forfeitures, 22, 488

- Abatement of action by death of defendant, 22, 498

- Amendments, 22, 495

- Averments and proof, 22, 497

- Averments of declaration and complaint, see infra*, Bill, declaration, and complaint.

- Burden of proof, 22, 498

- Defendant, 22, 493

- Form of remedy, 22, 488

- Inspection of books and papers, 22, 498

- Jurisdiction, 22, 490

- National banks, jurisdiction, and venue, 22, 490

- Objections to sufficiency of complaint, 22, 496

- Parties, 22, 492, 493

- Payment of loan as condition precedent to action, 22, 490

USURY, *cont'd.*

- Actions for penalties and forfeitures, *cont'd.*

Plaintiff:

- Assignee of insolvent debtor, 22, 492

- Common informer, 22, 492

- Person paying usury or his legal representative, 22, 492

- Plea or answer, 22, 496

- Review on appeal, 22, 499

- Set-off or counterclaim, 22, 489, 496

- Variance, 22, 497

- Venue, 22, 490

- Verdict and judgment, 22, 498

- Actions to recover property pledged to secure payment of usury, 22, 488

- Averments of complaint, 22, 488

- In general, 22, 488

- Tender, 22, 488

Admissions:

- Admissions in answer, 22, 475

- Effect of plea as admission of plaintiff's claim, 22, 448

Amendments, 22, 443

- Actions for penalties and forfeitures, 22, 495

- Unconscionable defense, 1, 520

- Amount of loan, 22, 494

- Amount of principal, 22, 436

- Amount of usury, 22, 472, 494

- Amount of usury taken or reserved, 22, 437

- Answer (*see infra*, Usury as defense):

- Actions and suits to recover back usury paid, 22, 486

- Actions for penalties and forfeitures, 22, 496

- Averments of answer in suits in equity for affirmative relief or discovery, 22, 474

- Verification, 22, 442

- Answers in code pleading, 1, 850

- Answers in equity pleading, 1, 878

- General charge of usury insufficient, 1, 879

- Illustration, 1, 879

- Relying on usury, 1, 878

- Waiver, 1, 879

- What must be set up, 1, 878

- Appeal, 22, 499

- Assumpsit, 2, 1020

- Attorneys' fees, 22, 461

- Bill, see infra*, Usury as defense.

- Bill, declaration, and complaint, 22, 470

- Actions and suits to recover back usury paid, 22, 484

- Amounts and dates, 22, 485

USURY, cont'd.

- Bill, declaration, and complaint, *con.*
- Actions and suits to recover back usury paid, *cont'd.*
 - In action against original payee, 22, 486
 - In action by creditor to recover usury paid by debtor, 22, 486
 - In general, 22, 484
- Actions for penalties and forfeitures, 22, 493
 - Amount of loan, 22, 494
 - Amount of usury paid, 22, 494
 - In general, 22, 493
 - National banks, 22, 494
 - Period of forbearance, 22, 493
 - To whom loan was made, 22, 493
- Actions to recover property pledged to secure payment of usury, 22, 488
- Amount of usury, 22, 472
- Corrupt agreement, 22, 472
- Excuse for failure to defend at law, 22, 473
- Inadequacy of legal remedy, 22, 472
 - In general, 22, 470
- Multifariousness, 22, 472
- Payment or tender, 22, 473
- Usury statute of foreign state, 22, 474
- Bills in equity:
 - Relief against usury, 3, 369
- Bills of discovery*, see *infra*, Suits in equity for affirmative relief or discovery.
- Burden of proof, 22, 452, 498
 - Examples, 22, 452, 454
 - In general, 22, 452
 - Presumptions, 22, 452
 - Suits in equity for affirmative relief or discovery, 22, 475
- Collateral attack, 22, 477
- Complaint*, see *infra*, Bill, declaration, and complaint.
- Confession of judgment, 22, 479
- Conflict of laws:
 - Pleading usury statutes of foreign states, 22, 441
- Costs, 22, 460
 - Amount in controversy, 5, 163
 - Suits in equity for affirmative relief or discovery, 22, 477
- Criminal prosecutions for usury, 22, 504
 - Averments of indictment, 22, 504
 - Defendant's plea, 22, 505
 - Variance, 22, 505
- Cross-bills, 22, 428

USURY, cont'd.

- Decrees, 22, 457, 476
 - Opening decrees to let in defense, 5, 1019
- Defense*, see *infra*, Usury as defense.
- Definiteness and certainty in pleadings, 6, 263; 22, 430
- Demand:
 - Actions and suits to recover back usury paid, 22, 483
- Demurrers, 22, 444
- Device to evade usury laws, 22, 440
- Discovery*, see *infra*, Suits in equity for affirmative relief or discovery.
- Election of remedies, 22, 482
 - Election to plead or bring suit, 22, 421
- Set-off, recoupment, and counterclaim, 22, 501
- Equitable relief against judgments at law, 22, 480
- Equity (see *infra*, Suits in equity for affirmative relief or discovery), 3, 252
- Estoppel, 22, 421
- Exceptions and objections*, see *infra*, Objections to plea or answer.
- Findings, 22, 457
- Forbearance, 22, 435, 436
- Forfeiture*, see *infra*, Actions for penalties and forfeitures.
- Forfeiture to school fund, 22, 458
- Forgery, 9, 561
- Funds and deposits in court:
 - Payment into court in accordance with tender, 22, 476
- General denial, 22, 424
- General issue, 22, 424, 426
- Impeachment of judgments and decrees for usury, 22, 477
 - Attack by third person, 22, 478
 - Collateral attack, 22, 477
 - Direct attack, 22, 478
 - Equitable relief against judgments at law, 22, 480
 - In general, 22, 478
 - Judgments by confession, 22, 479
- Inconsistent defenses, 22, 434
- Indictment*, see *infra*, Criminal prosecutions for usury.
- Informers, 22, 492
- Injunctions:
 - Allegation of usury, 10, 959
 - Tender, 10, 935
- Instructions, 22, 455
 - As to intention, 22, 456
 - As to usury statutes of foreign state, 22, 456
 - In general, 22, 455
 - That contract may be purged of usury, 22, 456
 - That defense of usury is unconscionable, 22, 456

USURY, *cont'd.*

- Issues to the jury, 11, 647; 22, 476
- Judgments (see *infra*, Impeachment of judgments and decrees for usury), 22, 457
- Equitable relief against judgments, 11, 1179, 1180, 1190
- Jurisdiction (see *infra*, Suits in equity for affirmative relief or discovery):
 - Actions and suits to recover back usury paid, 22, 483
 - Actions for penalties and forfeitures, 22, 490
- Legal conclusions, 12, 1036; 22, 434
- Limitation of actions, 22, 487
- Loan, 22, 435
- Manner of pleading, 22, 424
 - Cross-bill, 22, 428
 - General issue with notice, 22, 426
 - Plea of general issue or general denial, 22, 424
 - Plea of partial payment, 22, 428
 - Special plea or answer, 22, 426
 - Statutory suggestion in suit to foreclose mortgages, 22, 428
 - Whether pleadable in bar, 22, 428
- Motion, see *infra*, Objections to plea or answer.
- Multifariousness, 22, 471
- National banks, 22, 494
 - Appeals, 22, 499
 - Set-off, recoupment, and counterclaim based on appeal, 22, 500
- Necessity to do equity, 22, 465
 - Exceptions to general rule, 22, 466
 - In what cases exemption may be claimed, 22, 469
 - Statutory exemptions, 22, 467
 - Statutory exemptions where suits are brought in foreign states or federal courts, 22, 469
 - Tender of principal without interest sufficient, 22, 467
 - What parties entitled to statutory exemption, 22, 468
 - Where amount due has already been paid, 22, 466
 - Where debtor is forced into equity, 22, 466
 - Where plaintiff is not party to usury, 22, 466
- General rule, 22, 465
- Suits in equity for affirmative relief or discovery, 22, 465
- Usury as defense, 22, 420
- Necessity to plead, 22, 421
 - In general, 22, 421
 - Plea by one of several defendants, 22, 424

USURY, *cont'd.*

- Necessity to plead, *cont'd.*
 - Where usury appears from plaintiff's pleadings, 22, 422
 - Where usury appears from report of referee, 22, 423
- New trial, 22, 461
- Objections to plea or answer, 22, 444
 - Demurrer, 22, 444
 - Motion for judgment on pleadings, 22, 445
 - Motion to make more definite and certain, 22, 445
 - Motion to strike out, 22, 444
 - Waiver of objections, 22, 445
- Open and close, 22, 454
- Opening, amending, and vacating judgments (see *infra*, Impeachment of judgments and decrees for usury), 15, 244
- Parties to actions, 22, 469
 - Actions and suits to recover back usury paid:
 - Defendant, 22, 484
 - Plaintiff, 22, 483
 - Actions for penalties and forfeitures, 22, 492, 493
- Payment into court, 22, 476
- Penalties, see *infra*, Actions for penalties and forfeitures.
- Penalties and penal actions:
 - Reasonable doubt, 16, 296
- Place, 22, 436
- Plea (see *infra*, Usury as defense):
 - Actions and suits to recover back usury paid, 22, 486
 - Actions for penalties and forfeitures, 22, 496
 - Effect of plea as admission of plaintiff's claim, 22, 448
 - Verification, 22, 442
- Pledge, see *infra*, Actions to recover property pledged to secure payment of usury.
- Questions of law and fact, 22, 454, 487
- Redemption, 17, 968
- Rejoinder, 22, 448
- Replication or reply, 22, 446
 - Necessity for, 22, 446
 - Requisites and sufficiency, 22, 446
- Right to plead (see *infra*, Set-off, recoupment, and counterclaim), 22, 419
- School fund, forfeiture, 22, 458
- Set-off, recoupment, and counterclaim:
 - Actions for penalties and forfeitures, 22, 489, 496
 - Election to plead or bring suit, 22, 501
 - Essential averments, 22, 502
 - Method of trial, 22, 504

USURY, *cont'd.*

Set-off, recoupment, and counterclaim, *cont'd.*

Necessity to plead, 22, 502

Plea of set-off in actions to recover back usury paid, 22, 487

Replication or reply, 22, 504

Right to plead set-off, recoupment, and counterclaim when based on appeal, 22, 499

Action by national bank, 22, 500

After judgment, 22, 500

In equity, 22, 500

In general, 22, 499

Necessity that claims should arise out of same transactions, 22, 501

Necessity that demands should be mutual, 22, 501

Under laws of foreign state, 22, 500

Suits in equity for affirmative relief or discovery, 22, 461

Adequate remedy at law, 22, 461

Admissions in answer, 22, 475

Averments of answer, 22, 474

Averments of bill or complaint, see infra, Bill, declaration, and complaint.

Bill for discovery, 22, 464

Bill or complaint, see infra, Bill, declaration, and complaint.

Burden of proof, 22, 475

Costs, 22, 477

Decree, 22, 476

Equitable jurisdiction, 22, 461

Inadequate remedy at law, 22, 462

Necessity to come into equity with clean hands, 22, 464

Necessity to do equity, see infra, Necessity to do equity.

Parties, 22, 469

Payment into court in accordance with tender, 22, 476

Pleading and proof, 22, 475

Tender, 22, 473, 488

Time to plead, 22, 429

Extension, 22, 429

In general, 22, 419, 429

Necessity of offer to do equity, 22, 420

Right to plead on appeal, 22, 430

Usury as defense:

Amendments, 22, 443

Attorney's fees, 22, 461

Averments and proof, see infra, Variance.

Burden of proof, 22, 452

Costs, 22, 460

Decree, 22, 457

USURY, *cont'd.*

Usury as defense, *cont'd.*

Definiteness and certainty, 22, 430

Effect of plea as admission of plaintiff's claim, 22, 448

Election to plead or bring suit, 22, 421

Essential averments, 22, 430

Amount lawfully due, 22, 437

Amount of principal, 22, 436

Amount of usury taken or reserved, 22, 437

Between what parties contract was made, 22, 436

Corrupt agreement, 22, 439

Definiteness and certainty, 22, 430

Device to evade usury laws, 22, 440

Identity of usurious contract with contract in suit, 22, 440

In action by assignee or indorser, 22, 441

Inconsistent defenses, 22, 434

Intention to take unlawful interest, 22, 438

Lawful rate of interest, 22, 437

Legal conclusions, 22, 434

Period of forbearance, 22, 436

Place, 22, 436

That note had no valid existence at time of discount, 22, 441

That there was loan or forbearance, 22, 435

Under statutes, 22, 434

Usury statutes of foreign state, 22, 441

Estoppel to plead, 22, 421

Findings, 22, 457

Inconsistent defenses, 22, 434

Instructions, see infra, Instructions.

Issue to jury in equity, 22, 455

Judgment, 22, 457

Legal conclusions, 22, 434

Manner of pleading, see infra, Manner of pleading.

Necessity to plead, see infra, Necessity to plead.

New trial, 22, 461

Objections to plea or answer, see OBJECTIONS TO PLEA OR ANSWER.

Open and close, 22, 454

Province of court and jury, 22, 454

USURY, *cont'd.*Usury as defense, *cont'd.*

Questions of law and fact, 22, 454

Rejoinder, 22, 448

Replication and reply, see *infra*,
Replication or reply.Right to plead (see *infra*, Set-off,
recoupment, and counter-
claim), 22, 419

Statutes, 22, 434

Time to plead, see *infra*, Time to
plead.*Variance*, see *infra*, Variance.

Verdict, 22, 457

Verification of plea or answer,
22, 442

Variance, 22, 449, 475, 487, 497

In general, 22, 449

Rate of discount, 22, 451

That defendant has no right to
plead usury, 22, 451That note sued upon is renewal
note, 22, 451Title of plaintiff to instrument
sued upon, 22, 451

Vendor's liens, 22, 736

Venue:

Actions for penalties and for-
feitures, 22, 490

Verdict, 22, 457

Verification:

Plea or answer, 22, 442

UTTER, see COUNTERFEITING.**VACATING JUDGMENTS**, see
JUDGMENTS; OPENING, AMENDING, AND
VACATING JUDGMENTS.**VACATION** (see CHAMBERS AND VACA-
TION):

Inquests and inquiries, 10, 1139

VAGRANCY, 22, 508

Commitment, 22, 513

New commitment, 22, 514

Requisites, 22, 513

Indictment, information, or com-
plaint, 22, 510

Averment as to time, 22, 513

Charge in language of statute,
22, 511

In general, 22, 510

Necessity to allege facts, 22, 510

Necessity to bring case within
statute, 22, 510

Requisite averments, 22, 510

Justices of the peace, 22, 508

Record, 22, 514

Filing, 22, 514

Necessity, 22, 514

Summary proceedings against va-
grants, 22, 508Jurisdiction of justices and
police magistrates, 22, 508

Nature of proceedings, 22, 509

VAGRANCY, *cont'd.*Summary proceedings against va-
grants, *cont'd.*Notice to parent or guardian,
22, 509

Variance, 22, 512

Verdict, 22, 513

VALUE (see AMOUNT IN CONTRO-
VERSY):

Variance, 22, 506

Verdict, 22, 888

VARIANCE, 22, 515

Abatement in pleading, 1, 20

Abbreviations, 22, 571

Amendments, 1, 465; 22, 624

Jeofails, 22, 541

Opportunity to amend pleading,
22, 630

Animals, 22, 600

Appeal bonds and undertakings, 1,
1012

Appeals, 2, 536

Appearances, 2, 649

Arrest of judgment, 2, 813; 22, 639

Assumpsit, 2, 992

Attachment:

Affidavit, 3, 27

Return of writ, 3, 63

Avoiding consequences of variance,
22, 628By averments or counts in plead-
ing, 22, 628By use of *scilicet* or *videlicet*, 22,
628Between allegations and proof, 22,
527Avoiding consequences of vari-
ance, 22, 628By averments or counts in
pleading, 22, 629By use of *scilicet* or *videlicet*,
22, 628*Degree of conformity required*,
see *infra*, Degree of con-
formity required between alle-
gations and proof.*Objections for variance*, see *infra*,
Exceptions and objections.*Rule that proof must correspond to
allegations*, see *infra*, Rule that
proof must correspond to alle-
gations.*Specific allegations and variances
therefrom*, see *infra*, Specific
allegations and variances
therefrom.Variance caused by misspelling,
clerical errors, omissions, etc.,
22, 569

Waiver of variances, 22, 640

Between process and pleading, 22,
519, 538

Curing variance, 22, 526

VARIANCE, *cont'd.*Between process and pleading, *cont'd.*

In actions at law, 22, 519

In suits in equity, 22, 527

*Objection for variance, see infra,**Objection for variance.**Rule that declaration or complaint must conform to process, see infra, Rule that declaration or complaint must conform to process.*

Bills in equity, 22, 527

Bills of particulars, 3, 543

Bridges, 3, 706

Character in which claim arose, 22, 575

Clerical errors, 22, 569

Code states, 22, 542

Colors, 22, 601

Consideration of contract, 22, 577

Where allegation is necessary, 22, 577

Where allegation is unnecessary, 22, 578

Where consideration consists of several things, 22, 579

Where more than one consideration is alleged, 22, 578

*Continuando:*Time laid with *continuando*, 22, 615Contracts (see *infra*, Consideration of contract; Specific allegations and variances therefrom), 4, 917, 919; 22, 563

Express and implied contracts, 22, 580

Location, 22, 588

Performance, 22, 592

Writing, see infra, Writing.

Written or verbal contracts, 22, 626

Criminal procedure:

Allegations and proof, 22, 532

Degree of conformity required, 22, 548

Agency, 22, 562

Allegations of distribution, 22, 552

Illustrations, 22, 550

In general, 22, 548

Master and servant, 22, 562

Name, 22, 555

Relaxation of ancient rule, 22, 548

Statutory provisions, 22, 558

Test of materiality, 22, 551

Unnecessary allegations, 22, 556

Where offense is charged with unnecessary minuteness or particularity, 22, 557

VARIANCE, *cont'd.***Criminal procedure, *cont'd.***

Description of property, 22, 598

Illustrations, 22, 579

Kind of property, 22, 598

Location, 22, 590

Name, 22, 593

Statutes authorizing conviction of lesser offenses, 22, 579

Time, 22, 613

Title, ownership, and possession, 22, 604

Variance as to gist of offense, 22, 579

Curing variance under the codes, 22, 544, 545

Damages, 22, 580

*Declaration and complaint, see infra,**Rule that declaration or complaint must conform to process.**Declarations, see infra, Between allegations and proof.*

Definition, 22, 519

Degree of conformity required between allegations and proof, 22, 519, 538

Affected by manner of allegation, 22, 559

Affected by nature of allegations, 22, 551

Affected by nature of cause of action, 22, 563

Affected by nature of proceedings, 22, 546

Allegations of description, 22, 552

Allegations of description in criminal proceedings, 22, 554

Allegations of matters of inducement, 22, 559

Allegations of substance, 22, 551

At common law, 22, 540

Contracts and torts, 22, 563

Criminal proceedings, 22, 548, 554, 562

Curing variance under the code, 22, 544

Equity, 22, 546

Inferior courts, 22, 539

In general, 22, 538

Material allegations, 22, 551

Matters of inducement, 22, 559

Method of curing variances under the code, 22, 545

Redundant allegations, 22, 553

Statutes, 22, 540

Statutes of jeofails, 22, 541

Under the code, 22, 542

Unnecessary allegations, 22, 556

Where averment is according to legal effect, 22, 560

Where contract is averred, 22, 563

VARIANCE, *cont'd.*

- Degree of conformity required between allegations and proof, *cont'd.*
 - Where tort is averred, 22, 566
 - Where variance is curable under the code, 22, 544
 - Where variance is fatal under the code, 22, 542
- Demand, 22, 592
- Demurrers, 22, 526, 631
- Demurrers to evidence, 22, 638
- Departure*, see DEPARTURE.
- Description*, see *infra*, Variances as to description of property.
- Directing verdict:
 - Motions to direct verdict, 22, 636
 - Immaterial variances, 22, 637
 - In general, 22, 636
 - Province of court and jury in general, 22, 638
 - Province of court and jury where evidence is conflicting, 22, 638
 - Province of court and jury where facts are not disputed, 22, 638
 - Withdrawal of case from jury by court, 22, 636
- Dismissal, discontinuance, and nonsuit:
 - Motions for nonsuit, 22, 636
- Embezzlement:
 - Description of money, 7, 453
 - Embezzlement for larceny, 7, 455
 - Fiduciary capacity, 7, 452
 - In general, 7, 451
 - Ownership of property, 7, 454
 - Property embezzled, 7, 453
 - Statutes, 7, 456
 - Time, 7, 452
- Equity, 22, 527
 - Allegations and proof, 22, 530
 - Degree of conformity required, 22, 546
- Escape, 7, 919, 935
- Evidence*, see *infra*, Between allegations and proof, Exceptions and objections.
- Exceptions and objections (see *infra*, Objection for variance), 22, 629
- Demurrers to evidence, 22, 638
- Demurrers to pleading, 22, 631
- For variance between pleading and proof, 8, 247
- Necessity for objections, 8, 247
- Stating ground for objection, 8, 250
- Time and manner of making objection, 8, 249

VARIANCE, *cont'd.*

- Exceptions and objections, *cont'd.*
 - How objection may be made, 22, 631
 - Modification of rule, 22, 630
 - Motions for nonsuit, 22, 636
 - Motions in arrest of judgment, 22, 639
 - Motions to direct verdict, 22, 636
 - Motions to exclude evidence, 22, 633
 - New trials, 22, 639
 - Objections to admission and exclusion of evidence, 22, 632
 - Affidavits, 22, 635
 - In general, 22, 632
 - Necessity for specific objection, 22, 633
 - Objections to admission of evidence, 22, 632
 - Proof in support of objections, 635
 - Proof under codes, 22, 635
 - Requisites and sufficiency of objections, 22, 633
 - Opportunity to amend pleading, 22, 630
 - Province of court and jury where evidence is conflicting, 22, 638
 - Province of court and jury where facts are not disputed, 22, 638
 - Time of objecting, 22, 629
- Forgery*, see FORGERY.
- Former conviction or acquittal, 9, 636
- Forthcoming and delivery bonds, 9, 657
 - Between bond and execution, 9, 657
 - Between bond and officer's return, 9, 659
- Gaming, 9, 794
 - Common gambler, 9, 801
 - Description of wager, 9, 796
 - In general, 9, 794
 - Matters of description, 9, 799
 - Persons playing, 9, 795
 - Place, 9, 797
- Idem sonans*, 22, 569
- Ignorance of persons and facts, 22, 582
 - Averment as to ignorance of name, 22, 582
 - Averment that fact is unknown, 22, 583
 - Fatal variances, 22, 582
 - Immaterial variances, 22, 583
- Indictments (see *infra*, Criminal procedure; and see INDICTMENTS):
 - Complaint, 10, 501
- Informations:
 - Affidavit or complaint, 10, 499

VARIANCE, *cont'd.*

In hac verba, 22, 623

Intent, 22, 585

Intoxicating liquors, 11, 551; 22, 579

As to act of selling, 11, 551

Idem sonans, 11, 554

Joint and separate sales, 11, 555

Kind of liquor sold, 11, 551

Local-option district, 11, 555

Name of purchaser, 11, 553

Place, 11, 553

Proof of different offense, generally, 11, 551

Purpose of sale, 11, 555

Quantity of liquor sold, 11, 552

Sale to agent, 11, 554

Sale to agent of undisclosed principal, 11, 554

Sale to minor, 11, 555

Searches and seizures, 11, 585

Jeofails, 22, 541

Judgments (see JUDGMENTS):

Description of judgment in declaration and complaint in actions on judgments, 11, 1128

Designation of parties, 11, 948

Variance between process and declaration, 11, 867

Kind of property, 22, 598

Larceny:

Ownership and possession, 12, 960

Liability of defendants, 12, 585

Where individual and separate liability is averred, 22, 586

Where joint liability is averred, 22, 585

Where joint offense is averred, 22, 587

Libel and slander, 13, 62

Addressee of words, 13, 65

Affirmation and interrogation, 13, 66

Conditional and positive charge, 13, 66

Difference in tense of verb, 13, 67

Immaterial variances illustrated, 13, 68

Indictments, 13, 104

Language used, 13, 67

Material variances illustrated, 13, 67

Misconduct in office, 13, 68

Name of the alleged injured party, 13, 66

Person in which words were spoken, 13, 65

Proof of additional words, 13, 65

Proof of all words, 13, 64

Proof of equivalent words, 13, 63

Proving words substantially, 13, 63

Index Pl. & Pr. — 73

VARIANCE, *cont'd.*

Libel and slander, *cont'd.*

Statement of the rule, 13, 62

Time, 13, 67

Words imputing larceny, 13, 68

Words imputing perjury, 13, 68

Location, 22, 587

Criminal procedure, 22, 590

Fatal variances, 22, 590

Immaterial variances, 22, 590

civil proceedings, 22, 587

Averments descriptive of contract, 22, 588

Fatal variances, 22, 587

Immaterial variances, 22, 588

Substantial correspondence between allegations and proof, 22, 589

Lost instruments and records, 13, 372

Malicious mischief, 13, 416

Malicious prosecution, see MALICIOUS PROSECUTION.

Mechanics' liens, 13, 1002

Between findings and evidence, 13, 1006

Between pleading and notice or claim of lien, 13, 1004

Between pleading and proof, 13, 1002

Middle names (see NAMES), 22, 591

Misfeasance, 22, 591

Misspelling, 22, 569

Mistake, 14, 45

Money, 22, 595

Money counts:

Avoiding peril of variance, 14, 48

Motions, 14, 80

Municipal corporations, 14, 241

Names, 14, 284; 22, 554

Addition to names, 22, 573

Averment as to ignorance of name, 22, 582

Clerical error, 14, 284

Criminal procedure, 22, 593

Identity, 14, 287

Middle names, 22, 591

Name of third person, 14, 286

Slight variances, 14, 285

Negligence, see NEGLIGENCE.

Negotiable instruments, see NEGOTIABLE INSTRUMENTS.

New trials, 22, 639

Nonfeasance, 22, 591

Nonsuit, motions for, 22, 636

Notice, 22, 592

Number, 22, 597

Objection for variance (see *infra*, Exceptions and objections):

Declaration and process, 22, 523
At what stage should be made, 22, 523

VARIANCE, *cont'd.*

- Objection for variance, *cont'd.*
 - Declaration and process, *cont'd.*
 - Demurrer, 22, 526
 - How objection may be made, 22, 524
 - Motions to set aside, 22, 525
 - Plea in abatement, 22, 524
 - Obscenity*, see OBSCENITY.
 - Obstructing justice, 15, 7, 22
 - Official bonds, 15, 129
 - Ordinances, 15, 436
 - Passengers, 15, 1140
 - Performance, 22, 592
 - Perjury, 16, 322
 - Time and place, 16, 348
 - Personal injuries*, see PERSONAL INJURIES.
 - Persons injured, 22, 593
 - In general, 22, 593
 - Where description is by name, 22, 593
 - Where description is by race, 22, 594
 - Pleas in abatement, 22, 524
 - Profert and oyer, 22, 624
 - Property*, see TITLE, OWNERSHIP, AND POSSESSION.
 - Public lands, 17, 136
 - Public officers, 17, 199, 226
 - Indictment, 17, 255
 - Quantity, 22, 597
 - Questions of law and fact, 22, 638
 - Rape, 17, 664
 - Records, 22, 617
 - Replevin, 18, 563
 - Rescission, cancellation, and reformation of contracts, 18, 853
 - Review, 18, 1012
 - Riot, 18, 1203
 - Robbery, 18, 1222
 - Rule that declaration or complaint must conform to process, 22, 519
 - As to cause of action, 22, 522
 - As to character in which parties sue or are sued where process is general, 22, 520
 - As to character in which parties sue or are sued where process is special, 22, 521
 - As to court in which action is pending, 22, 522
 - As to damages, 22, 522
 - As to description to property, 22, 522
 - As to form of action, 22, 521
 - As to names of parties, 22, 520
 - As to number of parties, 22, 520
 - As to time to plead, 22, 523
 - In general, 22, 519

VARIANCE, *cont'd.*

- Rule that proof must correspond to allegations, 22, 527
 - Actions at law, 22, 527
 - Criminal proceedings, 22, 532
 - Degree of conformity required*, see *infra*, Degree of conformity required between allegations and proof.
 - Equity, 22, 530
 - In general, 22, 527
 - Material allegations, 22, 533
 - Proceedings of special character, 22, 533
 - Reason and object of rule, 22, 537
 - Special character, 22, 533
 - Suits in equity, 2, 530
- Sales, 19, 27
- Scilicet or videlicet, 22, 609, 628
- Scire facias, 19, 270
 - Recognition and conditional judgment, 19, 313
- Seals:
 - Sealed or unsealed instruments, 22, 627
- Search warrants:
 - Between warrant and complaint, 19, 331
- Sex, 22, 600
- Sheriffs and constables, 20, 172
- Signatures, 22, 608
- Specific allegations and variances therefrom, 22, 572
 - Absolute and alternative contracts, 22, 572
 - Absolute and contingent contracts, 22, 572
 - Addition to names, 22, 573
 - Character in which claim arose, 22, 575
 - Consideration of contract*, see *infra*, Consideration of contract.
 - Crimes, 22, 579
 - Damages, 22, 580
 - Demand, 22, 592
 - Description of property*, see *infra*, Variances as to description of property.
 - Express and implied contracts, 22, 580
 - Ignorance of persons and facts*, see *infra*, Ignorance of persons and facts.
 - Individual and common rights, 22, 576
 - Initials, 22, 584
 - Instruments causing bodily injury, 22, 584
 - Intent where allegation is formal, 22, 585
 - Intent where allegation is material, 22, 585

VARIANCE, *cont'd.*

- Specific allegations and variances therefrom, *cont'd.*
 - Liability of defendants, see infra, Liability of defendants.*
 - Location, see infra, Location.*
 - Middle names, 22, 591
 - Nonfeasance and misfeasance, 22, 591
 - Notice, 22, 592
 - Payments, 22, 592
 - Performance, 22, 592
 - Persons injured, see infra, Persons injured.*
 - Place of demand, 22, 593
 - Property, see infra, Variances as to description of property.*
 - Request, 22, 592
 - Sealed or unsealed instruments, 22, 626
 - Signatures, 22, 608
 - Time, see infra, Time.*
 - Title, ownership, and possession, see infra, Title, ownership, and possession.*
 - Unnecessary averments as to plaintiff's right, 22, 575
 - Written matter, see infra, Writing.*
 - Written or verbal contracts, 22, 626
- Specific performance, 20, 442, 444, 450, 462; 22, 609
- Stock and stockholders:
 - Plea or answer in actions on subscriptions, 20, 698
- Street railways:
 - Allegation of negligence, 20, 869
- Streets and highways, 20, 967
 - Criminal prosecution for failure to repair, 20, 96
 - Obstruction of streets and highways, 20, 934, 942
 - Prosecution for obstruction, 20, 929
- Subrogation, 20, 999
- Subscriptions, 20, 1006
- Taxation:
 - Enforcement of penalties, forfeitures, and costs, 21, 426
- Tender, 21, 569
- Tenor, 22, 623
- Time, 22, 608
 - Civil actions, 22, 608
 - Fatal variances, 22, 608
 - Immaterial variances, 22, 611
 - Scilicet or videlicet, 22, 609
 - Specific performance, 22, 609
 - Time laid with *continuando*, 22, 613
 - When time is material, 22, 608

VARIANCE, *cont'd.*

- Time, cont'd.*
 - Civil actions, *cont'd.*
 - Where allegation is defective, 22, 609
 - Criminal procedure, 22, 613
 - Alleged date of writing, 22, 614
 - Fatal variances, 22, 613
 - Immaterial variances, 22, 614
 - Time laid with *continuando*, 22, 615
- Title, ownership, and possession (see **TITLE, OWNERSHIP, AND POSSESSION**), 22, 602
 - Criminal procedure, 22, 604
 - Defendant's ownership, 22, 604
 - Ownership and possession in civil actions, 22, 603
 - Plaintiff's ownership, 22, 603
 - Title, 22, 602
- Torts, 22, 563, 566
- Trespass, see TRESPASS.*
- Trespassing, vicious, and diseased animals, 21, 895, 919
- Trespass on the case, 21, 916
 - Contract, 21, 916
- Trespass to try title, 21, 940
 - Description of land, 21, 933
- Trover and conversion, see TROVER AND CONVERSION.*
- Usages and customs, 22, 410
- Usury (see **USURY**), 22, 475, 487, 497
- Vagrancy, 22, 512
- Value, 22, 596
- Variances as to description of property, 22, 594
 - Colors in general, 22, 601
 - Colors of the same hue, 22, 602
 - Criminal procedure, 22, 595, 598
 - Dead or live animals, 22, 600
 - In civil actions, 22, 594
 - In general, 22, 594
 - Kind of property, 22, 598
 - Money, 22, 595
 - Number, 22, 597
 - Quantity, 22, 597
 - Sex, 22, 600
 - Species of animals, 22, 600
 - Sums of money, 22, 595
 - Value of property, 22, 596
- Vendor's liens, 22, 745
- Venue:
 - Criminal cases, 22, 820
 - Laying venue, 22, 812
- Videlicet, see SCILICET OR VIDELICET.*
- Waiver of variances, 22, 640
- Waste, 22, 1131
- Waters and watercourses, 22, 1153, 1170, 1175
- Work and labor, see WORK AND LABOR.*

VARIANCE, *cont'd.*

- Writing, 22, 616
 - Addition, 22, 622
 - Amendments, 22, 624
 - Description of record, 22, 617
 - Form of proceeding, 22, 619
 - In general, 22, 616
 - Instruments set out on oyer, 22, 624
 - Omission, 22, 622
 - Substitution, 22, 622
 - Under the code, 22, 619
 - Where allegation is according to legal effect, 22, 625
 - Where allegation is according to tenor or *in hac verba*, 22, 623
 - Where variance is merely literal, 22, 620
 - Where variance is more than literal, 22, 619
 - Where writing is foundation of action, 22, 616
 - Where writing is not foundation of action, 22, 617
 - Written or verbal contracts, 22, 626

VENDITIONI EXPONAS, 22, 641

- Alias* venditioni exponas, 22, 650
- Amendments, 22, 650
- Death, 22, 644, 645
- Definition, 22, 641
- Election of remedies, 22, 645
- Form and contents of writ, 22, 648
 - Alias fieri facias* clause, 22, 649
 - In general, 22, 648
 - Mandate, 22, 649
- Injunctions, 22, 644
- Into what county writ is issuable, 22, 647
- Jurisdiction, 22, 643
- Leave of court, 22, 646
- Necessity for writ, 22, 643
 - After death of plaintiff or defendant, 22, 644
 - After return day, 22, 643
 - After sheriff has gone out of office, 22, 644
 - After supersedeas or injunction, 22, 644
- Prerequisites to issuance of writ, 22, 645
 - After death of defendant, 22, 645
 - After death of plaintiff, 22, 645
 - Prior levy and return, 22, 645
 - Revivor of judgment before issuance of writ, 22, 645
- Quashal of writ, 22, 651
- Recall or withdrawal of writ, 22, 651
- Return, 22, 651
- Revivor of judgments, 22, 645
- Sale, 22, 651
- Supersedeas and stay of proceedings, 22, 644

VENDITIONI EXPONAS, *cont'd.*

- Time of issuance, 22, 646
- To whom writ should be directed, 22, 647
- Venue, 22, 647
- Writ of execution, 22, 642

VENDOR AND PURCHASER, 22, 653

See SALES; TITLE, OWNERSHIP, AND POSSESSION.

Action for use and occupation against purchaser, 12, 851

Actions:

Enforcement of vendor's liens and subjection of land, see VENDOR'S LIENS.

Purchaser's action for damages, see infra, Purchaser's action for damages.

Purchaser's action to recover back purchase money, see infra, Purchaser's action to recover back purchase money.

Purchaser's remedies, see infra, Purchaser's remedies.

Purchaser's suit for deficiency, see infra, Purchaser's suit for deficiency.

Vendor's action for damages, see infra, Vendor's action for damages.

Vendor's action for price, see infra, Vendor's action for price.

Vendor's remedies, see infra, Vendor's remedies.

Affidavits of merits or defense, 22, 794

Purchaser's action to recover back purchase money, 22, 765

Alder by verdict, 22, 678

Answer (see *infra*, Vendor's action for price; Purchaser's action for damages):

Vendor's action for damages, see infra, Vendor's action for damages.

Assumpsit:

Recovering back purchase money, 22, 669

Vendor's remedies, 22, 659

Attachment:

Motion by vendee, 3, 67

Bills in equity (see *infra*, Injunctions):

Purchaser's suit for deficiency, 22, 771

Burden of proof:

Vendor's action for price, 22, 696

Common counts, 22, 674

Complaint, see *infra*, Declaration, petition, and complaint.

Concurrent remedies:

Vendor's remedies, 22, 664

VENDOR AND PURCHASER, *con.*

- Consideration:
 - Averments in declaration, 22, 674
 - Plea of failure of consideration in vendor's action for price, 22, 682
- Covenants:
 - Vendor's remedies, 22, 659
- Damages (see *infra*, Purchaser's action for damages):
 - Purchaser's remedies, 22, 667
- Debt:
 - Vendor's remedies, 22, 659
- Declaration, petition, and complaint (see *infra*, Vendor's action for damages; Vendor's action for price):
 - Purchaser's action for damages, see *infra*, Purchaser's action for damages.
 - Purchaser's action to recover back purchase money, see *infra*, Purchaser's action to recover back purchase money.
 - Purchaser's suit for deficiency, 22, 771
- Deficiency, see *infra*, Purchaser's suit for deficiency.
- Definiteness and certainty in pleading:
 - Plea or answer in vendor's action for price, 22, 681
- Demand, 22, 755
 - Purchase money, 22, 679
 - Purchaser's action to recover back purchase money, 22, 764
- Duplicity, 22, 681
- Ejectment, 7, 319
 - Action by vendee, 7, 324
 - Action by vendor, 7, 319
- Agreement operating as of entry, 7, 322
- Distinction between notice to quit and demand for possession, 7, 323
- Estoppel to deny title, 7, 324
- In general, 7, 319
- Notice to quit, 7, 321
- Relation of vendor and vendee, 7, 321
- Vendee not in default, 7, 323
- Vendor's remedies, 22, 662
- Election of remedies:
 - Concurrent remedies of vendor, 22, 664
 - Purchaser's remedies, 22, 666
- Eminent domain:
 - Appeals, 7, 636
 - Parties, 7, 505
 - Executory contracts, 7, 507
 - General rule, 7, 505
 - Owner of property, 7, 505

VENDOR AND PURCHASER, *con.*

- Eminent domain, *cont'd.*
- Parties, *cont'd.*
 - Time of conveyance, 7, 505, 506
 - Time of estimating damages, 7, 505
- Enforcement of purchaser's lien, 22, 771
- Enforcement of vendor's liens and subjection of land to payment of purchase money, 22, 661
- Enforcement of vendor's liens and subjection of land to price, see VENDOR'S LIENS.
- Findings:
 - Purchaser's action for damages, 22, 761
 - Vendor's action for price, 22, 698
- Forcible entry and detainer:
 - Vendor's remedies, 22, 664
- Fraud:
 - Enjoining collection of purchase money, 22, 769
 - Fraud of vendor, 22, 701
 - Plea of fraud of vendor in vendor's action for price, 22, 687
- Frauds, statute of, 22, 673
- Funds and deposits in court, 9, 745
- General denial:
 - Vendor's action for price, 22, 682
- General issue:
 - Vendor's action for price, 22, 682
- Improvements:
 - Purchaser's remedies, 22, 668
- Injunctions:
 - Against collection of purchase money, 22, 669
 - Enjoining collection of purchase money, 22, 767
 - Bill or complaint, 22, 767
 - Definiteness and certainty, 22, 769
 - Essential allegations, 22, 769
 - Fraud, 22, 769
 - In general, 22, 767
 - Insolvency, 22, 769
 - Nature of judgment, 22, 770
 - Nonresidence, 22, 769
 - Prayer for rescission of contract, 22, 770
 - Readiness and willingness to pay, 22, 770
 - Parties, 22, 767
- Insolvency:
 - Enjoining collection of purchase money, 22, 769
- Instructions, 22, 697
 - Purchaser's action for damages, 22, 760

VENDOR AND PURCHASER, *con.*

- Instructions, *cont'd.*
 - Purchaser's action to recover back purchase money, 22, 766
 - Vendor's action for damages, 22, 702
- Joinder of counts and causes:
 - Purchaser's action for damages, 22, 753
- Judgments:
 - Purchaser's action for damages, 22, 761
 - Purchaser's action to recover back purchase money, 22, 766
 - Vendor's action for price, 22, 699
- Jurisdiction:
 - Limitations upon jurisdiction, 22, 705
 - Particular courts, 22, 706
 - Purchaser's action to recover back purchase money, 22, 761
 - Vendor's action for price, 22, 671
- Landlord and tenant.
 - Summary proceedings, 12, 872
- Land patents*, see LAND PATENTS.
- Liens (see VENDOR'S LIENS):
 - Enforcement of purchaser's lien, 22, 771
- Mechanics' liens:
 - Personal judgment against vendors and vendees of property subject to lien, 13, 1039
 - Vendors of property subject to lien, 13, 960
- Nonresidence:
 - Enjoining collection of purchase money, 22, 769
- Parties:
 - Enjoining collection of purchase money, 22, 767
 - Purchaser's action for damages, 22, 752
 - Purchaser's action to recover back purchase money, 22, 761
 - Vendor's action for damages, 22, 700
 - Vendor's action for price, 22, 672
- Patents*, see LAND PATENTS.
- Petition*, see *infra*, Declaration, petition, and complaint.
- Plea or answer (see *infra*, Purchaser's action for damages; Vendor's action for price):
 - Purchaser's action to recover back purchase money, 22, 765
 - Vendor's action for damages, see *infra*, Vendor's action for damages.
- Price (see *infra*, Vendor's action for price):
 - Vendor's remedies, see *infra*, Vendor's remedies.

VENDOR AND PURCHASER, *con.*

- Purchase money (see *infra*, Injunctions; Purchaser's action to recover back purchase money):
 - Demand, 22, 679
- Purchaser's action for damages, 22, 752
- Declaration and complaint, 22, 753
 - Contract, 22, 754
 - Damages, 22, 758
 - Demand for conveyance, 22, 755
 - In general, 22, 753
 - Performance by purchaser, 22, 757
 - Tender of deed, 22, 756
- Findings, 22, 761
- Instructions, 22, 760
- Joinder of counts and causes, 22, 753
- Judgment, 22, 761
- Parties, 22, 752
- Plea or answer, 22, 758
 - In general, 22, 758
 - Performance by vendor, 22, 759
- Province of court and jury, 22, 760
- Tender of abstracts of title, 22, 760
- Venue, 22, 752
- Verdict, 22, 761
- Purchaser's action to recover back purchase money, 22, 761
- Affidavit of claim, 22, 764
- Affidavit of defense, 22, 765
- Declaration and complaint, 22, 762
 - Common counts, 22, 762
 - Demand before suit, 22, 764
 - Essential allegations, 22, 763
 - In general, 22, 762
 - Performance by purchaser, 22, 763
 - Refusal to convey, 22, 764
- Instructions, 22, 766
- Judgment, 22, 766
- Jurisdiction, 22, 761
- Parties, 22, 761
- Plea or answer, 22, 765
- Questions of law and fact, 22, 766
- Replication or reply, 22, 766
- Rescission of contract, 22, 764
- Purchaser's remedies, 22, 666
- Assumpsit for purchase money, 22, 669
- Deficiency in quantity of land conveyed, 22, 668
- Election of remedies, 22, 666
- Inconsistent remedies, 22, 667
- In general, 22, 666

VENDOR AND PURCHASER, *con.***Purchaser's remedies, *cont'd.***

Injunction against collection of purchase money, 22, 669

Recovering back purchase money, 22, 669

Recovering back purchase money by suit in equity, 22, 670

Recovery of damages, 22, 667

Recovery of possession, 22, 667

Reimbursement for outlays, 22, 668

Rescission or reformation, 22, 668

Specific performance, 22, 667

Purchaser's suit for deficiency, 22, 770

Bill or complaint, 22, 771

Eviction, 22, 771

Fraud, 22, 771

Jurisdiction, 22, 770

Mutual mistake, 22, 771

Parties, 22, 771

Venue, 22, 770

Questions of law and fact, 22, 760

Purchaser's action to recover back purchase money, 22, 766

Remedies, see infra, Actions.

Rendition and entry of judgment, 22, 699

Replication or reply, 22, 702

Purchaser's action to recover back purchase money, 22, 766

Vendor's action for price, 22, 695

Repossession, see infra, Vendor's remedies.

Rescission, cancellation, and reformation of contracts, 22, 662

Purchaser's remedies, 22, 668

Vendor's action for price, 22, 689

Scope of article, 22, 658

Specific performance (see **SPECIFIC PERFORMANCE**):

Purchaser's remedies, 22, 667

Vendor's remedies, 22, 660

Splitting causes of action:

Vendor's action for price, 22, 672

Suit, see infra, Actions.

Supersedeas and stay of execution, 22, 699

Tender, 22, 756

Title, 22, 696

Failure of title in vendor's action for price, 22, 684

Negating knowledge of defective title, 22, 686

Plea of want of title in vendor's action for damages, 22, 701

Plea of want of title or defective title, 22, 696

Trespass:

Vendor's remedies, 22, 663

VENDOR AND PURCHASER, *con.***Trespass to try title:**

Vendor's remedies, 22, 664

Vendor's action for damages, 22, 700

Declaration, petition, or complaint, 22, 700

In general, 22, 701

Performance by plaintiff, 22, 700

Readiness and willingness to convey, 22, 701

Statement of contract, 22, 700

Instructions, 22, 702

Parties, 22, 700

Plea or answer, 22, 701

In general, 22, 701

Want of title and fraud of vendor, 22, 701

Replication or reply, 22, 702

Vendor's action for price, 22, 671

Burden of proof, 22, 696

Declaration, petition, or complaint, 22, 673

Aider by verdict, 22, 678

Character of title, 22, 678

Common counts, 22, 674

Consideration, 22, 674

Demand for purchase money, 22, 679

Execution and delivery of conveyance, 22, 675

Frauds, statute of, 22, 673

Indebtedness, 22, 679

Nature of conveyance executed, 22, 678

Particular averments, 22, 674

Requisites, 22, 673

Sufficiency, 22, 673

Where the covenant to pay is independent of the covenant for title, 22, 678

Execution, 22, 699

Findings, 22, 698

Instructions, 22, 697

Judgment, 22, 699

Jurisdiction, 22, 671

Parties, 22, 672

Payment of purchase money, 22, 697

Pleading and proof, 22, 696

Plea or answer, 22, 679

Affidavits of defense, 22, 694

Consistency, 22, 681

Definiteness and certainty, 22, 681

Denial of indebtedness, 22, 682

Duplicity, 22, 681

Equitable defenses, 22, 692

Essential averments of plea seeking equitable interference, 22, 693

VENDOR AND PURCHASER, *con.*Vendor's action for price, *cont'd.*Plea or answer, *cont'd.*

Failure of consideration, 22, 682

Failure to convey, 22, 690

Forfeiture of contract, 22, 692

Fraud of vendor, 22, 687

General denial, 22, 682

General issue, 22, 682

In general, 22, 679

Necessity to allege facts, 22, 680

Negative knowledge of defective title, 22, 686

Negating interest of purchaser, 22, 685

Negating title of vendor, 22, 687

Performance, 22, 692

Rescission of contract, 22, 689, 692

Verification, 22, 693

Province of court and jury, 22, 697

Rendition and entry of judgment, 22, 699

Replication or reply, 22, 695

Splitting causes of action, 22, 672

Stay of execution, 22, 699

Title, want of title, or defective title, 22, 696

Venue, 22, 671

Verdict, 22, 698

Vendor's liens, see **VENDOR'S LIENS.**

Vendor's remedies, 22, 658

Concurrent remedies, 22, 664

Fraud of purchaser, 22, 666

Inconsistent remedies, 22, 665

Where remedies are consistent, 22, 664

Where payment of price is sought, 22, 658

Assumpsit, 22, 659

Covenant, 22, 659

Debt, 22, 659

Enforcement of vendor's lien and subjection of land to purchase money, 22, 661

In general, 22, 658

Remedies in equity, 22, 659

Rescission, 22, 662

Specific performance, 22, 660

Where repossession is sought, 22, 662

Ejectment, 22, 662

Forcible entry and detainer, 22, 664

In general, 22, 662

Trespass *quare clausum*, 22, 663

Trespass to try title, 22, 664

VENDOR AND PURCHASER, *con.*

Venue:

Purchaser's action for damages, 22, 752

Vendor's action for price, 22, 671

Verdict:

Purchaser's action for damages, 22, 761

Vendor's action for price, 22, 698

Verification, 22, 693

VENDOR'S LIENS, 22, 702*Answer*, see *infra*, Plea or answer.

Assignments:

Parties in suit to enforce lien, 22, 715

Attorney's liens, 22, 748

Bill, petition, or complaint, 22, 717

Allegations as to contract, 22, 721

Allegations as to demand for payment, 22, 730

Allegations as to equity jurisdiction, 22, 721

Allegations as to indebtedness, 22, 729

Allegations as to land, 22, 722

Allegations as to title, 22, 729

Averment of performance, 22, 726

Definiteness and certainty, 22, 719

Description of land, 22, 722, 723

Frame of bill, 22, 719

In general, 22, 717

Misjoinder, 22, 720

Multifariousness, 22, 720

Negating waiver of lien, 22, 725

Notice of existence of lien, 22, 726

Ownership of claim for purchase money, 22, 724

Prayer for relief, 22, 730

Readiness and willingness to perform, 22, 727

Specific allegations, 22, 721

Tender, 22, 727

Bona fide purchase, 22, 734

Burden of proof, 22, 734

Change of venue, 22, 707

Costs, 22, 749

Court:

Hearing by court and jury, 22, 739

Decree, 22, 741

Amendment, modification, and vacation, 22, 751

Amount, 22, 745

Attorney's fees, 22, 748

Compensation of commissioner, 22, 749

Costs, 22, 749

VENDOR'S LIENS, *cont'd.*Decree, *cont'd.*Amount, *cont'd.*

Necessity to show precise indebtedness, 22, 745

Purchase money not yet due, 22, 747

Decree *in personam*, 22, 742Decrees *in rem* and *in personam*, 22, 741

Deficiency decree, 22, 743

Description of land, 22, 745

Enforcement, 22, 750

Execution, 22, 750

In general, 22, 750

Judicial sales, 22, 750

Limiting time for payment, 22, 746

Nature of relief granted, 22, 741

Power to apply cash payments, 22, 743

Requisites and sufficiency of decree, 22, 744

Strict foreclosure or sale, 22, 741

Variance, 22, 745

Definiteness and certainty in pleading, 22, 719

Definition, 22, 702

Demand, 22, 730

Disclaimer, 22, 731

Enforcement of vendor's liens and subjection of land to payment of purchase money, 22, 661

Equitable character of remedy, 22, 703

Executions, 22, 750

Executors and administrators, 22, 712

Findings, 22, 740

Fraud, 22, 733

Hearing or trial, 22, 739

By court or jury, 22, 739

Findings, 22, 740

Instructions, 22, 740

Verdict, 22, 740

Heirs and devisees, 22, 712

In rem and *in personam*, 22, 703, 741

Insolvency of vendor, 22, 735

Interlocutory proceedings, 22, 737

Judicial sales, 22, 750

Jurisdiction, 22, 704

Adequate remedy at law, 22, 704

Allegations as to equity jurisdiction, 22, 721

District courts, 22, 706

In general, 22, 704

Probate and county courts, 22, 706

United States courts, 22, 706

Jury:

Hearing by court and jury, 22, 739

Mistake, 22, 733

VENDOR'S LIENS, *cont'd.*

Multifariousness, 22, 720

Nature of remedy, 22, 703

Notice:

Want of notice, 22, 732, 735

Orders, 22, 738

Parties, 22, 707

Necessary and proper parties, 22, 707

Adverse claimants and prior incumbrancers, 22, 708

Assignor and assignee, 22, 715

Beneficiaries, 22, 710

Creditors, 22, 716

Heirs, 22, 712

Holders of prior liens, 22, 717

Holders of purchase-money notes, 22, 710

In general, 22, 707

Married women, 22, 711

Miscellaneous cases, 22, 717

Particular persons, 22, 708

Parties and privies, 22, 707

Personal representatives, 22, 712

Persons having title, 22, 708

Persons in possession of land, 22, 710

Persons materially interested, 22, 708

Subpurchasers, 22, 711

Subsequent incumbrancers, 22, 708

Trustees, 22, 710

Where purchaser has parted with his interest in land, 22, 709

Widow, 22, 711

Wife, 22, 711

Petition, see *infra*, Bill, petition, or complaint.

Plea or answer, 22, 731

Burden of proof, 22, 734

In general, 22, 731

Special defenses, 22, 732

Abatement of price, 22, 733

Bona fide purchase, 22, 734

Essential allegations, 22, 734

Fraud, 22, 733

Insolvency of vendor, 22, 735

Mistake, 22, 733

Offset, 22, 733

Release, 22, 736

Title superior to vendor's, 22, 733

Usury, 22, 736

Waiver of lien, 22, 732, 734

Want of notice, 22, 735

Want of notice of lien, 22, 732

VENDOR'S LIENS, *cont'd.*Plea or answer, *cont'd.*Special defenses, *cont'd.*

Want of title or defect in title, 22, 736

When advisable, 22, 732

When necessary, 22, 732

Withdrawal of answer, 22, 736

Prayers for relief, 22, 730

Receivers:

Appointment of receiver, 22, 737

Reference, 22, 738

Release, 22, 736

Remedy at law, 22, 704

Replication or reply, 22, 737

Special defenses, see *infra*, Plea or answer.

Summons and process, 22, 707

Tender, 22, 727

Title, ownership, and possession, 22, 729

Plea of want of title or defect in title, 22, 736

Title superior to vendor's, 22, 733

Trial, see *infra*, Hearing or trial.

United States courts, 22, 706

Usury, 22, 736

Variance, 22, 745

Venue, 22, 706

Change of venue, 22, 707

Where property is situated or defendant resides, 22, 706

Verdict, 22, 740

Waiver of lien, 22, 734

Withdrawal of answer, 22, 736

VENIRE DE NOVO (see NEW TRIAL):

Special interrogatories to juries, 20, 374

VENIRE FACIAS (see JURY):

Grand juries, 10, 360

VENUE, 22, 773

See JURISDICTION; SPECIFIC PERFORMANCE.

Accessories, 22, 825

Actions at law, 22, 787

English practice, 22, 787

Laying venue, 22, 787

Manner of laying, 22, 788

Necessity of laying venue truly, 22, 787

Place of bringing action, 22, 787

Federal practice, 22, 788

State practice, 22, 790

Common-law rules, 22, 790

In general, 22, 790

Statutory provisions as to venue, see *infra*, Statutory provisions as to venue in actions at law.

Affidavits, see AFFIDAVITS.

VENUE, *cont'd.*

Amendments, 1, 643

Indictments, 1, 691

Appearances, 2, 659, 660

Assault and battery, 2, 839; 22, 782

Change of venue, see CHANGE OF VENUE.

Code pleadings, 4, 592

Conflict of laws:

Murder, 10, 109, 111

Conspiracy, 4, 708

Contracts, 22, 782

Actions on contract, 22, 806

In general, 22, 806

Transitory actions against nonresidents, 22, 807

Corporations, 22, 801

Actions by and against corporations, 22, 801

Application of general statutes as to venue, 22, 801

County in which railroad operates, 22, 804

Statutes expressly fixing venue in actions against corporations, 22, 802

Venue fixed by place of contract or where obligation or liability arose, 22, 805

Where cause of action accrued, 22, 804

Where corporation exercises corporate functions, 22, 803

Where principal office or place of business is situated, 22, 802

Counties, 22, 808

Offenses committed partly in two counties, 22, 824

Covenant, 5, 362; 12, 857; 22, 783

Creditors' bills, 5, 438

In general, 5, 438

Suits affecting title to real estate, 5, 438

Crimes:

Suits founded on crime, 22, 809

Criminal procedure, 22, 819

Indictment for extraterritorial offense, 22, 821

In England, 22, 819

In general, 22, 819

Laying venue, 22, 825

Manner of laying, 22, 826

Necessity for, 22, 825

Presumption where venue is alleged, 22, 826

Local or transitory actions, 22, 779

Necessity and manner of laying in England, 22, 819

Place of trial, 22, 820, 821

Common-law rule, 22, 821

In federal practice, 22, 820

VENUE, *cont'd.*

Criminal procedure, *cont'd.*

Place of trial, *cont'd.*

Newly organized counties,
22, 825

Offenses committed in one
jurisdiction, 22, 822

Offenses committed near
boundary of county, 22,
825

Prosecution of accessories,
22, 825

Under codes and statutes,
22, 822

Where offense committed
partly in two counties, 22,
824

Statutory exceptions in England,
22, 819

United States practice, 22, 820

Variance, 22, 820, 827

Demurrer, 22, 828

Effect of omitting or laying
wrong venue, 22, 828

Objection for wrong venue,
22, 828

Omission of venue or uncer-
tain averment, 22, 828

Death by wrongful act, 5, 860

Debt, 22, 783

Landlord and tenant, 12, 861

Declaration or complaint:

Naming county, 4, 592

Definition, 22, 775

Demurrers, 22, 828

Distress, 22, 791

Dower, 22, 795

Ejectment, 22, 777, 795

Embezzlement, 7, 412

Averments as to venue, 7, 445

County in which defendant's du-
ties were to be performed, 7,
413

County in which misappropria-
tion took place, 7, 412

County in which property was
intrusted and in which defend-
ant failed to account, 7, 412

In general, 7, 412

Statutory provisions, 7, 413

Eminent domain, 7, 478

Equitable proceedings, 22, 828

Bills to enjoin proceedings at
law, 22, 830

In general, 22, 828

Raising and waiving objections
to venue, 22, 831

Venue controlled by domicile of
parties or situs of subject-
matter, 22, 829

Waiver of objection, 22, 831

Escape, prison breaking, rescue, 7,
936; 22, 783

VENUE, *cont'd.*

Estrays, 8, 18

Exceptions, 22, 812

Application for change of venue,
22, 815

Change of venue, 22, 815

Express statutory provision as
to waiver, 22, 818

How objection taken, 22, 813

Omission of venue, 22, 812

Plea of privilege, 22, 814

Raising, waiving, and curing ob-
jections for wrong venue, 22,
813

That the venue is wrong, 8, 178

View that objection may not be
waived, 22, 817

Waiver by pleading to merits,
22, 818

Waiver of objection, 22, 815

Executors and administrators, 22,
808

False imprisonment, 8, 842; 22, 782
Criminal procedure, 8, 854

False pretenses, 8, 858

Forcible entry and detainer, 9, 48

Foreclosure of mortgages (see FORE-
CLOSURE OF MORTGAGES), 22, 795

Forfeiture, 22, 791

Forgery, 9, 548

Examples, 8, 548, 550

In general, 9, 548

Possession of forged instrument,
9, 549

United States, 9, 550

Garnishment, 9, 813

Docket, 9, 813

From what court writ issues, 9,
813

Residence of defendant, 9, 814

Homicide:

Conflict of laws, 10, 109, 111

County where death occurred or
where stroke was given, 10,
109

How determined, 10, 108

Indictments, see *infra*, Criminal pro-
cedure; and see INDICTMENTS.

Infants:

Sale of infant's real estate, 10,
745

In general, 10, 745

In the case of resident mi-
nors, 10, 746

Where the minor is a non-
resident, 10, 746

Injunctions, 10, 885

Ancillary injunction, 10, 885

Power to grant injunctions
throughout the state, 10, 885

Where statute fixes the county,
10, 885

Insurance, see INSURANCE.

VENUE, *cont'd.*

- Intoxicating liquors:
 - Laying venue, 11, 540
- Landlord and tenant:
 - Covenant, 12, 857
 - Debt, 12, 861
 - Use and occupation, 12, 852
- Laying venue, 22, 810
 - Criminal cases in England, 22, 819
 - Criminal procedure*, see *infra*, *Criminal procedure*.
 - English practice, 22, 787
 - Manner of laying, 22, 788
 - Necessity for laying venue truly, 22, 787
 - Federal practice, 22, 788
 - In absence of statute, 22, 788
 - Statutory provisions, 22, 789
 - Local actions, 22, 780
 - Manner of laying, 22, 811
 - At common law, 22, 811
 - Laying venue in margin, 22, 811
 - Naming place in county only, 22, 811
 - Under codes and statutes, 22, 812
 - Necessity at common law, 22, 810
 - Necessity in local actions, 22, 811
 - Necessity under codes and practice acts, 22, 810
 - Objections for omitted or erroneous venue, 22, 812
 - Application for change of venue, 22, 815
 - Change of venue, 22, 815
 - Express statutory provision as to waiver, 22, 818
 - How objection taken, 22, 813
 - Omission of venue, 22, 812
 - Plea of privilege, 22, 814
 - Raising, waiving, and curing objections for wrong venue, 22, 813
 - View that objection may not be waived, 22, 817
 - Waiver by pleading to the merits, 22, 818
 - Waiver of objection, 22, 815
 - Transitory actions, 22, 784
 - Variance, 22, 812
- Lease, 22, 783
- Libel and slander, 22, 782
- Local and transitory actions, 12, 134; 22, 776
 - Comity, 12, 140
 - Crimes, 12, 134
 - Judgments or decrees operative against the person, 12, 136
 - Jurisdiction *in rem*, 12, 135

VENUE, *cont'd.*

- Local and transitory actions, *cont'd.*
 - Jurisdiction of the person in transitory actions, 12, 137
 - Modern statutory modification, 22, 786
 - In United States, 22, 786
 - Under English practice, 22, 786
 - Nonresidence of one or both parties, 12, 137
 - Penalties, 12, 134
 - Remedy affected by conflict of laws, 12, 139
 - Rights enforceable independently of concurrent statutes, 12, 141
 - Rights in real property, 12, 135
 - Statement of common-law principles, 22, 776
 - Actions founded upon contract, 22, 782
 - Actions of replevin, 22, 779
 - Assault and battery, 22, 782
 - Covenant, 22, 783
 - Criminal procedure, 22, 779
 - Debt, 22, 783
 - False imprisonment, 22, 782
 - Illustrations of local actions, 22, 777
 - Illustrations of transitory actions, 22, 781
 - In general, 22, 776
 - Laying venue, 22, 780, 784
 - Libel and slander, 22, 782
 - Local actions, 22, 776
 - Penal actions, 22, 780
 - Principle of transitory action, 22, 784
 - Rights and injuries relating to real property, 22, 777
 - Transitory actions, 22, 780
 - Trover, 22, 784
- Logs and lumber:
 - Attachment to enforce lien, 13, 338
- Malicious prosecution, 13, 420, 423
- Mandamus, 13, 523
 - County of respondent's residence, 13, 524
 - County where facts arose, 13, 524
 - Courts having jurisdiction in more than one county or district, 13, 525
 - Mandamus against corporations, 13, 525
 - Mandamus against state officers, 13, 526
 - Public officers in county of office, 13, 524
 - Where courts of inferior jurisdiction, 13, 523
- Mills and milldams, 14, 6

VENUE, *cont'd.*

- Municipal corporations (see MUNICIPAL CORPORATIONS), 22, 808
- National banks:
 - Actions for penalties and forfeitures, 22, 490
- Negotiable instruments*, see NEGOTIABLE INSTRUMENTS.
- Nuisances, see NUISANCES.
- Official bonds, 15, 166
- Ordinances, 15, 420
 - Complaint or petition, 15, 429
- Partnership, see PARTNERSHIP.
- Penalties and penal actions (see PENALTIES AND PENAL ACTIONS), 22, 780, 791
- Personal injuries, 16, 373
- Place of trial, 21, 959
- Preliminary examination*, see PRELIMINARY EXAMINATION.
- Probate and contest of wills, 22, 831
- Prosecuting attorneys, 17, 5
- Public officers (see PUBLIC OFFICERS), 22, 793
- Quieting title, 17, 295
- Qui tam actions*, see PENALTIES AND PENAL ACTIONS.
- Quo warranto*, see QUO WARRANTO.
- Railroads, see RAILROADS.
- Real actions, 17, 670
- Real property, 22, 777, 793
- Receivers, 17, 696
 - Appointment in vacation, 17, 697
 - In general, 17, 696
- Redemption, 17, 946
- Replevin, 18, 540; 22, 799
- Rescission, cancellation, and reformation of contracts, 18, 790
- Residence:
 - Venue dependent upon residence of parties, 22, 796
 - County in which one defendant resides or may be summoned, 22, 799
 - County of defendant's residence, 22, 797
 - County where either party resides, 22, 800
 - In general, 22, 796
 - Where neither party resides in state, 22, 800
 - Where there are two or more defendants, 22, 798
- Service of process*, see SERVICE OF PROCESS.
- Situs:
 - Venue as dependent upon subject-matter, 22, 792
 - Dower, 22, 795
 - Ejectment, 22, 795
 - Foreclosure of mortgages, 22, 795
 - Illustrations, 22, 793

VENUE, *cont'd.*

- Situs, *cont'd.*
 - Venue as dependent upon subject-matter, *cont'd.*
 - In general, 22, 792
 - Real property, see *infra*, Real property.
 - Waste, 22, 795
- States, 20, 588
- Statutory provisions as to venue in actions at law, 22, 790
 - County in which one defendant resides and may be summoned, 22, 799
 - County of defendant's residence, 22, 797
 - County where either party resides, 22, 800
 - Distress, 22, 791
 - Dower, 22, 795
 - Ejectment, 22, 795
 - Foreclosure of mortgages, 22, 795
 - Forfeiture, 22, 791
 - General classification as to facts fixing venue, 22, 790
 - Injuries to real property, 22, 793
 - Penalties and penal actions, 22, 791
 - Petition, 22, 795
 - Provisions as to venue in particular actions, 22, 801
 - Actions against counties, cities, and towns, 22, 808
 - Actions by and against corporations, see *infra*, Corporations.
 - Actions on contracts, see *infra*, Contracts.
 - Executors and administrators, 22, 808
 - Laying venue, see *infra*, Laying venue.
 - Suits founded on crimes, 22, 809
 - Trespass, 22, 809
 - Public officers, 22, 792
 - Real property, 22, 793
 - Two defendants, 22, 798
 - Venue as dependent upon place where cause of action arose, 22, 790
 - Venue as dependent upon residence of parties, 22, 796
 - Venue as dependent upon situs of subject-matter, 22, 792
 - Waste, 22, 795
 - Where neither party resides in state, 22, 800
- Summons and process*, see SUMMONS AND PROCESS.
- Sundays and holidays, 20, 1199

VENUE, *cont'd.*

- Suretyship:
 - Action for contribution, 16, 960
 - Action to enforce contract of suretyship, 16, 928
 - Taxation, 21, 397
 - Threats and threatening letters, 21, 675
 - Towns, 22, 808
 - Transitory actions (see LOCAL AND TRANSITORY ACTIONS):
 - Trespass*, see TRESPASS.
 - Trespass on the case, 21, 905
 - Trespass (see TRESPASS), 22, 778
 - Suits founded on trespass, 22, 809
 - Trespassing, vicious, and diseased animals, 21, 888
 - Trespass on the case, 21, 903; 22, 778
 - Trespass to try title, 21, 927
 - Trover and conversion, 21, 1037; 22, 784
 - Trusts and trustees, 22, 22, 40
 - Actions between trustees and beneficiaries or their representatives, 22, 140
 - Actions with third persons, 22, 156
 - Establishment and enforcement of trusts, 22, 119
 - United States courts, 22, 293, 788
 - In absence of statute, 22, 788
 - Statutory provisions as to suits in district of defendant's residence, 22, 789
 - Usury*, see USURY.
 - Variance:
 - Criminal cases, 22, 820
 - Laying venue, 22, 812
 - Venditioni exponas, 22, 647
 - Vendor and purchaser*, see VENDOR AND PURCHASER.
 - Vendor's liens*, see VENDOR'S LIENS.
 - Verdict:
 - Criminal cases, 22, 983
 - Verification, 22, 1046
 - Waste, 22, 778, 795
 - Injunction, 22, 1128
 - Watercourse, 22, 778
 - Waters and watercourses, 22, 1146, 1158, 1173
 - Winding up corporations, 22, 1249
- VERDICT, 22, 833**
 See FINDINGS OF COURT; JURY.
 Abbreviations, 22, 904
 Adjournments:
 - Reception of verdict during temporary adjournment, 22, 923
 Admitted facts, 22, 864
 Age of defendant, 22, 888
 Aider by verdict, 22, 939
 Allegations of time, 22, 945

VERDICT, *cont'd.*

- Aider by verdict, *cont'd.*
 - Collateral parts of pleading, 22, 947
 - Constructive amendment of pleadings, 22, 946
 - Contracts, 4, 938, 942, 944
 - Defective averment of cause of action, 22, 944
 - Defective averment of consideration, 22, 946
 - Defective averment of title, 22, 945
 - Duplicity in indictment, 22, 944
 - Erroneous instructions, 22, 946
 - General rule, 22, 939
 - Grounds of demurrer, 22, 942
 - Inferences from allegations, 22, 946
 - Irregularities of practice and procedure, 22, 946
 - Material facts imperfectly stated, 22, 949
 - Misjoinder of counts, 22, 949
 - Omission to plead, 22, 948
 - Public officers, 17, 255
 - Rule in criminal cases, 22, 943
 - Statutes of jeofails, 22, 950
 - Statutory actions or defenses, 22, 949
 - Substantial errors or omissions, 22, 947
 - Time, 22, 945
 - Title, ownership, and possession, 21, 732; 22, 945
 - Trespass to try title:
 - Description of land, 21, 934
 - Vendor and purchaser, 22, 678
 - Waiver of objections not made before verdict, 22, 949
 - Want of issue, 22, 948
- Amendments (see *in/ra*, Aider by verdict), 22, 961
 - After discharge of jury, 22, 971
 - As to mere formal corrections of the record, 22, 974
 - General rule, 22, 971
 - Qualifications of general rule, 22, 973
 - After verdict, 1, 604
 - Amendment by court, 22, 962
 - In general, 22, 962
 - In presence of jury, 22, 964
 - Limitations upon power of amendment by court, 22, 966
 - Matter of discretion, 22, 965
 - Without consulting jury, 22, 965
 - Amendment by jury, 22, 967
 - Amendment by jury under advice of court, 22, 967
 - Generally, 22, 967

VERDICT, *cont'd.***Amendments, *cont'd.*****Amendment by jury, *cont'd.***

Limitation of rule as to sending jury back, 22, 970

Sending jury back, 22, 968

Defects cured by verdict, 1, 604

Evidence, 22, 977

From what amended, 22, 974

Affidavits of jurors, 22, 976

Aider by evidence, 22, 977

Amendment after joinder in error, 22, 975

Clear and satisfactory proof, 22, 977

In general, 22, 974

Judge's notes of evidence, 22, 976

In general, 22, 961

Misentry of verdict, 22, 962

Sealed verdicts, 22, 1011

Amendment by court, 22, 1011

Amendment by jury, 22, 1011

Special verdicts, 22, 999

Surplusage, 22, 977

Finding as to costs, 22, 979

General rule, 22, 977

When rule not applied, 22, 979

Amount of verdict, 22, 907

Computation of interest, 22, 918

General and special verdicts, 22, 908

How payable, 22, 914

In general, 22, 907

Interest on amount of verdict, see infra. Interest on amount of verdict.

Rule by statute, 22, 910

Separate assessments of different elements of recovery, 22, 912

When court may insert amount, 22, 914

Actions for unliquidated damages, 22, 918

Amount determined by mathematical calculation, 22, 915

Amount violative of jury's intent, 22, 917

Correction of amount with jury's consent, 22, 916

Double or treble damages, 22, 917

In general, 22, 914

Nominal damages, 22, 917

Refusal to receive verdict for unwarranted amount, 22, 916

Sending jury back, 22, 917

When amount is matter of law, 22, 915

VERDICT, *cont'd.***Amount of verdict, *cont'd.***

Where amount not actually in issue, 22, 911

Where amount of verdict uncertain, 22, 910

Appeals, 2, 391, 400, 408, 492

Criminal cases, 2, 495

Direction of verdict, 2, 587

Errors cured by verdict, 2, 587

Evidence presumed to support the verdict, 2, 492

Informality, 2, 586

Items of damage, 2, 494

Presumption in favor of, 2, 492

Reversible errors, 2, 586

Special findings, 2, 495

Special interrogatories, 2, 586

Trifling error, 2, 586

Argumentative findings, 22, 890

Arrest of judgment:

Defective verdict, 2, 804

Insufficient to sustain judgment, 2, 805

Not conforming to issue or indictment, 2, 804

Upon an immaterial issue, 2, 805

Defects cured by verdict, 2, 810

Verdict in answering issue, 2, 796

Assault and battery, 2, 856

Aggravated assault, 2, 857

Assault with intent to kill, 2, 859

Assault with intent to murder, 2, 857

Conviction of lesser offense, 2, 856

Simple assault, 2, 858

Sufficiency of verdict, 2, 859

Assignment of errors, 2, 954

Amount of verdict, 2, 964

Assumpsit, 2, 1034

Bastardy, 3, 304

Bills of exceptions:

Verdict against the weight of evidence, 3, 403

Breach of promise of marriage, 3, 604

Breach of the peace, 3, 682

Certainty and definiteness, 22, 877

Age of defendant, 22, 888

Argumentative findings, 22, 890

Conditional verdicts, 22, 890

Criminal case, 22, 881

Degree of crime as indicated by punishment assessed, 22, 884

Description of personal property, 22, 888

Difficulty of general rules, 22, 88c

Expressions of opinion, 22, 890

VERDICT, *cont'd.*

- Certainty and definiteness, *cont'd.*
 - How verdict may be made certain, 22, 890
 - Illustrations, 22, 879
 - Inclusiveness, 22, 881
 - In general, 22, 877
 - Place of confinement, 22, 887
 - Provision for punishment unauthorized by law, 22, 886
 - Request for instructions, 22, 880
 - Several plaintiffs or defendants, 22, 888
 - Special verdicts, 22, 990
 - Specification of offense, 22, 882
 - Specifying defendant's age, 22, 888
 - Specifying degree of crime, 22, 882
 - Specifying punishment, 22, 884
 - Value, 22, 888
- Chance verdicts, 22, 856
 - General verdicts, 22, 849
 - In general, 22, 849
 - One or more defective counts, 22, 851
 - Separate counts, 22, 852
 - Several plaintiffs or defendants, 22, 853
 - Several pleas or defenses, 22, 854
 - Specification as to count, 22, 852
 - Where declaration contains several counts, 22, 850
- Compromise verdict (see COMPROMISE VERDICT), 22, 855
- Computation of interest, see *infra*, Interest on amount of verdict.
- Conclusion:
 - Special verdicts, 22, 993
- Conditional verdicts, 22, 890
- Conditions precedent:
 - Defect cured by verdict, 4, 662
- Conformity to issues, 22, 862
 - Admitted facts, 22, 864
 - Finding merely as to costs, 22, 863
 - General rule, 22, 862
 - Verdict broader than issue, 22, 864
- Conformity to law, 22, 860
- Consent:
 - Sealed verdicts, 22, 1006
- Consistency (see *infra*, Reasonableness and consistency):
 - Special verdict, 22, 989
- Consolidation of actions, 4, 703
- Conspiracy, 4, 735
- Construction of general verdict, 22, 954
 - Construction in light of pleadings, 22, 756

VERDICT, *cont'd.*

- Construction of general verdict, *con.*
 - Ignoring counts, 22, 957
 - Intentments favor verdicts, 22, 959
 - Intent of jury, 22, 955
 - Matters outside of pleadings, 22, 956
 - Presumption as to finding of necessary facts, 22, 961
 - Reasonable intentment and construction, 22, 954
 - Several counts all relating to same transaction, 22, 958
 - Silence as to one or more defendants, 22, 959
- Construction of special verdict, 22, 996
 - Against party sustaining burden of proof, 22, 996
 - In general, 22, 996
 - In the light of issues, 22, 996
 - Issues or facts ignored, 22, 996
 - Reference to evidence on trial, 22, 998
- Contest of wills, see PROBATE AND CONTEST OF WILLS.
- Conviction of lesser offense:
 - Assault and battery, 2, 856
- Coroner's inquests, 5, 48, 49
- Costs, see FINES AND COSTS IN CRIMINAL CASES.
- Counterfeiting, 5, 293
- Counts, paragraphs, and separate statements, 5, 340
- Courts (see *infra*, Amendments; Questions of law and fact):
 - Amount of verdict, see AMOUNT OF VERDICT.
 - Polling the jury, see *infra*, Polling the jury.
 - Sealed verdicts, see *infra*, Sealed verdicts.
- Criminal cases:
 - Aider by verdict, 22, 943
 - Duplicity in indictment, 22, 944
 - Certainty and definiteness, 22, 881
 - Cure for irregularities, 22, 943
 - General verdict (see *infra*, Responsiveness), 22, 840
 - Duty of court, 22, 849
 - Guilty on one or more counts, 22, 846
 - In general, 22, 840
 - Nolle prosequi* as to one or more counts, 22, 845
 - Offense of highest grade, 22, 842
 - One or more defective counts, 22, 843
 - Recommendation to mercy, 22, 847

VERDICT, *cont'd.*Criminal cases, *cont'd.*General verdict, *cont'd.*

Separate counts, same offense, 22, 842

Several defendants, 22, 847

Specifying count on which finding based, 22, 845

When indictment contains several counts, 22, 840

Where indictment charges several offenses, 22, 841

Where jury restricted to one count, 22, 844

Negating essential elements of crime, 22, 876

Omission of material element of crime, 22, 873

Presence of accused, 22, 927

Capital felonies, 22, 927

Felonies less than capital, 22, 928

How fact of presence shown, 22, 930

Misdemeanors, 22, 928

Recalling jury, 22, 930

Waiver by counsel, 22, 929

Waiver of right to be present, 22, 929

Responsiveness, see infra, Responsiveness.

Specification of offense, 22, 882

Specifying degree of crime, 22, 882

Degree of crime as indicated by punishment assessed, 22, 884

In general, 22, 882

Sending jury back, 22, 884

Where there are no degrees of crime charged, 22, 884

Specifying punishment, 22, 884

In general, 22, 884

Place of confinement, 22, 887

Provision for punishment unauthorized by law, 22, 886

Unauthorized punishment, 22, 887

Criminal procedure:

*Sealed verdicts, see infra, Sealed verdicts.**Special verdicts, see infra, Special verdicts.*Cured by verdict (see *infra, Aider by verdict*):

Erroneous instructions in actions for personal injuries, 16, 465

Personal injuries, 16, 465

Damages (see *infra, Amount of verdict*):

Death after verdict, 5, 793

Date, 22, 898

Index Pl. & Pr. — 74

VERDICT, *cont'd.*

Death:

Death of defendant after verdict, 5, 822

Death of plaintiff after verdict, 5, 798

Death of plaintiff before verdict, 5, 798

Death by wrongful act, 5, 887

Apportionment of damages, 5, 887

Inconsistent findings, 5, 888

Special findings, 5, 887

*Decisions, see DECISIONS.**Definiteness, see infra, Certainty and definiteness.*

Definiteness and certainty in pleadings:

Cure of defects, 6, 281

Special verdicts, 22, 990

Definition, 22, 839

*Degree of crime, see infra, Criminal cases.**Demurrers to evidence, see DEMURRERS TO EVIDENCE.*

Detinue, 6, 658

Assessing value, 6, 658

In general, 6, 658

Partial finding, 6, 660

Valuation, 6, 660

Writ of inquiry, 6, 659

Directing verdict, see DIRECTING VERDICT.

Discretion of jury as to nature of verdict rendered, 22, 1013

Rule at common law, 22, 1013

Rule under statute, 22, 1013

Dismissal, discontinuance, and nonsuit:

Want of prosecution, 6, 913

Disorderly houses, 7, 18

Divorce, 7, 119

Conclusiveness of verdict, 7, 120

Effect of verdict on appeal, 7, 137

Double or treble damages, 22, 917

Dower, 7, 167

Duplicity, 22, 944

Effect of general verdict, 22, 939

As a cure for irregularities, see infra, Aider by verdict.

As evidence, 22, 953

In general, 22, 939

Ejectment, 7, 344

General for the entire premises, 7, 345

Joint answer, 7, 345

May be general, 7, 344

Not sustained by evidence, 7, 345

Partial verdict, 7, 346

Property in question, 7, 345

Should specify for different parties, 7, 345

Specifying land recovered, 7, 344

VERDICT, *cont'd.*

- Embezzlement, 7, 459
- Eminent domain, 7, 584
 - Alternative awards, 7, 588
 - Conclusiveness, 7, 589
 - Conditional awards, 7, 588
 - Description of property taken or damaged, 7, 584
 - Excessive damages, 7, 593
 - Finding as to the necessity of the taking, 7, 585
 - Finding on question of damages, 7, 586
 - Grounds for setting aside, 7, 591
 - Improper argument, 7, 591
 - Inadequate damages, 7, 594
 - Interpretation, 7, 589
 - Itemizing the damages, 7, 587
 - Joint and several awards, 7, 588
 - Misconduct of jurors, 7, 592
 - Mistake, 7, 592
 - Mode of arrival at verdict, 7, 584
 - Motion to set aside, 7, 590
 - Objections, 7, 590
 - Power to set aside, 7, 590
 - Practice on motion to set aside, 7, 590
 - Reversal of erroneous verdict, 7, 650
 - Verdict against weight of evidence, 7, 592
- Enforceability by legal process, 22, 861
- Escape, 7, 938
- Evidence, 22, 977
 - Aider by evidence, 22, 977
 - Findings of evidence, 22, 993
 - Verdict as evidence, 22, 953
- Exceptions and objections, 8, 280
 - Direction of verdict, 8, 282
 - Excessive verdict, 8, 281
 - Inadequate verdict, 8, 281
 - Incomplete verdict, 8, 282
 - Raised for the first time on appeal, 8, 280
 - Refusal to direct, 8, 282
 - To form of verdict, 8, 280
 - Verdict contrary to the evidence, 8, 281
 - Verdict not within issues, 8, 282
 - What objection should specify, 8, 281
- Executors and administrators, 22, 867
- Findings of evidence, 22, 993
- Fines and costs in criminal cases, see FINES AND COSTS IN CRIMINAL CASES.*
- Forcible entry and detainer, 9, 70
- Forgery, 9, 610
- Form:
 - Special verdicts, 22, 991
- Former jeopardy:
 - Responsiveness, 22, 867

VERDICT, *cont'd.*

- Form of general verdict, 22, 891
 - Abbreviation, 22, 904
 - Designation of parties by name, 22, 905
 - Errors in spelling, 22, 902
 - Function of court as to form, 22, 894
 - Correction of merely formal irregularities, 22, 895
 - Generally, 22, 894
 - Preparation of form by counsel, 22, 896
 - Requiring jury to correct, 22, 894
 - Requisites of forms furnished to jury, 22, 895
- Grammar, 22, 902
- Informalities, 22, 899
- In general, 22, 891
- Irregularities, 22, 899
- Misnomer, 22, 906
- Misuse of singular or plural terms, 22, 903
- Omission of words, 22, 901
- Oral verdicts, 22, 896
- Preparation of form by counsel, 22, 896
- Spelling, 22, 902
- Stating reasons for finding, 22, 907
- Title of cause, 22, 904
- Verbal inaccuracies, 22, 899
- Verdicts are not to be taken strictly like pleadings, 22, 892
- When objections to form must be made, 22, 807
- Written verdicts, see infra, Written verdict.*
- Fornication, 9, 646
- Game and game laws, 9, 764
- Garnishment, 9, 850
- General verdict, 22, 839
 - Definition, 22, 839
 - Effect of general verdict, see infra.*
 - Effect of general verdict.*
 - Form of general verdict, see infra.*
 - Form of general verdict.*
 - Requisites of general verdict, see infra.*
 - Requisites of general verdict.
 - When general verdict proper, 22, 840
 - Criminal cases, see infra.*
 - Criminal cases.
- Grammar, 22, 902
- Heirs and devisees:
 - Actions at law against heirs and devisees on statutory liabilities, 10, 43
 - Common-law actions against heirs and devisees, 10, 35

VERDICT, *cont'd.***Homicide, 10, 178**

- Amendment by subsequent insertion of name of defendant, 10, 185
- Assessment of punishment, 10, 185
- Conviction of lesser crime, 10, 181
- Erroneous spelling, 10, 186
- Failure to specify the degree, 10, 179
- Form generally, 10, 178
- Guilty as charged, 10, 180
- Instruction as to form of verdict, 10, 175
- Omission of defendant's name, 10, 184
- Plea of guilty, 10, 184
- Polling the jury, 10, 186
- Recommendation to mercy, 10, 186
- Requiring verdict for particular degree, 10, 182
- Specific acquittal of higher degree, 10, 182
- Specification of count sustained, 10, 183
- Specifying the degree, 10, 179
- When and how rendered, 10, 178
- Inclusiveness, 22, 881
- Indictment*, see *infra*, Criminal cases.
- Informalities, 22, 899
- Insane persons:

- Insanity as a defense, 10, 1221

Instructions:

- Instructions in cases where special verdict is directed, 11, 302

Insurance, 11, 433

- General verdict, 11, 433
- Special verdict, 11, 433

Interest on amount of verdict, 22, 918, 921

- Computation of interest, 22, 918
- Erroneous allowance of interest, 22, 921
- In general, 22, 918
- Sending jury back, 22, 920
- Uncertain data, 22, 920

Interpretation, see *infra*, Construction of general verdict.**Intoxicating liquors, 11, 578**

- Alternative verdict, 11, 580
- Conviction of included offense, 11, 580
- General verdict, 11, 578
- Irreconcilable counts, 11, 579
- One good count, 11, 579
- Separate verdicts on separate counts, 11, 580
- Several counts of same nature, 11, 579

VERDICT, *cont'd.***Intoxicating liquors, *cont'd.*****Special verdict, 11, 579**

- Specifying count, 11, 580
- Variance, 11, 580
- Irregularities (see *infra*, Aider by verdict), 22, 899
- Issue (see *infra*, Conformity to issues; Responsiveness):
- Broader than issue, 22, 864
- Issues to the jury, 11, 689
- Adopting verdict, 11, 705
- Adoption equivalent to finding by court, 11, 706
- In general, 11, 705
- Against the evidence or weight of evidence:
- Appellate review, 11, 747
- Appellate review, 11, 745
- General effect of verdict and action of court, 11, 745
- General instead of special verdict, 11, 747
- Where verdict should have been disregarded or set aside, 11, 746
- Effect of, 11, 702
- Actions at law, 11, 705
- Appellate review, 11, 745
- Equity cases, 11, 702
- Probate and orphans' courts, 11, 704
- General effect of verdict in actions at law, 11, 705
- General effect of verdict in an equity case, 11, 702
- General effect of verdict in probate and orphans' courts, 11, 704
- General power of court over verdict and findings, 11, 705
- New trial:
- First and second verdict contrary, 11, 733
- Granting new trial without setting aside verdict, 11, 732
- Third trial after two concurring verdicts, 11, 733
- Verdict not given in evidence, 11, 735
- Where issues of right and verdict conclusive, 11, 733
- New trial for incorrect or improper verdict, 11, 724
- Dissatisfaction of one of judges, 11, 726
- Trial court satisfied or dissatisfied, 11, 725
- Verdict against the evidence or weight thereof, 11, 724

VERDICT, *cont'd.*Issues to the jury, *cont'd.*New trial for incorrect or improper verdict, *cont'd.*

Verdict insensible, contradictory, or uncertain, 11, 727

Verdict not responsive or determinative of issues, 11, 727

Verdict too broad, 11, 727

Virginia, 11, 726

Return of findings and proceedings at trial, 11, 604

Setting aside or disregarding verdict, 11, 706

Court dissatisfied with verdict generally, 11, 709

Decision contrary to verdict, 11, 706

Disagreement of jury, 11, 710

Divorce cases, 11, 707

Equitable and legal issues in same action, 11, 708

Foreclosure of mortgage, 11, 708

General instead of special verdict, 11, 710

General power of court, 11, 706

Injunction, 11, 707

Interpleader, 11, 707

Intervention, 11, 707

Issue improperly directed, 11, 711

Particular cases, 11, 707

Petition to enforce mechanics' lien, 11, 708

Proceedings and evidence not reported, 11, 708

Reinstatement of verdict set aside, 11, 711

Time of setting aside, 11, 711

Verdict against evidence or weight thereof, 11, 709

Verdict uncertain, 11, 710

Where issues are of right with the parties, 11, 711

With or without new trial, 11, 708

Verdict against the evidence or weight thereof, 11, 724

Jeofails, 22, 950

Judgment roll, 18, 477

Judgments (see JUDGMENTS), 11, 864

Special verdicts, 22, 1000

Jury (see *infra*, Discretion of jury as to nature of verdict rendered):*Amendments*, see *infra*, *Amendments*.

Deliberation, 22, 854

Polling the jury, see *infra*, *Polling the jury*.**VERDICT, *cont'd.***

Justices of the peace:

Appeal where there is a verdict without judgment, 12, 760

Larceny (see LARCENY), 12, 1016

Finding of value, 12, 1017

General verdict, 12, 1016

In general, 12, 1016

Several counts, 12, 1017

Law, conformity to, 22, 860

Legal conclusions, 22, 995

Special verdicts, 22, 995

Lewdness:

Defects cured by verdict, 13, 25

Libel and slander, 13, 112

General and special verdicts, 13, 112

Several counts, 13, 113

Uncertain verdict, 13, 113

Limitations, 13, 267; 22, 867

Lost instruments and records, 13, 376

Malicious mischief, 13, 417

Malicious prosecution, 13, 476

Defects cured by verdict or judgment, 13, 457

Malpractice, 16, 534

Mandamus, 13, 805

Entering and signing judgment, 13, 564

Reception, see *infra*, *Rendition and reception*.

Mayhem, 13, 936

Mills and milldams, see **MILLS AND MILLDAMS**.

Mines and mining, 14, 21

Misspelling, 22, 902

Name:

Designation of parties by name, 22, 905

Criminal case, 22, 905

In general, 22, 905

Misnomer, 22, 906

Name of person who signs, 22, 899

Necessity for verification:

Exceptions to statutory provisions, 22, 1030

New trial, see **NEW TRIAL**.*Nolle prosequi*:*Nolle prosequi* as to one or more counts, 22, 845

Nominal damages, 22, 917

Not guilty, 22, 867, 871

Obstructing justice, see **OBSTRUCTING JUSTICE**.

Omission of words, 22, 901

Opening, amending, and vacating judgments, see **OPENING, AMENDING, AND VACATING JUDGMENTS**.

Opinion of court:

Verdicts subject to opinion of court, 22, 1001

Opinions, expressions of, 22, 890

VERDICT, cont'd.

- Oral verdicts, 22, 896
- Partial verdicts, 22, 1001
- Partnership, 15, 950
 - Conformity to judgment, 15, 954
 - Examples, 15, 951, 952
 - Responsiveness, 15, 951
 - Supported by evidence, 15, 951
- Patents, 16, 93
- Payment, 16, 221
- Penalties and penal actions, 16, 298
 - Form, 16, 298
 - General verdict, 16, 298
 - Several defendants, 16, 298
 - Statute of jeofails, 16, 299
- Perjury, 16, 350
- Personal injuries*, see **PERSONAL INJURIES**.
- Polling the jury, 22, 932
 - Asking explanation of verdict or reason for finding, 22, 937
 - At whose instance, 22, 932
 - Before agreement on verdict, 22, 932
 - Discretion of court, 22, 932
 - Dissent from verdict, 22, 937
 - Form of interrogatories, 22, 935
 - Form of reply, 22, 936
 - Importance, 22, 933
 - In general, 22, 932
 - Mode of procedure, 22, 935
 - Object of practice, 22, 933
 - Sealed verdicts, 22, 1000
 - Waiver of right to poll, 22, 935
 - When motion or request for polling should be made, 22, 935
 - Where verdict is directed, 22, 934
- Presence of accused*, see *infra*, **Rendition and reception**.
- Presence of all the judges, 22, 926
- Presence of counsel, 22, 931
- Presence of parties*, see *infra*, **Rendition and reception**.
- Presumptions of law, 22, 994
- Privy verdicts, 22, 1003
- Probate and contest of wills*, see **PROBATE AND CONTEST OF WILLS**.
- Process:
 - Enforceability by legal process, 22, 861
- Public officers, 17, 227
 - Criminal procedure, 17, 259
- Punishment*, see *infra*, **Criminal cases**.
- Questions of law and fact:
 - Function of court as to form, 22, 894
 - Correcting merely irregularities, 22, 895
 - In general, 22, 894
 - Preparation of form by counsel, 22, 896

VERDICT, cont'd.

- Questions of law and fact, *cont'd.*
 - Function of court as to form, *con.*
 - Requiring jury to correct, 22, 895
 - Requisites of form furnished to jury, 22, 895
 - Special verdicts, 22, 992
- Quieting title, 17, 359
- Quotient verdicts, 22, 856
- Railroads*, see **RAILROADS**.
- Rape*, see **RAPE**.
- Reasonableness and consistency, 22, 876
 - In general, 22, 876
- Negating essential element of crime, 22, 876
- Refusal to receive, 22, 877
- Sending jury back, 22, 877
- Several counts, offenses, and defendants, 22, 877
- Receiving stolen goods, 17, 898
- Reception of verdict*, see *infra*, **Rendition and reception**.
- Recommendation to mercy, 22, 847
- Records:
 - Recordation of verdict, 22, 938
- Rejoinders and subsequent pleadings:
 - Defects not cured by verdict, 18, 74
- Remittitur*, see **REMITTITUR**.
- Rendition and reception, 13, 559; 22, 922
 - By whom received, 22, 925
 - In general, 22, 925
- Duty to receive verdict, 22, 932
- Generally, 22, 922
- Polling the jury*, see *infra*, **Polling the jury**.
- Presence of all of several judges, 22, 926
- Presence of counsel, 22, 931
- Presence of parties, 22, 926
 - Capital felonies, 22, 927
 - Civil cases, 22, 931
 - Criminal cases, 22, 927
 - Doctrine that right cannot be waived, 22, 930
 - Felonies less than capital, 22, 928
 - How fact of presence shown, 22, 930
 - In general, 22, 926
 - Misdemeanors, 22, 928
 - Recalling jury, 22, 930
 - Waiver by counsel, 22, 929
 - Waiver of right to be present, 22, 929
- When received, 22, 923
 - Before expiration of time, 22, 923

VERDICT, *cont'd.*

- Rendition and reception, *cont'd.*
 - When received, *cont'd.*
 - During temporary adjournment, 22, 923
 - Sunday, 22, 924
 - Where received, 22, 925
- Replevin*, see REPLEVIN.
- Requisites of general verdict, 22, 854
 - Certainty and definiteness*, see *infra*, Certainty and definiteness.
 - Conformity to issues*, see *infra*, Conformity to issues.
 - Conformity to law, 22, 860
 - Enforceability by legal process, 22, 861
 - Mode of deliberation, 22, 854
 - Chance verdicts, 22, 856
 - Compromise verdicts, 22, 855
 - In general, 22, 854
 - Lack of constraint, 22, 855
 - Quotient verdicts, 22, 856
 - Reasonableness and consistency*, see *infra*, Reasonableness and consistency.
 - Responsiveness*, see *infra*, Responsiveness.
 - Substantial compliance with statute, 22, 861
 - Unanimity of consent, 22, 858
- Responsiveness, 22, 864
 - Actions against personal representatives, 22, 867
 - Criminal cases, 22, 873
 - Different offense of lesser degree, 22, 875
 - In general, 22, 873
 - Omission of material element of crime, 22, 873
 - Where offense charged divisible into degrees, 22, 874
 - Former jeopardy, 22, 867
 - General conclusion, 22, 870
 - General finding disposing of all issues, 22, 869
 - Generally, 22, 864
 - Justification, 22, 871
 - Limitation of actions, 22, 867
 - Not guilty, 22, 871
 - One or more of several issues ignored, 22, 866
 - Presumption, 22, 872
 - Remedy for irresponsiveness, 22, 875
 - Set-off, recoupment, and counterclaim, 22, 871
 - Several defendants, 22, 872
 - Several issues, finding the issue, 22, 869
 - Special verdicts, 22, 986
 - Facts not in dispute, 22, 987

VERDICT, *cont'd.*

- Responsiveness, *cont'd.*
 - Special verdicts, *cont'd.*
 - Finding undisputed facts, 22, 988
 - Immaterial facts, 22, 988
 - In general, 22, 986
 - Remedy for irresponsiveness, 22, 988
 - Verdict need not respond in terms of issue, 22, 868
- Review, 18, 1043
- Riot, 18, 1210
 - Conviction of less than number necessary to commit offense, 18, 1211
 - General requisites, 18, 1210
 - Guilty, 18, 1210
- Sales, 19, 58
 - Vendor's action to recover goods, 19, 70
- Scaled verdicts, 22, 1003
 - Affirmance of verdict in court, 22, 1008
 - Agreement, 22, 1007
 - Amendments*, see *infra*, Amendments.
 - Consent of parties or counsel, 22, 1006
 - Consent presumed, 22, 1006
 - Correction*, see *infra*, Amendments.
 - Criminal cases, 22, 1003, 1004
 - Discretion of court, 22, 1005
 - Dissent from verdict, 22, 1009
 - Effect of consent, 22, 1007
 - In general, 22, 1003
 - Necessity for authority of court, 22, 1005
 - Oral verdict after permission to seal and separate, 22, 1008
 - Polling jury, 22, 1010
 - Reduction to writing, 22, 1007
 - To whom sealed verdict delivered, 22, 1008
- Sending jury back, 22, 917, 920
 - Amendment, 22, 968
- Sentence (see SENTENCE):
 - Recitals concerning verdict, 19, 478
- Set-off, recoupment, and counterclaim, 19, 806; 22, 871
 - Failure to show establishment of plaintiff's claim, 19, 807
 - Failure to show that defendant's claim was passed upon, 19, 807
 - Special or general verdict, 19, 806
- Several defendants, 22, 847
- Several sorts of verdicts, 22, 899
- Sheriffs and constables, 20, 159
- Signature, 22, 898
 - General rule as to signing verdict, 22, 898

VERDICT, *cont'd.***Signature, *cont'd.*****Rule by statute as to signing**
verdict, 22, 899

Singular and plural, 22, 903

Special interrogatories to juries, see
SPECIAL INTERROGATORIES TO JURIES.

Special verdicts, 22, 979

Abolition of statute, 22, 981

Amendment of special verdict,
22, 999

Certainty, 22, 990

Civil actions, 22, 984

In general, 22, 984

Negligence cases, 22, 985

Conclusions of law, 22, 995

Conjecture, 22, 994

Consistency, 22, 989

Construction of special verdict,
see *infra*, Construction of special verdict.

Criminal cases, 22, 982

In general, 22, 982

Intent, 22, 983

Venue, 22, 983

Definition, 22, 979

Facts not embraced within issues, 22, 986

Findings of evidence, 22, 993

Form, 22, 991

Formal conclusion, 22, 993

Function of court, 22, 991

Function of jury, 22, 992

Instructions by court, 22, 981

Judgment, 22, 1000

Object, 22, 980

Opinion, 22, 994

Origin, 22, 980

Preparation of form by counsel,
22, 993Preparation of form by court,
22, 992Reference to evidence on trial,
22, 998

Requisites in general, 22, 981

Responsiveness, see *infra*, Responsiveness.

Special verdicts and special findings distinguished, 20, 300

Surplusage, 22, 999

When special verdicts may be rendered, 22, 980

Specific performance, 20, 539

Spelling, 22, 902

Stipulations, 20, 632

Street railways, see STREET RAILWAYS.

Streets and highways, 20, 975

Sundays and holidays:

Receiving verdict, 20, 1194

Reception of verdict on Sunday,
22, 924**VERDICT, *cont'd.*****Surplusage, 22, 977****Amendment, 22, 977****Special verdicts, 23, 999***Telegraphs and telephones*, see TELE-
GRAPHS AND TELEPHONES.*Tender*, see TENDER.

Title of cause, 22, 904

Trade-marks and trade names, 21, 760

Trespass, see TRESPASS.

Trespassing, vicious, and diseased animals, 21, 898

Trespass on the case, 21, 923

Trespass to try title, see TRESPASS TO TRY TITLE.*Trial of the right of property*, see RIGHT OF PROPERTY, TRIAL OF.*Trover and conversion*, see TROVER AND CONVERSION.

Unanimity of consent, 22, 858

Agreement of parties, 22, 859

General rule, 22, 858

Right of any juror to dissent, 22,
859

Rule by statute, 22, 859

United States courts, 22, 305

Unliquidated damages, 22, 918

Usury, 22, 457

Vagrancy, 22, 513

Value, 22, 888

Vendor and purchaser, see VENDOR AND PURCHASER.Purchaser's action for damages,
22, 761

Vendor's liens, 22, 740

Venue:

Criminal cases, 22, 983

Verbal inaccuracies, 22, 899

Waste, 22, 1101

Waters and watercourses, 22, 1155

Wills, see PROBATE AND CONTEST OF WILLS.

Work and labor, 22, 1381

Writing:

Sealed verdicts, 22, 1007

Written verdict, 22, 897

Date, 22, 898

In general, 22, 897

Rule by statute, 22, 898

Signing verdict, 22, 898

VERIFICATION, 22, 1015

See AFFIDAVITS.

Abatement:

Abatement in pleading, 1, 28

Pleas in abatement, 22, 1027

Accord and satisfaction, 1, 76

Accounts and accounting, 1, 91

Administration, see SETTLEMENT OF DECEDENTS' ESTATES.

Admiralty:

Answer, 1, 272

Libel, 1, 255

Agent, 22, 1022, 1035

VERIFICATION, *cont'd.*

- Amendments, 1, 495, 505; 22, 1052
- Amended pleadings, 1, 644; 22, 1029
- Amendment of sworn bills, 1, 478
- Bill in equity, 22, 1022
- Bill or petition, 22, 1020
- Verified pleadings, 1, 464
- Another suit pending, 1, 774
- Answer, 22, 1023, 1024
- Time of verification, 22, 1032
- Attorney, 22, 1022, 1035
- Awards, 3, 137
- Bankruptcy:
 - Objections to petition for discharge, 22, 382
 - Opposition to petition, 22, 357
 - Petition, 22, 347
 - Petition for discharge, 22, 379
 - Schedules, 22, 351
- Before whom verified, 22, 1039
- Attorney of party, 22, 1039
- In general, 22, 1039
- Bill in equity, 22, 1017
- Amendment, 22, 1022
- Amendment to bill or petition, 22, 1020
- Bill for discovery merely, 22, 1018
- By agent, 22, 1022
- By attorney, 22, 1022
- By whom verified, 22, 1020
- Demurrer, 22, 1022
- Form, 22, 1021
- Jurisdictional allegations, 22, 1018
- Necessity for verification in general, 22, 1017
- Objections, 22, 1022
- Requisites of verification, 22, 1021
- Suits for discovery of deeds and writings and for relief, 22, 1019
- Time of verification, 22, 1021
- Where necessary, 22, 1018
- Bills of particulars, 3, 534
- By whom verified, 22, 1032
- Agent or attorney, 22, 1035
- Any person knowing facts, 22, 1037
- Bill in equity, 22, 1020
- Corporation, 22, 1037
- In general, 22, 1032
- Officer, 22, 1038
- Party pleading, 22, 1032
- Public officer, 22, 1038
- Several parties, 22, 1033
- Certiorari, 4, 158
- Affidavits, 4, 158
- Before whom made, 4, 160
- By whom made, 4, 160
- Form of verification, 4, 158
- Generally, 4, 158

VERIFICATION, *cont'd.*

- Codes and statutes, 22, 1023
- Amendments, *see infra*, Amendments.
- Before whom verified, *see infra*, Before whom verified.
- By whom verified, *see infra*, By whom verified.
- Form and requisites of verification, *see infra*, Form and requisites of verification.
- In general, 22, 1023
- Necessity for verification, *see infra*, Necessity for verification.
- Omitted or defective verification, *see infra*, Omitted or defective verification.
- Time of verification, *see infra*, Time of verification.
- Complaint, 22, 1023
- Time of verification, 22, 1031
- Confession of judgment, 11, 1007
- Construction of pleadings, 4, 755
- Corporations, 22, 1037
- Counties:
 - Verification of claim, 5, 297
- Covenant:
 - Plea of *non est factum*, 5, 378
- Debt:
 - Oath to plea, 5, 922
- Decrees:
 - Application to open decrees *pro confesso*, 5, 1023
 - Opening decrees *pro confesso*, 5, 1023
- Defaults, 6, 46, 91
- Unverified pleas, 6, 87
- Definition, 22, 1016
- Demurrers, 22, 1022
- Demurrers in chancery, 6, 409, 422
- In general, 6, 422
- Statutory requirements, 6, 422
- Depositions:
 - Oath of witness, 6, 532
 - United States courts, 6, 624
- Disbarment and suspension of attorneys, 6, 713
- Discovery, 6, 771; 22, 1018, 1019
- Divorce, 7, 85
- Amendment, 7, 86
- Answer, 7, 87
- Cross petition, 7, 86
- Defective or omitted, 7, 86
- In general, 7, 85
- Elections:
 - Petition, complaint, or notice, 7, 386
- Equity:
 - Bills in equity*, *see infra*, Bill in equity.
- Exceptions and objections, 8, 205; 22, 1042
- Forcible entry and detainer, 9, 63

VERIFICATION, *cont'd.*

- Foreclosure of mortgages, 9, 395
 - In chancery, 9, 395
 - Under the codes, 9, 396
- Form and requisites of verification, 22, 1040
 - By person other than party, 22, 1041
- Compliance with statutory form, 22, 1044
- Exceptions, 22, 1042
- In general, 22, 1040
- Signature, 22, 1046
- Statement of grounds of belief, 22, 1041
- Statement of reason why verification not made by party, 22, 1043
- Venue, 22, 1046
- When employment of twofold form unnecessary, 22, 1045
- Former conviction or acquittal, 9, 636
- Habeas corpus:
 - Petition, 9, 1021
 - By whom made, 9, 1022
 - Necessity, 9, 1021
 - Person incompetent as witness, 9, 1022
- Infants:
 - Petition for sale of real property, 10, 781
- Informations*, see **INFORMATIONS**.
- Injunctions (see **INJUNCTIONS**):
 - Answer, 10, 1072
- Insolvency:
 - Petition for discharge, 11, 16
 - Swearing to schedule, 11, 18
- Insurance, 11, 426
- Interpleader:
 - Bills of interpleader, 11, 467
- Interstate commerce:
 - Answer, 11, 486
 - Complaints, 11, 485
- Judgments:
 - Confession of judgment, 11, 1007
 - Consent judgments, 11, 1028
 - Statement upon confession of judgment, 11, 1007
- Justices of the peace (see **JUSTICES OF THE PEACE**):
 - Necessity for verification of plea or answer, 12, 722
- Landlord and tenant:
 - Affidavit in summary proceedings, 12, 884
 - Answer in summary proceedings, 12, 888
- Lost instruments and records, 13, 354
- Mandamus (see **MANDAMUS**), 13, 685
- Marriage (annulment), 13, 879
- Mechanics' liens, 13, 988, 1011
 - Bill of particulars, 13, 992

VERIFICATION, *cont'd.*

- Mills and milldams, 14, 9
- Necessity for verification, 22, 1023
 - Amended pleadings, 22, 1029
 - Answer, 22, 1024
 - Bill in equity, 22, 1017
 - Complaint, 22, 1023
- Exceptions to statutory provisions:
 - Answer of guardian or attorney for imprisoned person, 22, 1031
 - In general, 22, 1030
 - Where officer of state is defendant, 22, 1031
 - Where party pleading will be privileged from testifying, 22, 1030
- Insufficient verification, 22, 1026
- Petition, 22, 1023
- Plea, 22, 1024
- Pleas in abatement, 22, 1027
- Pleas or answers requiring verification, 22, 1027
- Negotiable instruments*, see **NEGOTIABLE INSTRUMENTS**.
- Object, 22, 1016
- Official bonds, 15, 148
- Omitted or defective verification, 22, 1047
 - Demurrer, 22, 1049
- Manner of raising objection, 22, 1047
- Notice must point out defects, 22, 1050
- Unverified pleading treated as nullity, 22, 1049
- Waiver of objections, 22, 1051
- Opening, amending, and vacating judgments:
 - Verified answer, 15, 276
- Ordinances:
 - Complaint or petition, 15, 433
- Partition, 15, 800
- Partnership:
 - Denial by partners of existence of partnership, 15, 932
 - Denial of execution of instrument, 15, 936
 - Verification of plea by one of several partners, 15, 941
- Patents:
 - Bill in equity for infringement, 16, 103
- Perpetuation of testimony, 16, 368
- Petition, 16, 517; 22, 1023
 - Time of verification, 22, 1031
- Plea, 22, 1023, 1024
 - Time of verification, 22, 1032
- Pleas at law, 16, 558
 - Non est factum*, 16, 546
 - Plea nullity because not sworn to, 16, 582

VERIFICATION, *conf. d.*

- Pleas in equity, 16, 594
 - Necessity to verify plea, 16, 594
 - Objection, 16, 594
 - Permission to file new plea duly verified, 16, 595
 - Plea of matter of record, 16, 594
- Probate and contest of wills:
 - Application to set aside probate, 16, 1058
 - Contestant's pleading, 16, 1025
 - Necessity, 16, 1025
 - Sufficiency, 16, 1025
 - Waiver of objection, 16, 1025

Publication:

- Declaration and complaint, 17, 51
- Public officers, 22, 1038
- Complaint or petition for removal, 17, 221

Puis darrein continuance, 17, 271

Receivers, 17, 736

Records, 17, 938

Redemption, 17, 969

Rejoinders and subsequent pleadings:

Offer to verify, 18, 77

Removal of causes:

Petition for removal, 18, 318

Replevin, 18, 544

Replications and replies:

Absence of verification, 18, 723

Codes, 18, 718

By whom made, 18, 719

Effect of unverified reply, 18, 720

Form of verification, 18, 719

In general, 18, 718

Offer to verify, 18, 674

Matter of record in issue, 18, 676

Negative nature of new matter, 18, 675

New affirmative matter in replication, 18, 674

Special traverses in replication, 18, 674

Review, 18, 1037

Set-off, recoupment, and counterclaim, 19, 770

Settlement of decedents' estates (see **SETTLEMENT OF DECEDENTS' ESTATES**), 19, 991, 1084

Claims against insolvent estates, 19, 991

Verification of statement of claim, 19, 955

Sham and frivolous pleadings, 20, 15

Verified answers, 20, 39

Signature, 22, 1046

Specific performance, 20, 462

Stock and stockholders, 20, 789

Plea or answer in actions on subscriptions, 20, 697

VERIFICATION, *conf. d.*

Supplemental pleadings, 21, 74

Time of verification:

Answer, 22, 1032

Bill in equity, 22, 1021

Complaint, 22, 1031

Petition, 22, 1031

Plea, 22, 1032

Usury:

Plea or answer, 22, 442

Vendor and purchaser, 22, 693

Venue, 22, 1046

Waiver of objections, 22, 1051

Waste, 22, 1111

Winding up corporations, 22, 1273

VEXATIOUS PLEADINGS, see **SHAM AND FRIVOLOUS PLEADINGS**.

VIDELICET, see **SCILICET** OR **VIDELICET**.

VI ET ARMIS, see **TRESPASS**.

VIEW BY JURY, 22, 1053

Appeals, 22, 1056

Bills of exceptions, 3, 417

Conduct of jury at view, 22, 1061

Communication with bystanders, 22, 1061

Discussion on issues, 22, 1062

Separation of jury, 22, 1061

Use of intoxicants, 22, 1062

Conduct of view, 22, 1059

Coroner's inquests, 5, 46

Examination of the body should be minute and careful, 5, 46

View of the body an essential requisite, 5, 46

Courts, see *infra*, When view ordered.

Discretion of court, 22, 1056

Dower, 7, 162

Eminent domain, see **EMINENT DOMAIN**.

Jury:

Unauthorized view of *locus in quo*, 12, 588

Oath of officer in charge of jury, 22, 1059

Origin, 22, 1053

Personal injuries, 22, 1057, 1058

Pointing out premises to jury, 22, 1060

Presence of accused:

Necessity of accused being present, 22, 1059

Waiver of right to be present, 22, 1060

Presence of judge at view, 22, 1059

Private view, 22, 1062

Purpose of view, 22, 1054

Real property:

Actions relating to land, 22, 1058

Right to view, 22, 1053

Streets and highways, 20, 899, 975

Time of view, 22, 1058

VIEW BY JURY, *cont'd.*

- Use of results of examination, 22, 1054
- View in other county, 22, 1062
- When view ordered, 22, 1055
 - Actions relating to land, 22, 1058
 - Change in condition of premises, 22, 1057
 - Criminal prosecutions, 22, 1058
 - Discretion of court, 22, 1056
 - In general, 22, 1055
 - Jury conversant with *locus*, 22, 1055
 - Personal injuries, 22, 1057, 1058
 - Review on appeal, 22, 1056

VOLUNTARY ASSOCIATIONS, *see* PARTNERSHIP; UNINCORPORATED SOCIETIES.**VOTING, *see* ELECTIONS.****WAGER, *see* GAMING.****WAIVER (*see* AMENDMENT):**

- Abatement in pleading, 1, 32
- Affidavit of merits, 1, 33
- After imparlance, 1, 36
- Capacity to sue, 1, 10
- Demurring, 1, 36
- Exceptions and rules, 1, 35
- Infancy, 1, 9
- Pleading out of order, 1, 34
- Pleading to merits, 1, 32
- Proceeding in cause, 1, 36
- Replication, 1, 39
- Waiver of plea, 1, 32
- Withdrawing plea to merits, 1, 34

Agreed case, 1, 391**Answers in equity pleading, *see* ANSWERS IN EQUITY PLEADING.****Appeal bonds and undertakings, *see* APPEAL BONDS AND UNDERTAKINGS.****Appeals, *see* APPEALS.****Arraignment and plea, 2, 764****Guardians *ad litem*, 10, 675****WARDS, *see* GUARDIANS.****WAREHOUSEMEN, 22, 1064**

- Actions against warehousemen, 22, 1065
 - Actions for conversion, 22, 1066
 - Actions for destruction of goods through want of diligence, 22, 1066
- Answer, 22, 1069
- Declaration and complaint, 22, 1067
- Extent of recovery in action on warehouse receipt fraudulently issued, 22, 1069
- Form of action, 22, 1066
- Necessity for tender of amount due for storage, etc., 22, 1066
- Necessity that defendant claim right of interest other than lien, 22, 1066

WAREHOUSEMEN, *cont'd.*

- Actions against warehousemen, *con.*
 - Negligence question for jury, 22, 1069
 - Plaintiff's ownership or right of possession, 22, 1065
 - Pleading and proof, 22, 1068
 - When proper, 22, 1066
 - Who may maintain, 22, 1065
- Actions by warehousemen, 22, 1064
 - Complaint in action for property converted, 22, 1065
 - Right to maintain trover for goods stolen, 22, 1065
- Answer, 22, 1069
- Carriers of goods:
 - Charging common carrier as warehouseman, 1, 570
- Criminal procedure, 22, 1069
 - Manner of prosecution, 22, 1069
 - Requisites of indictment, 22, 1069
- Declaration and complaint, 22, 1067
- Injunction, 22, 1070
- Trover and conversion, 22, 1065, 1066

WAR PRIZE, *see* ADMIRALTY.**WARRANTED OR CONFESSED JUDGMENT, *see* COGNOVIT.****WARRANT OF ATTORNEY (*see* JUDGMENTS):**

- Appearances, 2, 675
- Corporations, 5, 55

WARRANTS, 22, 1071***See* COMMITMENTS; EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES.****Address, *see* *infra*, Direction.****Amendments, 1, 699****Bastardy:**

- Warrants for arrest, 3, 278

Bench warrant, 22, 1076, 1083**Caption, 22, 1072**

- How warrant runs, 22, 1072

- Name of county, 22, 1073

Clerical errors, 22, 1083**Clerk of court:**

- Signature, 22, 1089

Commitments, *see* COMMITMENTS.**Conclusion, 22, 1083****Contempt:**

- Duration of imprisonment, 4, 799

- Formal requisites, 4, 799

- Necessity, 4, 799

- Warrant of commitment, 4, 799

Contents, 22, 1072**Date, 22, 1088****Death warrant, *see* SENTENCE AND JUDGMENT IN CRIMINAL CASES.****Description of offender, 22, 1076**

- Alteration of name, 22, 1079

- In general, 22, 1076

WARRANTS, *cont'd.*

- Description of offender, *cont'd.*
 - Legality of arrest by wrong name, 22, 1078
 - Name, 22, 1077
- Description of offense, 22, 1079
 - Acts not amounting to criminal offense, 22, 1081
 - Averment that crime charged is first offense, 22, 1082
 - Bench warrant after indictment found, 22, 1083
 - Clerical errors, 22, 1083
 - Description by reference to complaint or preamble, 22, 1083
 - Formal conclusion, 22, 1083
 - In coroner's warrant of arrest, 22, 1083
 - Necessity for description, 22, 1079
 - Offense not within magistrate's jurisdiction, 22, 1081
 - Place of commission, 22, 1082
 - Technical accuracy not required, 22, 1080
 - Time of commission, 22, 1082
 - Warrant charging two offenses, 22, 1082
 - What description is sufficient, 22, 1080
 - Where warrant serves as indictment, 22, 1084
- Direction, 22, 1073
 - Alteration of direction after issuance, 22, 1074
 - Necessity for, 22, 1073
 - To whom directed in general, 22, 1073
 - Validity of warrant directed to private person or special officer, 22, 1074
- Directions as to return, 22, 1085
 - Directions as to disposition of prisoner, 22, 1087
 - Directions as to time of return, 22, 1087
 - Necessity for command to make return, 22, 1085
 - To what magistrate or court returnable, 22, 1085
- Disorderly conduct, 7, 3
- Distress, 7, 23
 - Action for rent, 7, 24
 - Citation to the defendant, 7, 24
 - Description of premises, 7, 24
 - Name of state, 7, 34
 - Warrant of distress in general, 7, 23
- Extradition*, see EXTRADITION.
- Filling out blanks, 22, 1079
- Form, 22, 1072

WARRANTS, *cont'd.*

- Indictment:
 - Description of offense where warrant serves as indictment, 22, 1084
- Intoxicating liquors*, see INTOXICATING LIQUORS.
- Jurisdiction:
 - Offense not within magistrate's jurisdiction, 22, 1081
- Jurisdictional facts, 22, 1075
 - Bench warrant, 22, 1076
 - In general, 22, 1075
 - Recital of complaint, 22, 1075
- Landlord and tenant*, see LANDLORD AND TENANT.
- Mandamus, 13, 593
- Municipal securities*, see MUNICIPAL SECURITIES.
- Names, 22, 1077
 - Alteration of name, 22, 1079
 - Christian name, 22, 1077
 - Filling out blanks, 22, 1079
 - Legality of arrest by wrong name, 22, 1078
 - Name of accused not known, 22, 1077
 - Warrant naming only one of several defendants, 22, 1078
- Ordinances, 15, 423
- Place of commission of offense, 22, 1082
- Preliminary examination, 16, 843
 - Effect of failure to charge proper offense, 16, 844
 - Necessity for, 16, 843
 - To whom warrant returned, 16, 838
- Returns*, see *infra*, Directions as to return.
- Seal, 22, 1089
 - In general, 22, 1089
 - Necessity for, 22, 1089
 - Place of seal, 22, 1090
 - Private seal of justice, 22, 1090
 - Seal of magistrate issuing warrant, 22, 1090
 - Wafer, 22, 1090
 - Warrant issued by clerk under seal of court, 22, 1090
- Search warrants* see SEARCH WARRANTS.
- Sentence*, see SENTENCE.
- Signature, 22, 1088
 - In general, 22, 1088
 - Place of signature, 22, 1089
 - Signature in lead pencil, 22, 1089
 - Warrants signed by clerk of court or city attorney, 22, 1089
- Summary proceedings, 20, 1086
- Supplementary proceedings*, see SUPPLEMENTARY PROCEEDINGS.

WARRANTS, *cont'd.*

Time of commission of offense, 22, 1082

Two offenses, 22, 1082

Waiver of irregularities and defects, 22, 1091

By appearance and plea or giving of recognizance, 22, 1091

In general, 22, 1091

WARRANTY (see COVENANT):

Answers in code pleading:

General denials, 1, 826

Joinder of fraud and breach of warranty, 1, 859.

Costs:

Amount in controversy, 5, 169

Covenant, 5, 348

False representations and deceit:

Effect of, 8, 885

False warranty, 8, 903, 904

Sales, see *SALES*.

WASTE, 22, 1093

Accounts and accounting, 22, 1134

In general, 22, 1134

Requisites of bill, 22, 1136

Scope of remedy, 22, 1135

Survival of liability, 22, 1136

When proper, 22, 1135

Who entitled to relief, 22, 1136

Actions for waste committed, 22, 1095

Trespass on the case in nature of waste, see *infra*, *Trespass on the case in nature of waste*.

Writ of waste, see *infra*, *Writ of waste*.

Bill for accounting, 22, 1136

Bill for injunction, 22, 1128

Allegation of defendant's insolvency, 22, 1129

Allegation of facts, 22, 1128

Allegation of plaintiff's interest in and title to subject-matter, 22, 1130

Averment of irremedial damage or irreparable mischief, 22, 1129

Demurrer, 22, 1131

Pleading and proof, 22, 1131

Requisites of bill in general, 22, 1128

Verification, 22, 1130

Costs, 22, 1101, 1111

Curtsey, 22, 1098

Declaration, see *infra*, *Writ of waste*.

Declaration and complaint:

Trespass on the case in nature of waste, 22, 1110

Demurrers, 22, 1131

Dower, 22, 1098

Effect of injunction order, 22, 1132

Equitable waste, 22, 1119

Estrepleme, writ of, 22, 1112

Application for writ, 22, 1114

WASTE, *cont'd.*

Estrepleme, writ of, *cont'd.*

Direction of writ, 22, 1114

Dissolution of writ, 22, 1114

In general, 22, 1112

Nature of writ, 22, 1113

Necessity for affidavit, 22, 1114

Necessity for bond, 22, 1114

Time of application, 22, 1114

Heirs and devisees, 22, 1097

Husband and wife, 22, 1096

Injunction, 22, 1114

Answer, 22, 1131

Bond, 22, 1132

Demurrer to bill, 22, 1131

Discretion of court, 22, 1117

Dissolution, 22, 1132

Enlargement of remedy by injunction, 22, 1120

Form and requisites of bill, see *infra*, *Bill for injunction*.

For restraint of permissive and equitable waste, 22, 1119

General rule as to when proper, 22, 1118

Hearing, 22, 1132

In general, 22, 1114

Jurisdiction confined to technical waste, 22, 1117

Multiplicity of suits, 22, 1118

Necessity for privity, 22, 1119

Parties defendant, 22, 1124

Parties plaintiff, 22, 1122

Permissive waste, 22, 1119

Privity, 22, 1119

Remedy at law, 22, 1118

Removal of timber already cut, 22, 1121

Restraint of waste on lands in foreign country, 22, 1121

Threatened injury, 22, 1119

Timber, 22, 1121

Venue, 22, 1128

When proper, 22, 1118

Joinder of parties, 22, 1096

Trespass on the case in nature of waste, 22, 1106

Joint tenants and tenants in common:

Between joint tenants and tenants in common, 11, 767

Landlord and tenant, 12, 862; 22, 1098

Mortgages:

Actions by mortgagee, 22, 1109

Injunction, 22, 1123

Multiplicity of suits, 22, 1118

Notice, 22, 1133

Order in cause, 22, 1133

Application for order, 22, 1133

Effect of denial of commission of waste, 22, 1134

Enforcement of order, 22, 1134

In general, 22, 1133

Necessity for notice, 22, 1133

WASTE, *cont'd.*

- Parties to actions, 15, 727
 - Injunction, 22, 1122, 1124
 - Trespass on the case in nature of waste, 22, 1104
 - Writ of waste, 22, 1095
- Permissive waste, 22, 1119
- Plea, 22, 1100, 1111
- Privy, 22, 1119
- Proceedings to prevent or restrain waste, 22, 1112
 - Injunctions*, see *infra*, *Injunction*.
 - Order in cause*, see *infra*, *Order in cause*.
 - Writ of estrepement*, see *infra*, *Estrepement*, writ of.
 - Writ of prohibition of waste*, see *infra*, *Writ of prohibition of waste*.
- Prohibition*, see *infra*, *Writ of prohibition of waste*.
- Remedy at law, 22, 1118
- Splitting causes of action, 1, 162
- Timber, 22, 1121
- Trespass on the case in nature of waste, 22, 1101
 - Allegations of declaration and complaint, 22, 1111
 - Costs, 22, 1111
 - Declaration and complaint, 22, 1110
 - In general, 22, 1101
 - Joinder of parties, 22, 1106
 - Nature of action, 22, 1102
 - Parties defendant, 22, 1107
 - Parties plaintiff, 22, 1104
 - Plea, 22, 1111
 - Survival against personal representative, 22, 1110
 - When maintainable, 22, 1103
 - Variance, 22, 1131
- Venue, 22, 778, 795
 - Injunction, 22, 1128
- Verdict, 22, 1101
- Verification, 22, 1131
- Writ of estrepement*, see *infra*, *Estrepement*, writ of.
- Writ of prohibition of waste, 22, 1112
 - Against whom maintainable, 22, 1112
 - Definition, origin, and nature, 22, 1112
 - Proceedings on writ, 22, 1112
- Writ of waste, 22, 1095
 - Declaration, 22, 1099
 - Averment of plaintiff's title, 22, 1099
 - Averment that waste was to the disinheriting of plaintiff, 22, 1100
 - Character in which plaintiff holds, 22, 1100

WASTE, *cont'd.*

- Writ of waste, *cont'd.*
 - Declaration, *cont'd.*
 - Setting out premises by metes and bounds, 22, 1100
 - Specification of waste, 22, 1100
 - Definition, 22, 1095
 - Husband and wife, 10, 210
 - In general, 22, 1095
 - Joinder of plaintiffs, 22, 1096
 - Nature, 22, 1095
 - Parties defendant, 22, 1097
 - Parties plaintiff, 22, 1095
 - Plea, 22, 1100
 - Tenants in dower as parties, 22, 1098
 - Verdict, 22, 1101
 - When maintainable, 22, 1095
- WATER COMPANIES AND WATERWORKS, 22, 1137**
- Actions by water companies, 22, 1137
 - Action to restrain enforcement of ordinance fixing rates, 22, 1138
 - Condemnation proceedings, 22, 1137
 - Injunctions at suit of company, 22, 1137
 - Eminent domain, 22, 1137
 - Injunctions, 22, 1137
 - Action to restrain enforcement of ordinance fixing rates, 22, 1138
 - Injunctions at suit of company, 22, 1137
 - Restraining cutting off water supply, 22, 1140
 - Necessity for tender of amount due to company, 22, 1141
 - Who may obtain injunction, 22, 1140
 - When proper, 22, 1137
 - Mandamus, 22, 1141
 - Proceedings against water companies, 22, 1138
 - Action for deficiency of water in case of fire, 22, 1138
 - Actions to forfeit franchise, 22, 1138
 - Injunctions restraining cutting off water supply, 22, 1140
 - Mandamus, 22, 1141
 - Quo warranto proceedings, 22, 1139
 - Suits for specific performance, 22, 1140
 - Suits in equity, 22, 1139
 - Quo warranto, 22, 1139
 - Specific performance, 22, 1140

WATERS AND WATERCOURSES,
22, 1144

See RIPARIAN RIGHTS.

Actions (see *infra*, Navigation; Pollution):

- Actions for interference with easement to well, 22, 1178
- Actions to recover compensation for use of watercourse, 22, 1179
- Canals, 22, 1177

- Actions and suits for diversion or detention, 22, 1158

- Actions at law, 22, 1158

- Amendments, 22, 1164

- Averments of bill, 22, 1167

- Averments of plaintiff's pleadings, 22, 1160

- Averments as to damages, 22, 1161

- Averments of replication, 22, 1162

- In general, 22, 1160

- Joinder of causes of action, 22, 1162

- Location of obstruction, 22, 1161

- Malice of defendant, 22, 1162

- Matters of defense, 22, 1162

- Plaintiff's title and possession, 22, 1161

- Right to use water, 22, 1160

- Bill in equity, 22, 1167

- As to injury, 22, 1169

- As to plaintiff's right and title, 22, 1168

- In general, 22, 1167

- Joinder of cause of action, 22, 1169

- Prayer for relief, 22, 1169

- Costs, 22, 1165

- Defendant's pleadings, 22, 1162

- Form of action, 22, 1158

- In general, 22, 1158

- Judgment, 22, 1165

- Jurisdiction, 22, 1158

- Parties defendant, 22, 1159

- Parties plaintiff, 22, 1159

- Pleading and proof, 22, 1163

- Proof as to plaintiff's right, 22, 1164

- Province of court and jury, 22, 1164

- Suits in equity, 22, 1165

- Averments of answer, 22, 1169

- Decree, 22, 1170

- In general, 22, 1165

- Issues to jury, 22, 1170

- Jurisdiction of federal courts, 22, 1166

- Parties defendant, 22, 1167

- Parties plaintiff, 22, 1166

- Pleading and proof, 22, 1170

WATERS AND WATERCOURSES,
cont'd.

- Actions and suits for diversion or detention, *cont'd.*

- Survival of action, 22, 1158

- Variance, 22, 1163

- Venue, 22, 1158

- Warrant of abatement, 22, 1165

- Actions and suits for flowage, 22,

- 1144

- Actions at law, 22, 1144

- Amendments, 22, 1154

- Averments of plaintiff's pleadings, 22, 1148

- Anticipation of defense, 22, 1152

- Averments as to damages, 22, 1151

- Creation or maintenance of nuisance, 22, 1150

- In general, 22, 1148

- Joinder of causes of action, 22, 1152

- Negligence of defendant, 22, 1150

- Plaintiff's title to property injured, 22, 1149

- Defendant's pleadings, 22, 1152

- Admission by failure to deny averments of complaint, 22, 1152

- Defense of adjustment and satisfaction of damages, 22, 1153

- Defense of contributory negligence, 22, 1153

- Plea in abatement for defect of parties, 22, 1153

- Plea of prescription, 22, 1153

- Fact of flowage and cause thereof, 22, 1149

- Findings, 22, 1155

- Form of action, 22, 1144

- Instructions, 22, 1154

- Jurisdiction, 22, 1146

- Notice as condition precedent to suit, 22, 1145

- Parties defendant, 22, 1147

- Parties plaintiff, 22, 1146

- Pleading and proof, 22, 1153

- Province of court and jury, 22, 1154

- Statutory remedies, 22, 1145

- Suits in equity, 22, 1155

- Averments of answer, 22, 1157

- Averments of bill, 22, 1156

- Decree, 22, 1157

- In general, 22, 1155

- Issues to jury, 22, 1157

- Parties, 22, 1156

- Survival of action, 22, 1145

- Variance, 22, 1153

WATERS AND WATERCOURSES,
cont'd.

- Actions and suits for flowage, *cont'd.*
 - Venue, 22, 1146
 - Verdict, 22, 1155
 - View of premises by jury, 22, 1154
- Admiralty:
 - Obstruction of navigation, 22, 1176
- Amendments, 22, 1154
- Answers (see *infra*, Actions and suits for flowage), 22, 1162, 1170, 1172
- Bill in equity (see *infra*, Actions and suits for diversion or detention), 22, 1156
- Obstruction of navigation, 22, 1175
- Canals, 22, 1177
 - Actions and prosecutions relating to canals, 22, 1177
 - Collisions on canals, 22, 1178
 - Neglect of duty by canal officers, 22, 1177
- Costs, 22, 1165, 1176
- Criminal procedure:
 - Canals, 22, 1178
 - Obstruction of navigation, 22, 1176
 - Averments of indictment, 22, 1176
 - Jurisdiction of federal court, 22, 1176
 - Pollution, 22, 1173
- Declaration, see *infra*, Actions and suits for flowage.
- Declaration and complaint (see *infra*, Actions and suits for flowage):
 - Detention or diversion of water, see *infra* Actions and suits for diversion or detention.
 - Navigation, see *infra*, Navigation.
 - Pollution, 22, 1171
- Decree, 22, 1157, 1170
- Detention of waters, see *infra*, Actions and suits for diversion or detention.
- Ejectment, 7, 272
- Equity (see *infra*, Actions and suits for diversion or detention; Actions and suits for flowage):
 - Navigation, see *infra*, Navigation.
 - Pollution, see *infra*, Pollution.
- Findings, 22, 1155
- Fish and fisheries:
 - Actions and prosecutions for obstructing passage of fish, 22, 1178
- Flowage, see *infra*, Actions and suits for flowage.
- Flowing lands, see *infra*, Actions and suits for flowage.

WATERS AND WATERCOURSES,
cont'd.

- Indictments (see *infra*, Criminal procedure):
 - Obstruction of navigation, 22, 1176
- Injunctions:
 - Detention or diversion of water, 22, 1165
 - Obstruction of navigation, 22, 1175
 - Pollution, 22, 1171
- Instructions, 22, 1154
- Joinder of counts and causes, 22, 1152, 1162, 1169, 1174
- Judgment, 22, 1165
- Jurisdiction, 22, 1146, 1158
- Mills and milldams, see MILLS AND MILLDAMS.
- Navigation, 22, 1173
 - Actions at law for obstruction, 22, 1173
 - Averments of complaint, 22, 1173
 - As to injury, 22, 1173
 - As to place, 22, 1174
 - Joinder of causes of action, 22, 1174
 - That river is a public highway, 22, 1174
- Injunction, 22, 1173
- Variance, 22, 1175
- Venue, 22, 1173
- Who may sue, 22, 1173
- Averments of indictment, 22, 1176
- Criminal prosecutions, 22, 1176
- Suits in admiralty, 22, 1176
- Suits in equity, 22, 1175
 - Averments of bill, 22, 1175
 - Costs, 22, 1176
 - In general, 22, 1175
 - Jurisdiction, 22, 1175
 - Parties, 22, 1175
- Notice, 22, 1145, 1158
- Parties to actions:
 - Actions and suits for diversion or detention, 22, 1159
 - Actions and suits for flowage, 22, 1146
 - Obstruction of navigation, 22, 1175
 - Suits in equity, 22, 1156
 - Suits in equity for detention or diversion, 22, 1166
- Plea (see *infra*, Actions and suits for flowage), 22, 1162
- Pollution, 22, 1171
 - Actions at law, 22, 1171
 - Averments of complaint, 22, 1171
 - In general, 22, 1171
 - Province of court and jury, 22, 1171

WATERS AND WATERCOURSES,*cont'd.***Pollution, *cont'd.***

- Suits in equity, 22, 1171
 - Averments of answer, 22, 1172
 - Burden of proof, 22, 1172
 - Findings of court, 22, 1172
 - In general, 22, 1171
 - Parties, 22, 1172

Replications and replies, 22, 1162

Suits in equity (see *infra*, Actions and suits for diversion or detention; Navigation):*Pollution*, see *infra*, *Pollution*.

Survival of actions, 22, 1145, 1158

Obstructing and diverting water-course, 21, 334

United States courts, 22, 1166

Criminal procedure for obstruction of navigation, 22, 1176

Variance, 22, 1153, 1170, 1175

Venue, 22, 778, 1146, 1158, 1173

Verdict, 22, 1155

Well:

Actions for interference with easement to well, 22, 1178

WAYS, 22, 1180

Action at law for obstruction and interference, 22, 1184

Allegations of declaration and complaint, 22, 1185

Declaration and complaint, 22, 1185

Exclusiveness of remedy, 22, 1184

Form of action, 22, 1184

Joinder of counts, 22, 1186

Prosecution of action by surviving plaintiff, 22, 1184

Who may maintain, 22, 1184

Appeals, 22, 1183

Criminal procedure, 22, 1187

Declaration and complaint, 22, 1185

Decree, 22, 1183

Establishment of private ways, 22, 1180

Appeal and error, 22, 1183

Appointment and powers of committee to lay out way, 22, 1182

Award of damages, 22, 1182

Bond, 22, 1182

Decree or order establishing private road, 22, 1183

Estoppel of petitioner to deny regularity of proceedings, 22, 1183

In general, 22, 1180

Notice of application, 22, 1182

Objections to petition, 22, 1182

Parties defendant in actions to

establish, 22, 1181

Petition, 22, 1181

Index Pl. & Pr. — 75

WAYS, *cont'd.*

Indictment, 22, 1187

Injunctions, 22, 1186

Joinder of counts and causes, 22, 1186

Notice, 22, 1182

Parties to actions, 22, 1181

Petition, 22, 1181

WEAPONS, see CARRYING WEAPONS.**WEIGHTS AND MEASURES, 22, 1188**

Action under ordinance requiring delivery of certificate of weight, 22, 1188

Criminal procedure, 22, 1188

Indictment, 22, 1188

Prosecutions for using false weights and measures, 22, 1188

WELLS:

Actions for interference with easement to well, 22, 1178

WHARVES AND WHARFAGE,

20, 260

See SHIPPING.

Ejectment, 7, 275

WHORE HOUSE, see DISORDERLY HOUSES.**WIDOW, see DOWER.****WILFULLY:**

Arson, 2, 825

WILLS (see EXECUTORS AND ADMINISTRATORS; PROBATE AND CONTEST OF WILLS; SETTLEMENT OF DECEDENTS' ESTATES):

Additional allowances of costs, 1, 223; 22, 1212

Allowance to widow or family, see SETTLEMENT OF DECEDENTS' ESTATES.*Answer*, see *infra*, Suits in equity for construction of wills.

Appeal:

Suits in equity for construction of wills, 22, 1213

Attorney's fees, 22, 1212

Bills in chancery and statutory actions to set aside wills, 22, 1218

Averments of bill or complaint, 22, 1220

Decree, 22, 1221

In general, 22, 1218

Inherent equity jurisdiction, 22, 1218

Issues to jury, 22, 1220

Jurisdiction of federal courts, 22, 1220

Parties, 22, 1220

Statutory jurisdiction, 22, 1219

Where another will is established, 22, 1220

Bills in equity, see *infra*, Suits in equity for construction of wills.

WILLS, *cont'd.*

- Bills in equity and statutory suits to establish wills, 22, 1215
- Averments of bill, 22, 1217
- Burden of proof, 22, 1218
- Costs, 22, 1218
- Issues to jury, 22, 1217
- Judgment, 22, 1218
- Jurisdiction, 22, 1215
 - In general, 22, 1215
 - Lost, destroyed, or suppressed wills, 22, 1215
 - Statutory action in New York supreme court, 22, 1216

Parties, 22, 1217

Citations, see CITATIONS.

Complaint, see *infra*, Suits in equity for construction of wills.

Construction:

Proceedings in probate court for construction of wills, 22, 1214

Contest of wills, see PROBATE AND CONTEST OF WILLS.

Costs (see *infra*, Suits in equity for construction of wills):

Bills in equity to establish wills, 22, 1218

Cross-bill, 22, 1207

Debts of decedent, see SETTLEMENT OF DECEDENTS' ESTATES.

Decree (see *infra*, Suits in equity for construction of wills):

Bills in equity and statutory actions to set aside wills, 22, 1220

Bills in equity to establish wills, 22, 1218

Devises, see HEIRS AND DEVISEES.

Distributees, see LEGATEES AND DISTRIBUTUTES.

Equity, see *infra*, Suits in equity for construction of wills):

Establishment of wills, see *infra*, Bills in equity and statutory suits to establish wills.

Executors and administrators (see EXECUTORS AND ADMINISTRATORS):

Suits by executors for instructions, 22, 1191

Fraud:

Jurisdiction, 9, 680

Heirs, see HEIRS AND DEVISEES.

Interpleader, 22, 1203

Interpretation (see *infra*, Suits in equity for construction of wills):

Proceedings in probate court for construction of wills, 22, 1214

Issues to jury:

Bills in equity and statutory actions to set aside wills, 22, 1220

WILLS, *cont'd.*

Issues to jury, *cont'd.*

Bills in equity to establish wills, 22, 1217

Judgment:

Bills in equity to establish wills, 22, 1218

Jurisdiction (see *infra*, Suits in equity for construction of wills):

Bills in chancery and statutory actions to set aside wills, see *infra*,

Bills in chancery and statutory actions to set aside wills.

Bills in equity and statutory suits to establish wills, see *infra*,

Bills in equity and statutory suits to establish wills.

Legatees, see LEGATEES AND DISTRIBUTUTES.

Manner of pleading wills, 22, 1221

Multifariousness, 22, 1204

Parties to actions:

Bills in equity and statutory actions to set aside wills, 22, 1220

Bills in equity to establish wills, 22, 1217

Suits in equity for construction of wills, 22, 1199, 1201

Making new parties, 22, 1202

Necessity to present parties in proper capacity, 22, 1202

Prayer for relief, 22, 1206

Probate and contest of wills, see PROBATE AND CONTEST OF WILLS.

Production of wills, 22, 1221

Reformation of contracts, 22, 1221

Removal of causes:

Proceedings relating to wills, 18, 174

Suits relating to wills and administration, 18, 224

Report and case made, 22, 1212

Rescission, cancellation, and reformation of contracts, 22, 1221

Setting aside wills, see *infra*, Bills in chancery and statutory actions to set aside wills.

Settlement of decedents' estates, see SETTLEMENT OF DECEDENTS' ESTATES.

Suits by executors for instructions, 22, 1191

Suits in equity for construction of wills, 22, 1191

Answer, 22, 1206

Answer containing counterclaim, 22, 1207

Answer containing irrelevant, impertinent, or scandalous matter, 22, 1207

WILLS, *cont'd.*Suits in equity for construction of wills, *cont'd.*Answer, *cont'd.*

Answer praying sale of real estate, 22, 1207

In general, 22, 1206

Waiver of objections to jurisdiction, 22, 1206

Appeal, 22, 1213

Bill or complaint, 22, 1203

Averment of probate, 22, 1205

Bill of interpleader, 22, 1203

Form of bill, 22, 1203

Jurisdictional facts, 22, 1204

Multifariousness and misjoinder, 22, 1204

Necessity for bill, 22, 1203

Prayer for relief, 22, 1206

Requisite averments, 22, 1203

Setting out will, 22, 1205

Case reversed or reported for advice, 22, 1212

Costs, 22, 1210

Attorney's fees, 22, 1212

Costs on appeal, 22, 1213

Extra allowances, 22, 1212

In general, 22, 1210

Whether payable out of general estate or particular fund, 22, 1211

Cross-bill, 22, 1207

Decree, 22, 1207

Conclusiveness and effect of decree, 22, 1209

Declaration of future rights, 22, 1208

In general, 22, 1207

Leave to apply for further directions or relief, 22, 1209

Necessity to answer all questions submitted, 22, 1208

Power to decree further relief, 22, 1208

Hearing, 22, 1207

Inherent equity jurisdiction, 22, 1191

Declaration of future rights, 22, 1195

Determination of hypothetical, abstract, or moot questions, 22, 1195

Distinction between wills of realty and wills of personality, 22, 1192

Jurisdiction as between courts of different states, 22, 1196

Jurisdiction dependent upon nature of questions involved, 22, 1195

WILLS, *cont'd.*Suits in equity for construction of wills, *cont'd.*Inherent equity jurisdiction, *con.*

Jurisdiction incident to that over trusts, 22, 1191

Jurisdiction of federal courts, 22, 1196

Jurisdiction as between courts of equity and courts of probate, 22, 1198

Making new parties, 22, 1202

Necessity to present parties in proper capacity, 22, 1202

Parties defendant, 22, 1201

Parties plaintiff, 22, 1199

Rehearing, 22, 1212

Statutory jurisdiction, *oo. ooo*

Suits to compel production of wills, 22, 1221

Surrogates:

Jurisdiction as between courts of equity and courts of probate, 22, 1198

Proceedings in probate court for construction of wills, 22, 1214

United States courts:

Construction of wills, 22, 1196

WINDING UP CORPORATIONS, 22, 1222

Abatement, 22, 1278

Actions to collect assets and to enforce liabilities of corporation, see infra.
Proceedings under statutes providing for posthumous existence and winding up by officers.

Amendments, 22, 1274

Answers, 22, 1275

Appeals, 22, 1292

Attachment:

Priorities, 22, 1290

Attorney-general, 22, 1255

Actions by attorney-general or in name of people, 22, 1236

Bills in equity, 22, 1262

Amendments, 22, 1274

Bill showing that dissolution is not sought in good faith, 22, 1262

Cross-bill, 22, 1275

Definiteness and certainty, 22, 1264

Dissolution of corporation, 22, 1267

Fraud, 22, 1268

General requisites, 22, 1262

Grounds for equitable relief, 22, 1265

Insolvency, 22, 1269

Inventory showing financial condition of corporation, 22, 1271

Legal conclusions, 22, 1264

Misconduct, 22, 1268

WINDING UP CORPORATIONS,

*cont'd.*Bills in equity, *cont'd.*

Misfeasance or nonfeasance, 22, 1267

Mismanagement, 22, 1268

Multifariousness, 22, 1263

Prayer for relief, 22, 1272

Reasonable cause or reasons for dissolution, 22, 1266

Schedule showing financial condition of corporation, 22, 1271

Statutory grounds for relief, 22, 1265

Supplemental bill, 22, 1274

Verification, 22, 1273

Collateral attack, 22, 1225

Consolidation, 22, 1297

Costs, 22, 1292

Courts:

Discretion of court, 22, 1253

Leave of court, 22, 1253

Creditors' bills, 22, 1243

Building and loan association, 22, 1246

Doctrine that assets of dissolved corporation constitute trust fund, 22, 1244

Equitable jurisdiction after dissolution of corporation, 22, 1244

Equitable jurisdiction after suspension of business, 22, 1245

Equitable jurisdiction notwithstanding statute providing for posthumous existence, 22, 1247

Foreign corporations, 22, 1246, 1248

Jurisdiction conferred by statute, 22, 1247

Jurisdiction of equity to entertain creditors' bills, 22, 1243

Jurisdiction of equity to set aside fraudulent conveyances, 22, 1243

Statutory trustees, 22, 1246

Cross-bill, 22, 1275

Declaration and complaint:

Merger, consolidation, or reorganization, 22, 1298

Decree and proceedings subsequent thereto, 22, 1278

Appointment of receiver, see infra, Receivers.

Directing sale of property, 22, 1279

Distribution of assets, see infra, Distribution of assets.

In general, 22, 1278

Injunction against interference with assets, 22, 1279

Injunction bond, 22, 1281

WINDING UP CORPORATIONS,

*cont'd.*Decree and proceedings subsequent thereto, *cont'd.*

Necessity to regard pleadings, 22, 1278

Statutes authorizing issuance of injunction, 22, 1280

Definiteness and certainty in pleading, 22, 1264

Dissolution of corporations (see *infra*, Relief against dissolution and winding up of corporations), 22, 1267*Suits in equity to dissolve and wind up corporations, see infra, Suits in equity to dissolve and wind up corporations.*

Dissolution of corporations at common law, 22, 1224

Effect of dissolution, 22, 1224

How dissolution effected, 22, 1224

Necessity for direct proceedings to obtain dissolution of corporation, 22, 1225

Distribution of assets, 22, 1287

In general, 22, 1287

Priorities, 22, 1289

Priority of attachment lien, 22, 1290

Priority of creditors over stockholders, 22, 1291

Right of creditors to come in under decree, 22, 1288

Statutory provisions, 22, 1291

Equity:

Suits in equity to dissolve and wind up corporations, see infra, Suits in equity to dissolve and wind up corporations.

Exhaustion of legal remedies by creditors, 22, 1251

Statutory provisions, 22, 1252

Where relief is sought after dissolution of corporation, 22, 1252

Where relief is sought before dissolution of corporation, 22, 1251

False imprisonment:

Application of statutes conferring jurisdiction upon courts of chancery to foreign corporation, 22, 1242

Foreign corporations:

Creditors' bills, 22, 1246, 1248

Jurisdiction of equity, 22, 1238

Fraud, 22, 1268

Fraudulent conveyances, 22, 1243

Incumbrancers, 22, 1261

Injunctions:

Injunction against interference with assets, 22, 1279

WINDING UP CORPORATIONS,

*cont'd.*Injunctions, *cont'd.*

Injunction in aid of quo warranto, 22, 1229

Relief against dissolution and winding up of corporations, 22, 1294

Removal of officers and injunction against discharge of their duties, 22, 1232

Insolvency, 22, 1237, 1269

Effect of insolvency, 22, 1226

Intervention, 22, 1261

Inventory showing financial condition of corporation, 22, 1271

Jurisdiction:

Creditors' bills, see *infra*, *Creditors' bills*.

Jurisdiction of particular courts, 22, 1248

Conflict of jurisdiction, 22, 1249

In general, 22, 1248

Pendency of several actions, 22, 1249

United States courts, 22, 1249

Venue, 22, 1249

Jurisdiction to dissolve and wind up corporations:

Inherent jurisdiction, 22, 1227

Apparent conflict of authority as to extent of jurisdiction, 22, 1233

Appointment of receiver in quo warranto proceedings, 22, 1230

Before dissolution of corporation, 22, 1227

Equitable jurisdiction after dissolution of corporation or expiration of charter, 22, 1233

Exceptions to and qualifications of general rule, 22, 1230

Extent of remedial power to be exercised by court of equity, 22, 1231

Injunction in aid of quo warranto, 22, 1229

Jurisdiction of equity to aid voluntary dissolution, 22, 1233

Jurisdiction of equity to dissolve and wind up foreign corporations, 22, 1228

Removal of officers and injunction against discharge of their duties, 22, 1232

Rule that court of equity is without jurisdiction, 22, 1227

WINDING UP CORPORATIONS,

*cont'd.*Jurisdiction to dissolve and wind up corporations, *cont'd.*

Jurisdiction conferred by statute, 22, 1234

Actions by attorney-general or in name of people, 22, 1236

Application of statutes to foreign corporations, 22, 1242

Dissolution upon good cause shown, 22, 1240

Equitable jurisdiction to appoint receiver and wind up corporation after dissolution, 22, 1240

Equity jurisdiction limited by provisions of statute, 22, 1236

Implied power to dissolve corporation, 22, 1239

Insolvent corporation, 22, 1237

Jurisdiction to appoint receiver in quo warranto proceedings, 22, 1241

Statutes applicable to particular corporations, 22, 1238

Statutes authorizing appointment of receiver, 22, 1239

Statutes conferring jurisdiction to dissolve and wind up, 22, 1235

To dissolve and wind up corporations, 22, 1234

Voluntary dissolution, 22, 1237

Jury trial, 22, 1277

Leave of court, 22, 1253

Legal conclusions, 22, 1264

Merger, 22, 1297

Misconduct, 22, 1268

Misfeasance, 22, 1267

Multifariousness and misjoinder, 22, 1263

Necessity for direct proceedings to obtain dissolution of corporation, 22, 1225

Nonfeasance, 22, 1267

Notice, 22, 1276

Officers, see *infra*, *Proceedings under statutes providing for posthumous existence and winding up by officers*.

Opening, amending, and vacating judgments, 22, 1297

Order to show cause, 22, 1276

Parties to actions (see *infra*, *Suits in equity to dissolve and wind up corporations*):

WINDING UP CORPORATIONS,
*cont'd.*Parties to actions, *cont'd.*

Actions to collect assets and to enforce liabilities of corporation, 22, 1303

Merger, consolidation, or reorganization, 22, 1297

Posthumous existence, see *infra*, Proceedings under statutes providing for posthumous existence and winding up by officers.

Prayers for relief, 22, 1272

Priorities, 22, 1289

Proceedings under statutes providing for posthumous existence and winding up by officers, 22, 1299

Actions to collect assets and to enforce liabilities of corporation, 22, 1301

In general, 22, 1301

Parties, 22, 1303

Pleading, 22, 1304

Service of process, 22, 1305

Equitable control over statutory trustees, 22, 1305

Object of statutes, 22, 1300

Provisions and objects of statutes, 22, 1299

Revivor of actions pending at time of dissolution, 22, 1301

Prohibition, 22, 1297

Quo warranto:

Injunction in aid of quo warranto, 22, 1229

Jurisdiction to appoint receiver in quo warranto proceedings, 22, 1241

Receivers:

Appointment of receiver, 22, 1281

Actions by receiver, 22, 1285

Direction and protection of receiver by court, 22, 1285

Discretion of court, 22, 1283

Effect of appointment of receiver, 22, 1284

Final settlement of receiver, 22, 1287

Jurisdiction of equity to appoint receiver, 22, 1281

Receivers' sales, 22, 1286

Statutory provisions, 22, 1282

Terms of order appointing receiver, 22, 1283

Appointment of receiver for insolvent corporation, 22, 1237

Effect of appointment of receiver, 22, 1226

Equitable jurisdiction to appoint receiver and wind up corporation after dissolution, 22, 1240

WINDING UP CORPORATIONS,
*cont'd.*Receivers, *cont'd.*

Jurisdiction to appoint receiver in quo warranto proceedings, 22, 1241

Receivers as parties defendant, 22, 1259

Statutes authorizing appointment of receiver, 22, 1237, 1239

Reference, 22, 1277

Relief against dissolution and winding up of corporations, 22, 1294

By injunction, 22, 1294

By prohibition, 22, 1297

Impairment of obligation of contracts, 22, 1295

Injunction against consolidation or merger, 22, 1296

Injunction against dissolution by legislature, 22, 1295

Injunction against dissolution pending creditors' bill, 22, 1296

Opening and vacating judgments and decrees, 22, 1297

Reorganization, 22, 1297

Revivor of suits and actions, 22, 1278, 1301

Sale of property:

Receiver's sale, 22, 1286

Schedule showing financial condition of corporation, 22, 1271

Service of process, 22, 1305

Stock and stockholders, 22, 1257, 1259

Enforcement of stockholders' liability, 20, 709

Joinder of stockholders where suit to enforce a statutory liability is really one to wind up the affairs of a corporation, 20, 726

Priority of creditors over stockholders, 22, 1291

Suits in equity to dissolve and wind up corporations, 22, 1227

Abatement, 22, 1278

Answer, 22, 1275

Appeal, 22, 1292

Bill or complaint, see *infra*, Bills in equity.

Costs, 22, 1292

Cross-bill and cross-complaint, 22, 1275

Decree and proceedings subsequent thereto, see *infra*, Decree and proceedings subsequent thereto.

Discretion of court, 22, 1253

Exhaustion of legal remedies by creditors, see *infra*, Exhaustion of legal remedies by creditors.

Intervention, 22, 1261

WINDING UP CORPORATIONS,
cont'd.

Suits in equity to dissolve and wind up corporations, *cont'd.*

Jurisdiction of particular courts, see infra, Jurisdiction of particular courts

Jurisdiction to dissolve and wind up corporations, see infra, Jurisdiction to dissolve and wind up corporations.

Jurisdiction to entertain creditors' bills, see infra, Creditors' bills.

Jury trial, 22, 1277

Leave of court, 22, 1253

Necessity for strict compliance with statute, 22, 1250

Notice, 22, 1276

Order to show cause, 22, 1276

Parties complainant, 22, 1255

Attorney-general, 22, 1255

Creditors, 22, 1256

Persons designated by statute, 22, 1255

State, 22, 1255

Stockholders, 22, 12, 1257

Parties defendant, 22, 1258

Assignee of corporation, 22, 1261

Corporation, 22, 1258

Incumbrancers, 22, 1261

Officers of corporation, 22, 1259

Receiver, 22, 1259

Stockholders, 22, 1259

Reference, 22, 1277

Revivor, 22, 1278

Supplemental bill, 22, 1274

Suspension of business, 22, 1245

United States courts, 22, 1249

Venue, 22, 1249

Verification, 22, 1273

WITHDRAWING AND STRIKING OUT EVIDENCE, 22, 1307

Bills of exceptions, 22, 1321

Exceptions and objections, 22, 1321

Necessity for previous objection, 22, 1310

Hearsay evidence, 22, 1314

Motions, see infra, Striking out evidence.

Parol evidence, 22, 1315

Striking out evidence, 22, 1310

By motion, 22, 1315

Effect of motion as waiver of exception, 22, 1319

In general, 22, 1315

Motion to exclude for variance, 22, 1319

Precision required, 22, 1318

Requisites of motion, 22, 1317

WITHDRAWING AND STRIKING OUT EVIDENCE, *cont'd.*

Striking out evidence, *cont'd.*

By motion, *cont'd.*

Striking out by consent after court's refusal of motion, 22, 1320

Striking out on court's own motion, 22, 1320

Time of motion, 22, 1317

Where only part of evidence is improper, 22, 1318

Exceptions and bills of exception, 22, 1321

Hearing and determination of motion, 22, 1320

Instructions to jury, 22, 1321

Power of court to strike out, 22, 1310

Procedure in striking out evidence, 22, 1315

Striking out by consent after court's refusal of motion, 22, 1320

Striking out on court's own motion, 22, 1320

When proper, 22, 1310

Answers to leading questions, 22, 1314

Evidence admitted on condition of supplying connecting evidence, 22, 1312

Evidence apparently admissible subsequently shown to be inadmissible, 22, 1312

Evidence of witness testifying to best of recollection, 22, 1314

Evidence relevant and competent but insufficient, 22, 1314

Exclusion of parol evidence of written contract, 22, 1315

Hearsay evidence, 22, 1314

Illness of witness before end of cross-examination, 22, 1315

Improper answer to proper question, 22, 1312

Necessity for previous objection, 22, 1310

Withdrawing evidence, 22, 1308

Application for leave to withdraw, 22, 1309

Effect of withdrawal, 22, 1301

General rule forbidding, 22, 1308

Manner of withdrawal, 22, 1309

When proper, 22, 1308

Withdrawal by court *suo motu*, 22, 1309

WITHDRAWING JUROR, see DISMISSAL, DISCONTINUANCE, AND NON-SUIT; JURY.

WITHDRAWING PLEADINGS, 22, 1322

Application for leave to withdraw, 22, 1323

Discretion of court, 22, 1323

Effect of withdrawal, 22, 1323

Imposition of terms, 22, 1323

What may be withdrawn, 22, 1322

Withdrawal after verdict, 22, 1322

WITHOUT PREJUDICE:

Dismissal, discontinuance, and nonsuit, see DISMISSAL, DISCONTINUANCE, AND NONSUIT.

WITNESSES, 22, 1325

See EXAMINATION OF WITNESSES.

Ad testificandum, see *infra*, Habeas corpus *ad testificandum*.

Affidavit for attachment, 22, 1347

Affidavits:

Competency of affiants, 1, 325

Arguments of counsel:

Accusations of tampering with witnesses, 2, 733

Comment on absence of witnesses, 2, 714

Comment on character or credibility of parties or witnesses, 2, 738

Comment on defendant's omission to call his wife, 2, 725

Comment on failure of a party to testify in a civil case, 2, 726

Comment on failure of the accused to testify in criminal cases, 2, 718

Comments in advance, 2, 720

Construction of statutes, 2, 718, 723

Defendant's failure to produce witnesses, 2, 722

Effect of improper comment, 2, 724

General scope and effect of statutory provisions, 2, 718

Improper comment where the evidence is conclusive, 2, 724

Instruction by the court, 2, 724

New trial, 2, 724

What allusions are too remote, 2, 723

What constitute improper comments, 2, 723

Where defendant elects to testify, 2, 721

Credibility of witness, 2, 715

Attachments, 22, 1345

Affidavit, 22, 1347

Necessity and propriety, 22, 1345

WITNESSES, *cont'd.*

Attachments, *cont'd.*

Proceedings for attachment, 22, 1346

Attendance of witnesses, see *infra*, Procuring attendance of witnesses.

Bail and recognizance (see *infra*, Recognizances to appear in criminal cases), 3, 231

Bribery (see BRIBERY), 22, 1351

Calling witnesses, 22, 1348

Change of venue, see CHANGE OF VENUE.

Commitments, 4, 568

Compensation, see *infra*, Fees.

Conspiracy, 4, 732

Contempt:

Attachment without prior order, 4, 784

Hearing apart, 21, 989

Materiality of a witness, 4, 781

Continuances, see CONTINUANCES.

Coroner's inquests, 5, 43, 46

Examination conducted by coroner, 5, 47

Hearing all persons who claim knowledge, 5, 47

Jury may question witness, 5, 47

Testimony reduced to writing, 5, 48

Witnesses should be enrolled and sworn, 5, 47

Corroboration, 10, 324

Contradiction involving charge of fraud, 10, 324

Evidence of good character, 10, 325

Examination in chief, 10, 324

Explanation by impeached witness himself, 10, 332

Good character presumed, 10, 324

Prior consistent statements, 10, 329

Rape cases, 10, 331

Requisite knowledge of sustaining witness, 10, 331

Right to corroborate, 10, 325

Strengthening evidence, 10, 325

Value of negative evidence, 10, 332

When allowed, 10, 324

Witness merely contradicted, 10, 324

Courts:

Cautioning witnesses, 21, 991

Putting witnesses under rule, see TRIAL.

Criminal procedure:

Recognizances to appear in criminal cases, see *infra*, Recognizances to appear in criminal cases.

WITNESSES, *cont d.*

- Criminal procedure, *cont d.*
 - Subpoena, 22, 1330
 - Common law, 22, 1330
 - In general, 22, 1330
 - Necessity and sufficiency of application, 22, 1331
 - Statutory provisions, 22, 1330
- Tender and payment of fees, 22, 1340
- Cross-examination, see EXAMINATION OF WITNESSES.
- Damages, see *infra*, Recovery of damages, forfeitures, or penalties from defaulting witnesses.
- Declaration and complaint:
 - Recovery of damages, forfeitures, or penalties from defaulting witnesses, 22, 1353
- Defaulting witnesses, see *infra*, Recovery of damages, forfeitures, or penalties from defaulting witnesses.
- Depositions, see DEPOSITIONS.
- Directing verdict:
 - Question of credibility of witnesses, 6, 694
- Discovery, see DISCOVERY.
- Duces tecum, see *infra*, Subpoena.
- Eminent domain:
 - Fees, 7, 672
 - Right to swear witnesses and hear evidence, 7, 576
- Examination of parties before trial, see EXAMINATION OF PARTIES BEFORE TRIAL.
- Examination of witnesses, see EXAMINATION OF WITNESSES.
- Exceptions and objections, see EXCEPTIONS AND OBJECTIONS.
- Exclusion from court house, see TRIAL.
- Expert witnesses, see EXPERT WITNESSES.
- Fees (see FINES AND COSTS IN CRIMINAL CASES), 22, 1355
 - Action to recover, 22, 1355
 - Certificates of materiality of evidence, 22, 1356
 - Taxation, 12, 1355
 - Tender and payment of fees, 22, 1339
- Forcible entry and detainer, 9, 69
- Grand juries, see GRAND JURIES.
- Habeas corpus *ad testificandum*, 22, 1341
 - How and when granted, 22, 1341
 - Requisites and sufficiency of application, 22, 1342
 - Requisites and sufficiency of writ, 22, 1343
 - Service and return, 22, 1343

WITNESSES, *cont d.*

- Habeas corpus *ad testificandum*, *con.*
 - To whom application made, 22, 1342
 - When and where application made, 22, 1342
 - When necessary, 22, 1341
- Impeachment, see IMPEACHMENT OF WITNESSES.
- Indictments, see INDICTMENTS.
- Informations, 10, 453
- Indorsement of witnesses, 10, 460
- Instructions, see INSTRUCTIONS.
- Interference with witnesses, see OBSTRUCTING JUSTICE.
- Jurisdiction:
 - Procuring attendance of witnesses, 22, 1327
 - In general, 22, 1327
 - Particular bodies and persons, 22, 1327
- Mandamus, 13, 552
 - Attachment against party or witness, 13, 553
 - Coercion of witnesses, 13, 553
 - To receive proof or hear witnesses, 13, 552
- New trial, see NEW TRIAL.
- Number of witnesses:
 - Discretion of court in limiting number of witnesses, 21, 980
 - Distinction between chief and collateral issues, 21, 981
 - General rule, 21, 980
- Oath, see *infra*, Swearing witnesses.
- Obstructing justice, see OBSTRUCTING JUSTICE.
- Obstructing witnesses, 22, 1351
- Order of proof, see ORDER OF PROOF.
- Parties to actions (see EXAMINATION OF PARTIES BEFORE TRIAL):
 - Equity, 15, 601
- Penalties, see *infra*, Recovery of damages, forfeitures, or penalties from defaulting witnesses.
- Preliminary examination, see PRELIMINARY EXAMINATION.
- Privilege, 22, 1350
- Procuring attendance of witnesses:
 - Attachment, see *infra*, Attachments.
- Habeas corpus *ad testificandum*, see *infra*, Habeas corpus *ad testificandum*.
- Jurisdiction, 22, 1327
 - In general, 22, 1327
 - Particular bodies and persons, 22, 1327
- Methods of procuring attendance of witnesses, 22, 1328

WITNESSES, *cont'd.*

Procuring attendance of witnesses, *cont'd.*

Recognizances to appear in criminal cases, see infra, Recognizances to appear in criminal cases.

Subpoena, see infra, Subpoena.

Tender and payment of fees, 22, 1339

Putting witnesses under rule, see TRIAL.

Rape:

Corroboration of witnesses, 10, 331

Prior consistent statements of prosecuting witness, 10, 331

Recalling witnesses, see ORDER OF PROOF.

Recognizances to appear in criminal cases, 22, 1343

Compliance with statutes, 22, 1344

Form and sufficiency of obligation, 22, 1345

In general, 22, 1343

Jurisdiction of court, 22, 1343

Nature and form of proceeding, 22, 1345

Recovery of damages, forfeitures, or penalties from defaulting witnesses, 22, 1352

Action to recover penalty, 22, 1352

Declaration and complaint, 22, 1353

Parties, 22, 1353

Plea or answer, 22, 1355

Remedies, 22, 1352

Scire facias, 22, 1352

Specific allegations, 22, 1353

Venue, 22, 1353

References:

Compelling witnesses to attend and testify, 17, 1027

Returns, 22, 1341

Habeas corpus *ad testificandum*, 22, 1343

Rules of court:

Number of witnesses, 18, 1248

Scope of article, 22, 1327

Self-crimination (see DISCOVERY):

Grand juries, 10, 397

Scandal and impertinence, 19, 195

Separation of witnesses, see TRIAL.

Service of subpoena, 22, 1335

By whom made, 22, 1336

Habeas corpus *ad testificandum*, 22, 1343

How made, 22, 1337

Necessity of valid service, 22, 1335

Proof of service, 22, 1341

WITNESSES, *cont'd.*

Service of subpoena, *cont'd.*

Tender or payment of fees, 22, 1339

Tender or payment of fees in criminal cases, 22, 1340

Time of service, 22, 1338

What is a reasonable time, 22, 1338

Where made, 22, 1336

Subpoena, 10, 393; 22, 1328

Attestation, 22, 1335

Description of documents in subpoena *duces tecum*, 22, 1334

Entitlement of writ, 22, 1332

Issuance, 22, 1329

Issuance in civil cases, 22, 1329

Issuance in criminal cases, 22, 1330

Name of party requiring evidence, 22, 1333

Necessity, 22, 1328

Necessity and sufficiency of application in criminal cases, 22, 1331

Penalty, 22, 1335

Place of attendance, 22, 1333

Propriety, 22, 1328

Requisites, 22, 1332

Return of writ, 22, 1341

Seal, 22, 1335

Service, see infra, Service of subpoena.

Subpoena *ad testificandum*, 22, 1328, 1329

Subpoena *duces tecum*, 22, 1328, 1330, 1334, 1349

Depositions, 6, 622

Sufficiency, 22, 1332

Time of attendance, 22, 1333

To whom directed, 22, 1333

Supplementary proceedings, see SUPPLEMENTARY PROCEEDINGS.

Swearing witnesses, 22, 1348

Form of oath, 22, 1350

In general, 22, 1348

Witnesses under subpoena *duces tecum*, 22, 1349

Tender and payment of fees, 22, 1339

Trial, see TRIAL.

Witness fees, see infra, Fees.

WOMEN, see ABDUCTION.

WOODS AND FORESTS, 22, 1358

WORDS AND PHRASES:

Abode:

Last or usual place of abode, 19, 627

About:

On or about, 10, 516

Absence, 18, 1006, 1027

Absolute drunkenness, 11, 203

According to law, 13, 784

Mandamus, 13, 676

WORDS AND PHRASES, *cont'd.*

Account, 17, 997
 Acquiescence, 11, 203
 Actions, 1, 751
 Error, writ of, 7, 826
 Act or transaction, 17, 790
 Adjoining, 3, 750
 Adoption, 11, 203
 Adultery, 1, 306
 Adverse possession, 11, 204
 Affidavit, 1, 309
 Aforethought, 10, 119
 Agent:
 Service of process, 19, 665
 Aggrieved, 2, 170
Allocatur, 15, 319
 Alter:
 Forgery, 9, 607
 And:
 Attachment, 3, 24
 Answer, 13, 204
 Answer or plea, 18, 288
 Appearances, 2, 595
 As:
 Executors and administrators, 8, 667
 As soon as possible:
 Insurance, 11, 429
 At, 19, 627
 Attorney, 1, 364
 Beast, 13, 412
 Believed, 1, 365
Bona fide purchaser, 9, 207
 Brought, 7, 877
 Buildings, 2, 826; 3, 747
 Burglariously, 3, 742, 753
 By, 21, 704
 By virtue of, 21, 719
 Cards, 9, 775, 779, 782
 Care, 11, 203
 Carelessness, 11, 203
 Carry away, 12, 954
 Cattle, 13, 412
 Co., 15, 930
 Color of title, 11, 204
 Compel, 11, 203
 Controversies, 18, 169
 Corn, 13, 413
 Corruptly, 16, 337
 Costs to abide the event, 5, 220
 Credible person, 3, 8
 Decision, 8, 932; 11, 809, 828
 Deliberate:
 Homicide, 10, 123
 Determination, 11, 809
 Difficult and extraordinary cases, 1, 226
 Diligent inquiry, 11, 203
 Disseizin, 9, 23
 Divers, 12, 980
 Divers and sundry, 12, 980
 Dogs, 13, 413
 Domestic animals, 13, 412

WORDS AND PHRASES, *cont'd.*

Due notice:
 Presentment and demand, 14, 551
 Duly, 1, 807
 Duly presented, 14, 536
 Duly protested, 14, 547
 Dwelling, 3, 747
 Dwelling house, 2, 826
 Editor, 17, 108
 Embezzled, 7, 442
 Executed, 18, 919
 Exemplary damages, 11, 204
 Extorsively, 8, 794
 Falsely, 16, 335
 Forgery, 9, 556
 Family, 19, 631
 Father:
 Intoxicating liquors, 11, 558
 Felonies, 2, 825; 3, 772
 Felonious, 12, 975, 1015
 Feloniously, 2, 853; 3, 753; 7, 442;
 9, 556; 11, 203; 13, 414; 16,
 337; 17, 655, 658; 18, 1220
 False pretenses, 8, 860
 Gaming, 9, 774
 Homicide, 10, 121
 Indictments, 10, 492
 Female, 17, 650
 Filing, 8, 923
 Filing evidence, 3, 424
 Findings, 8, 932
 Fine, 16, 234
 Folio, 9, 18
 For an illegitimate purpose, 11, 204
 Forcibly, 17, 658
 For the use, 15, 112
 Forthwith, 17, 87, 104; 21, 705
 Insurance, 11, 429
 Franchises, 2, 43
 Fraudulently, 12, 975
 Freehold, 2, 47
 Freeholder:
 Grand juries, 10, 356
 "Going" witnesses, 6, 482
 Good cause, 5, 1009; 7, 609
 Good defense, 1, 362
 Grain, 13, 413
 Gross negligence, 11, 204
 Guarantee, 11, 203
 Habitual criminal intercourse, 1, 308
 Her, 17, 650
 House, 2, 826; 3, 747
 Householder:
 Grand juries, 10, 356
 Human being, 10, 146
 Immaterial, 8, 228
 Immediately:
 Insurance, 11, 429
 Incompetent, 8, 227
 Indigent person, 16, 657
 Injured party, 15, 112
 Instantly, 21, 705
Instructions, see INSTRUCTIONS.

WORDS AND PHRASES, *cont'd.*

Intent, 2, 847
 Intent to defraud creditors, 11, 204
 Intervening damages, 18, 1018
 Introduced, 3, 424
 Involved, 1, 233
 Irrelevant, 8, 228
 Justly, 3, 20
 Justly due:
 Confession of judgment, 11, 1105
 Knowingly, 8, 794; 13, 409; 16, 338, 349
 Land, 12, 678
 Last place of abode, 19, 627
 Last usual place of abode, 18, 937
 Long account, 17, 997
 Malice, 11, 204
 Malice aforethought, 10, 118
 Maliciously, 13, 408, 410, 934
 Indictments, 10, 492
 Managing agent, 19, 662, 680, 688
 Mansion house, 3, 747
 Master:
 Intoxicating liquors, 11, 558
 Material facts, 11, 204
 Mischievously, 13, 408, 410
 Month, 17, 97
 Mortal, 10, 134
 Murder, 10, 144
 Near, 7, 523
 Newspaper, 17, 101
 Obtained:
 False pretenses, 8, 879
 Occupants, 7, 488
 Odium, 4, 403
 Once a week, 17, 113
 On or about, 10, 516
 On or before, 9, 227
 On the relation, 15, 112
 Open court, 7, 113
 Opinions, 5, 937
 Order, 14, 317
 Ordinary skill:
 Malpractice, 16, 532
 Other persons, 16, 263
 Owner of, 21, 718
 Owners, 7, 488
 Papers in evidence, 12, 592
 Parties to actions, 15, 463
 Pauper, 16, 657
 Penalty, 16, 234
 Personal representatives, 5, 853
 Persons interested, 7, 488
 Place of abode, 19, 627
 Place of business, 19, 626
 Pleadings, 1, 654
 Poor, 16, 657
 Premeditated:
 Homicide, 10, 123
 Preponderance of evidence, 11, 205
 Presumption of law, 11, 205
 Presumptive notice, 11, 204
 Printer, 1, 325; 17, 108, 109

WORDS AND PHRASES, *cont'd.*

Property, 12, 978
 Proprietor, 17, 109
 Prosecutor, 10, 432
 Prudence, 11, 203
 Public buildings, 13, 413
 Public place, 9, 786
 Publisher, 17, 109
 Purport:
 Forgery, 9, 575
 Ratification, 11, 203
 Ratify, 11, 203
 Ravish, 17, 659
 Remotely, 11, 203
 Rendition, 2, 249
 Represented, 19, 97
 Repudiation, 11, 203
 Responsible person, 14, 1032
 Riotous, 18, 1197
 Rob, 18, 1225
 Rule, 15, 317
 Same transaction, 1, 188
 Seizin, 9, 23
 Seized of, 21, 718
 Served, 18, 919
 Session, 1, 240
 Settled, 19, 121
 Spinster, 17, 651
 Stack, 13, 413
 Standing mute, 2, 773
 Stayed by injunction, 18, 942
 Steal, 12, 954, 975, 1015
 Strike:
 Homicide, 10, 131
 Stroke:
 Homicide, 10, 131
 Substance of evidence, 3, 424
 Substantial, 11, 203
 Substantially, 11, 203
 Successive days, 17, 113
 Successive weeks, 17, 113
 Suit, 1, 751; 18, 166
 Error, writ of, 7, 826
 Tenor:
 Forgery, 9, 575
 Term, 1, 240
 Testimony, 3, 424
 Then and there, 10, 519, 524; 18, 1198
 Time, 4, 422
 To, 21, 704
 Transaction, 1, 185
 Unlawful:
 Homicide, 10, 124
 Unlawfully, 13, 409; 17, 655
 Gaming, 9, 774
 Indictments, 10, 495
 Ordinances, 15, 432
 Until, 21, 704
 Usual place of abode, 19, 627
 Value distinguished from amount,
 1, 726
 Violent, 18, 1197, 1227
 Violently, 17, 658

WORDS AND PHRASES, *cont'd.*

- Wantonly, 13, 409
 - Mayhem, 13, 934
- Warranted, 19, 97
- Warranty, 11, 204
- Willfully, 2, 825, 853; 8, 794; 11, 205;
 - 13, 408; 16, 336, 349
- Homicide, 10, 121
- Indictments, 10, 492
- Ordinances, 15, 432
- With costs, 5, 219
- With costs in both courts, 5, 220
- Without prejudice, 2, 433
- WORK AND LABOR, 22, 1360**
 - Admissions, 22, 1374
 - Amendments, 22, 1374
 - Addition of common counts, 22, 1375
 - Addition of special count, 22, 1375
 - Change of action to enforce mechanic's lien to action for compensation, 22, 1375
 - Complaint on special contract changed to *quantum meruit*, 22, 1375
 - In general, 22, 1374
- Answer, 22, 1372
- Assumpsit, 2, 1008; 22, 1361
 - Abandoned by sickness, 2, 1011
 - Account for work, labor, and materials, 2, 1008
 - Death, 2, 1011
 - Dismissal of servant, 2, 1011
 - Excuse for nonperformance, 2, 1009
 - Quantum meruit*, 2, 1010
 - Special contract, 2, 1009, 1012
 - Work abandoned by plaintiff, 2, 1011
 - Work preferred and accepted, 2, 1009
- Attorney's fees, 3, 105
- Bills of particulars, 22, 1369
- Burden of proof, 22, 1379
- Counts, paragraphs, and separate statements, 22, 1364
- Covenant, 22, 1361
- Debt, 22, 1361
- Declaration and complaint, 22, 1363
 - Averment as to performance, 22, 1367
 - Averment as to services performed, 22, 1368
 - Averment of breach of contract by defendant, 22, 1368
 - Averment of value of work, 22, 1369
 - Averment that defendant accepted work and was benefited thereby, 22, 1369
 - Averment that defendant promised to pay, 22, 1366

WORK AND LABOR, *cont'd.*

- Declaration and complaint, *cont'd.*
 - Averment that labor was performed at defendant's request, 22, 1366
 - Averment that plaintiff promised to labor, 22, 1366
 - Averment that services were rendered, 22, 1367
 - Averment that sum claimed is due and unpaid, 22, 1370
 - Demand of payment, 22, 1370
 - Description of services performed, 22, 1368
 - Bills of particulars, 22, 1369
 - By whom and for whom performed, 22, 1368
 - Extra work, 22, 1369
 - In general, 22, 1368
 - Time of performance, 22, 1368
- Election between counts, 22, 1364
- In general, 22, 1363
- Joinder of counts and causes, see infra*, Joinder of counts and causes.
- Necessity for *quantum meruit* count, 22, 1363
- Prayer, 22, 1370
- Requisite averments, 22, 1365
- Sufficiency of common counts under codes and practice acts, 22, 1363
- Theory of the case, 22, 1370
- Value of work, 22, 1369
- Defendant's pleadings, 22, 1371
 - Admissions by defendant, 22, 1374
 - Admissions by demurrer, 22, 1374
 - Admissions in answer, 22, 1374
 - Answer, 22, 1372
 - General issue or general denial, 22, 1371
 - Special pleas, 22, 1372
- Description of services performed, see infra*, Declaration and complaint.
- Election between counts, 22, 1364
- Evidence:
 - Admissibility of evidence under pleadings, 22, 1375
- Findings, 22, 1381
- General denial, 22, 1371
- General issue, 22, 1371
- Instructions, 22, 1380
- Joinder of counts and causes, 22, 1363
 - Joinder of counts, 22, 1363
 - Separate statement of causes of action, 22, 1364
 - Several items constituting single cause of action, 22, 1364

WORK AND LABOR, cont'd.

Parties to actions, 22, 1362
Pleading and proof, see *infra*, Variance.

Pleas:

Special pleas, 22, 1372
Quantum meruit, 22, 1363
 Questions of law and fact, 22, 1379
 Reference, 22, 1381
 Replications and replies, 22, 1374
 Set-off, recoupment, and counter-claim, 22, 1382

Theory of the case, 22, 1370

Trial, 22, 1379

Variance, 22, 1375

Admissibility of evidence under pleadings, 22, 1375

Where action is upon common counts, 22, 1375

Where plaintiff declares specially, 22, 1376

Variance and failure of proof, 22, 1376

Failure to prove full performance, 22, 1377

In general, 22, 1376

Proof of *quantum meruit* under averments of special contract, 22, 1378

Proof of special contract under averments of *quantum meruit*, 22, 1378

Variance between proof and bill of particulars, 22, 1379

Where declaration contains both special and common counts, 22, 1379

Verdict, 22, 1381

WRIT DE LUNATICO INQUIREND, see **INSANE PERSONS**.

WRITING (see **DOCUMENTARY EVIDENCE**):

Forgery, see **FORGERY**.

Variance, see **VARIANCE**.

WRIT OF ENTRY, see **ENTRY**, **WRIT OF**.

WRIT OF ERROR, see **ERROR**, **WRIT OF**.

WRIT OF INQUIRY, see **INQUESTS AND INQUIRIES**.

WRIT OF POSSESSION, see **POSSESSION**, **WRIT OF**.

WRIT OF WASTE, see **WASTE**.

WRITS (see **ATTACHMENTS**; **CERTIORARI**; **ERROR**, **WRIT OF**; **ESTREPEMENT**, **WRIT OF**; **EXECUTIONS**; **EXECUTIONS AGAINST THE BODY AND ARREST IN CIVIL CASES**; **HABEAS CORPUS**; **INJUNCTIONS**; **MANDAMUS**; **PROHIBITION**; **PUBLICATION**; **SERVICE OF PROCESS**; **SUMMONS AND PROCESS**; **VARIANCE**):

Actions for malicious abuse of process, see **MALICIOUS PROSECUTIONS**.

Assistance, see **ASSISTANCE**, **WRIT OF**.

Attachment, see **ATTACHMENT**.

Audita querela, see **AUDITA QUERELA**.

Certiorari, see **CERTIORARI**.

Garnishment, see **GARNISHMENT**.

Habeas corpus, see **HABEAS CORPUS**.

Lost instruments and records, 13, 375

Mandamus, see **MANDAMUS**.

Præcipe, see **PRÆCIPE**.

Prohibition, see **PROHIBITION**.

Real actions, see **REAL ACTIONS**.

Returns, see **RETURNS**.

Review, 18, 1037

Scire facias, see **SCIRE FACIAS**.

WRONGFUL DETAINER, see **FORCIBLE ENTRY AND UNLAWFUL DETAINER**.

et = 3.12.12
 5/1/12



